REPORT

OF THE

NORTH DAKOTA
LEGISLATIVE MANAGEMENT

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

SIXTY-NINTH LEGISLATIVE ASSEMBLY
2025

TABLE OF CONTENTS

Judiciary

Juvenile Justice

Tribal and State Relations

Water Topics Overview

North Dakota Legislative Management

Mike Lefor, Chairman
David Hogue, Vice Chairman
John Bjornson, Director, Legislative Council Staff

January 7, 2025

Honorable Kelly Armstrong
Governor of North Dakota

Members, 69th Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Management's report and recommendations of 25 interim committees.

Major recommendations include consolidating the state's guardianship programs under the judicial branch; providing funding for a housing incentive fund; creating a facility construction committee; proposing entering a social work licensure compact; creating a division of apprenticeship; recommending a comprehensive study to determine the feasibility of advanced nuclear energy development in the state; and recommending the inclusion in the legislative branch budget 25 Legislative Council staff positions in response to term limits for legislators.

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

Respectfully submitted,

Representative Mike Lefor
Chairman
North Dakota Legislative Management

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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 1st 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, and Water Topics Overview 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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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 or create a related rule to address any of the considerations under NDCC Section 28-32-18(1)(a)-(f), 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 Representatives Brandy Pyle (Chairman), Donna Henderson, Scott Louser, Andrew Marschall, Carrie McLeod, Brandon Prichard, Dan Ruby, Matthew Ruby, Mike Schatz, Vicky Steiner, Nathan Toman, Bill Tveit, Steve Vetter, and Robin Weisz and Senators Sean Cleary, Jerry Klein, Diane Larson, Janne Myrdal, and Bob Paulson.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

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 type of public notice provided and the extent of public hearings held on the rules.
- Whether any person presented a written or oral concern, objection, or complaint for agency consideration regarding the rules. Each agency is asked to describe the 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 providing public notice and holding hearings on the rules and the approximate cost (not including staff time) of 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 must 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 must 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 must 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 must be provided to the committee.
- If the rules were adopted as emergency rules under NDCC Section 28-32-03, the agency shall 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 written comments or provide oral testimony as permitted by the Chairman. 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 1,531 rules sections and 1,939 pages of rules changed from January 2023 through October 2024. 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
January 2023-October 2024	1,531

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
January 2023-October 2024	1,939

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 15th day of the month before the date of the NDAC supplement in which the rule change appears. The committee may carry over consideration of voiding administrative rules for not more than one additional meeting. This allows the committee to act more deliberately in rules decisions and allows agencies additional time to provide information or to address any of the considerations for which the committee may find a rule to be void. 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 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 review by the Legislative Management of the committee's decision. If the adopting agency does not file a petition, the rule becomes void on the 15th day after the notice to the adopting agency. If within 60 days after receipt of a petition from the agency the Legislative Management has not disapproved the finding of the committee, the rule is void.

Rules Carried Over or Amended by Committee Approval

The committee carried over for consideration a rule of the Department of Public Instruction (NDAC Section 67-04-02-01) to consider whether the use of the word "installation" was appropriate. The Attorney General's office advised the department the phrase "member of the military installation" is direct language from NDCC Section 15.1-08-02 and departure from the term is outside the agency's authority. The committee approved the originally proposed rule.

The committee carried over for consideration a rule of the Office of Management and Budget (NDAC Section 4-07-20.1-08) due to committee concern regarding whether the rule change would prohibit a party to an appeal from receiving assistance in person. The committee, as authorized by NDCC Section 28-32-18(3), agreed to an amendment offered by the Office of Management and Budget to address the issue.

The committee carried over for consideration rules of the Department of Health and Human Services (NDAC Chapter 33-36-01 and Article 33-11) related to ambulance services and emergency medical service personnel training, testing, certification, and licensure. The committee, as authorized under NDCC Section 28-32-18(3), agreed to an amendment offered by the department to address the issue.

The committee, as authorized by NDCC Section 28-32-18(3), agreed on the withdrawal of a rule of the State Board of Examiners for Nursing Home Administrators (NDAC Section 55-02-01-07(3)), and agreed on amendments offered by the Department of Health and Human Services (NDAC Sections 33-03-35-11 and 33-03-35-14(2)) and State Board of Funeral Service (NDAC Section 25-02-02-02(3)(b)).

Rules Voided by Committee

The committee considered a motion to void a rule of the Department of Health and Human Services (NDAC Section 33-04-12-02), relating to a list of acceptable reassignment surgeries, for failing to comply with express legislative intent under NDCC Section 28-32-18(1)(c). The motion to void the rule passed.

The committee considered a motion to void a rule of the Department of Health and Human Services (NDAC Section 33-07-01.1-34), relating to the proposed replacement of the terms "woman" and "mother", because the rule change was arbitrary and capricious under NDCC Section 28-32-18(1)(e). The motion to void the rule passed.

The committee considered a motion to void a rule of the Department of Health and Human Services (NDAC Section 75-03-36-02), relating to the review of applications for licensure to operate a child-placing agency, for failing to comply with express legislative intent under NDCC Section 28-32-18(1)(c). The motion to void the rule passed.

The committee considered a motion to void a rule of the Marriage and Family Licensure Board (NDAC Section 111-02-01-05(5)(p)), relating to conversion therapy, for failure to comply with express legislative intent under NDCC Section 28-32-18(1)(c). The motion to void the rule passed.

TABLE A

Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
		Statistical Summary of Rulemaking January 2023 Through October 2024 - Supplements 387 Through 394							
3	392 - Apr 24	Accountancy, Board of	19	0	0	1	0	0	20
4	390 - Oct 23	Management and Budget, Office of	7	0	0	1	0	0	8
	391 - Jan 24		1	0	0	0	0	0	1
	393 - Jul 24		1	3	0	0	0	0	4
7	393 - Jul 24	Agriculture Commissioner	20	11	0	3	0	0	34
10	391 - Jan 24	Attorney General	0	0	0	5	0	0	5
20	394 - Oct 24	State Board of Dental Examiners	21	1	0	0	0	0	22
24.1	393 - Jul 24	State Electrical Board	21	0	0	0	0	0	21
25	389 - Jul 23	State Board of Funeral Service	2	0	0	0	0	0	2
28	391 - Jan 24	Engineers and Land Surveyors, Board of Registration for Professional	27	0	0	0	0	0	27
30	388 - Apr 23	Game and Fish Department	11	1	0	0	0	0	12
	392 - Apr 24		10	0	0	5	0	0	15
33	388 - Apr 23	State Department of Health	0	15	0	0	0	0	15
	389 - Jul 23		0	16	0	0	0	0	16
	390 - Oct 23		2	1	0	0	0	0	3
	391 - Jan 24		23	0	0	0	0	0	23
	392 - Apr 24		41	18	0	14	0	0	73
33.1	387 - Jan 23	Department of Environmental Quality	15	13	0	0	0	0	28
	391 - Jan 24		6	0	0	0	0	0	6
	393 - Jul 24		2	0	0	0	0	0	2
	394 - Oct 24		39	2	0	0	0	0	41
42	392 - Apr 24	Indian Scholarships, Board for	8	0	0	1	0	0	9
43	392 - Apr 24	Industrial Commission	35	6	0	0	0	0	41
45	391 - Jan 24	Insurance, Commissioner of	6	5	0	138	0	0	149
48.1	393 - Jul 24	State Board of Animal Health	40	0	0	3	0	0	43
49	392 - Apr 24	Massage Therapy, Board of	8	1	0	0	0	0	9
50	392 - Apr 24	North Dakota Board of Medicine	33	25	0	0	0	0	58
54	392 - Apr 24	Board of Nursing	3	3	0	3	0	0	9
55	387 - Jan 23	Nursing Home Administrators, Board of Examiners for	1	0	0	0	0	0	1
61	391 - Jan 24	State Board of Pharmacy	18	1	0	1	0	0	20
66	394 - Oct 24	Psychologist Examiners, Board of	1	7	0	0	0	0	8
67	387 - Jan 23	Public Instruction, Superintendent of	8	1	0	2	0	0	11
	390 - Oct 23		9	4	0	1	0	0	14
	391 - Jan 24		0	1	0	0	0	0	1
	393 - Jul 24		3	0	0	0	0	0	3
	394 - Oct 24		7	1	0	0	0	0	8
67.1	391 - Jan 24	Education Standards and Practices Board	20	3	0	0	0	0	23
	392 - Apr 24		1	0	0	0	0	0	1
69	387 - Jan 23	Public Service Commission	0	5	0	0	0	0	5
	392 - Apr 24		3	0	0	0	0	0	3
69.5	392 - Apr 24	Racing Commission, North Dakota	24	0	0	0	0	0	24
74	394 - Oct 24	Seed Commission	12	0	0	0	0	0	12
75	389 - Jul 23	Department of Human Services	10	0	0	0	0	0	10
	387 - Jan 23		51	0	0	0	0	0	51
	391 - Jan 24		57	0	0	8	0	0	65
	392 - Apr 24		205	8	0	15	0	0	228
	394 - Oct 24		10	0	0	0	0	0	10
82	392 - Apr 24	Board of Trustees of the Teachers' Fund for Retirement	14	5	0	1	0	0	20
85	392 - Apr 24	University and School Lands, Board of	7	0	0	0	0	0	7
89	387 - Jan 23	Water Commission	144	2	0	5	0	0	151
	393 - Jul 24		11	5	0	1	0	0	17
90	394 - Oct 24	State Board of Water Well Contractors	23	6	0	11	0	0	40
92	391 - Jan 24	Workforce Safety and Insurance	15	1	0	1	0	0	17
99	387 - Jan 23	State Gaming Commission	72	1	0	0	0	0	73
103	392 - Apr 24	State Retirement and Investment Office	1	0	0	0	0	0	1
111	392 - Apr 24	Marriage and Family Therapy Licensure Board	8	0	0	0	0	0	8
115	392 - Apr 24	North Dakota Ethics Commission	3	0	0	0	0	0	3
Total			1139	172	0	220	0	0	1531

AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The Agriculture and Natural Resources Committee was assigned three studies:

- Senate Bill No. 2365 (2023) directed a study of the roles of the Insurance Commissioner, Department of Emergency Services, and Department of Water Resources (DWR) in tracking and updating the relevant primary land use authority on lands outside a municipality's jurisdiction. The study required consideration of a method for tracking all organized townships within the state and maintaining updated contact information, certified annually by December 31st; consideration of a formal process for organized townships to request, establish, and track the yielding of land use authority to an adjacent jurisdiction; consideration of how insurance producers access the necessary information, including updated contact information of the authority, to appropriately associate potential insurance policyholders with the relevant land use authority for the purposes of the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP); and consideration of how a member of the public may access the relevant land use authority associated with a specific parcel of land.
- Section 4 of Senate Bill No. 2371 (2023) directed a study of the number of persons that own or control any real estate or commercial assets or operate a business within the state which is owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries or individuals acting on behalf of or in conjunction with foreign adversaries or persons listed on the Office of Foreign Assets Control (OFAC) sanctions list. The study required a review of the definition of "foreign adversary," a review of which federal list accurately encompasses the foreign nations posing threats to the state, a discussion about whether a mechanism exists allowing state agencies and national intelligence agencies to share classified intelligence; which state agencies are best equipped to implement a program to monitor foreign adversaries seeking to operate a business or a charitable enterprise or a beneficial interest in real estate; and the circumstances under which foreign adversaries may own real property in the state.
- Section 22 of Senate Bill No. 2009 (2023) directed a study of the plans for mitigation of adverse wildlife and environmental impacts and monetary payments made to state agencies, contractors, nongovernmental organizations, and others by applicants or other persons for mitigation during the siting and operation of energy conversion or transmission facilities. The study required consideration of the provisions of law affecting the ability of developers to effectively mitigate adverse wildlife habitat and environmental impacts, applicant payments used for the purchase of perpetual or nonperpetual conservation easements, the distinction between an adverse direct environmental effect or an adverse indirect environmental effect, methods to monetarily quantify adverse direct or adverse indirect environmental effects, and alternative programs that may be used or developed for the mitigation of adverse wildlife and environmental effects.

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

- A report from the Model Zoning Review Task Force on the development of a new or updated model zoning ordinance related to animal feeding operations, pursuant to North Dakota Century Code Section 4.1-01-28.
- A biennial report from the Agriculture Commissioner regarding environmental impact mitigation fund disbursements, pursuant to Section 4.1-01-21.1(6).
- 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).

Committee members were Representatives Paul J. Thomas (Chairman), Mike Beltz, Mike Brandenburg, Hamida Dakane, Dori Hauck, Jeff A. Hoverson, Dwight Kiefert, David Monson, Dennis Nehring, SuAnn Olson, Mitch Ostlie, JoAnne Rademacher, and Bill Tveit and Senators Cole Conley, Greg Kessel, Randy D. Lemm, Larry Luick, Janne Myrdal, Terry M. Wanzek, Mark F. Weber, and Kent Weston.

Representative Scott Dyk served on the committee until his resignation from the Legislative Assembly on April 7, 2024.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

TRACKING PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM STUDY

Senate Bill No. 2365 (2023) directed a study of the roles of the Insurance Commissioner, Department of Emergency Services, and DWR in tracking and updating the relevant primary land use authority on lands outside a municipality's jurisdiction. The study required consideration of a method for tracking all organized townships within the state and maintaining updated contact information, certified annually by December 31st; consideration of a formal process for organized townships to request, establish, and track the yielding of land use authority to an adjacent jurisdiction; consideration of how insurance producers access the necessary information, including updated contact information of the authority, to appropriately associate potential insurance policyholders with the relevant land use authority for the purposes of the NFIP; and consideration of how a member of the public may access the relevant land use authority associated with a specific parcel of land.

Background

Testimony provided by a representative of the Insurance Department during the 2023 legislative session in support of the study indicated some North Dakota residents had their NFIP policies canceled because the township in which the property was situated did not have a participation agreement in place to allow eligibility for NFIP coverage. The inability of insurance agents to access accurate information regarding which townships have a valid participation agreement in place further exacerbates the issue. Testimony indicated up to 100 NFIP policies sold in the state may be ineligible for coverage due to the township lacking the necessary participation agreement.

National Flood Insurance Program

The National Flood Insurance Program was established by the National Flood Insurance Act of 1968. The goal of the NFIP is to offer primary flood insurance to properties subject to significant flood risk and to reduce flood risk through effective floodplain management standards. Communities volunteer to participate in the NFIP to access federal flood insurance. To participate in the NFIP, the community must adopt minimum land use standards.

State Agency Authority

Chapter 26.1-01 defines the duties and powers of the Insurance Commissioner. Section 26.1-01-03, in part, requires the Insurance Commissioner to "see that all the laws of this state respecting insurance companies and benevolent societies are executed faithfully" and "report in detail to the attorney general any violation of law relative to insurance companies and their officers or agents." Additionally, Section 26.1-01-07 allows the Insurance Commissioner to issue licenses to an insurance professional and collect fees in connection with the issuance of a license. The Insurance Commissioner and the Insurance Department regulate North Dakota insurance professionals, including those selling flood insurance.

Chapter 61-16.2 provides DWR authority to administer floodplain management practices in North Dakota. Under this chapter, DWR must collect and distribute information relating to floodplain management and coordinate local, state, and federal floodplain management activities. The department also is tasked with encouraging appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes and to allow adequate local participation in the planning process. The department must assist communities and districts in their floodplain management activities in cooperation with the federal and state entities. Section 61-16.2-05 requires DWR to review a community's floodplain management ordinances. During the ordinance review, DWR must verify whether a community's floodplain management ordinances comply with Chapter 61-16.2 and the minimum standards set forth under the NFIP. Section 61-16.2-13 requires communities with residential and nonresidential structures in areas subject to excessive flooding, as determined by DWR, to participate in the NFIP. However, a community is not required to participate in the NFIP if all land under the jurisdiction of the community is enrolled due to another community's participation in the program. Section 61-16.2-02(1)(b) defines "community" as any political subdivision that has the authority to zone.

Chapter 37-17.1, known as the North Dakota Disaster Act of 1985, governs the Department of Emergency Services. As it relates to disasters, Section 37-17.1-02 requires the Department of Emergency Services to provide for "a statewide emergency management system embodying all aspects of prevention, mitigation, preparedness, response, and recovery and incorporating the principles of the national incident management system and its incident command system, as well as other applicable federal mandates." Under Section 37-17.1-04(3), the term "disaster" includes, among other events, flooding.

Local Zoning

In most states, zoning, especially zoning relating to floodplain management, is delegated to municipalities or counties, not townships. Section 58-03-11 permits a board of township supervisors to establish one or more zoning districts within an organized township for zoning and land use. Section 58-03-12 permits a township to exercise zoning to "facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, promote health, safety, and general welfare, and provide for emergency management." Under Section 58-03-12, "emergency management" is defined as "a comprehensive, integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment. The comprehensive plan must be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control." Flooding and floodplain management falls under the definition of "emergency management."

Counties have the authority to zone under Chapter 11-33. Section 11-33-01 permits the board of county commissioners of any county to "regulate and restrict within the county the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes." Section 11-33-03 allows zoning ordinances to provide for emergency management, which includes flooding and floodplain management.

Cities have the authority to zone under Chapter 40-47. Section 40-47-01 permits the governing body of a city to "regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes." Like the authority granted to townships and counties, Section 40-47-03 allows city zoning ordinances to provide for emergency management, which also includes flooding and floodplain management.

Testimony

City of Grand Forks

The committee received testimony from representatives of the City of Grand Forks regarding the administration of the NFIP within a city. According to the testimony, the community rating system is a criteria-based incentive program recognizing safe floodplain management practices that exceed the minimum requirements of the NFIP. The NFIP policyholders residing in the city of Grand Forks receive up to a 25 percent annual discount on insurance premiums because of FEMA's community rating system and the city's responsible floodplain management practices. The testimony indicated if federal law or regulations relating to the NFIP change, state laws and local ordinances also must change to comply with federal law. The committee was informed updating a FEMA floodplain map is a time-consuming and expensive process, and joining the NFIP may be a significant undertaking for a prospective community, depending on the resources available to the community.

Department of Water Resources

The committee received testimony from representatives of DWR regarding DWR's role in administering the NFIP and local zoning authorities. According to the testimony, a community with an established zoning authority may adopt a floodplain ordinance for residents of that community to receive access to federally subsidized NFIP insurance. Participating communities must have the legal authority to enact and enforce floodplain management ordinances to comply with the NFIP. The state joined the NFIP in 1978. Upon joining, FEMA was made aware that a township, city, and county may enact floodplain management ordinances. The committee was informed that despite being aware of the three-tiered floodplain management system, the national mapping standards do not account for the unique distinction. The testimony indicated after spring flooding in 2022, three NFIP claims were flagged by FEMA due to the potentially incorrect zoning or land use authority identified in the policy. In all three cases, FEMA determined the policies were incorrectly written to the county when the township was the appropriate jurisdiction with zoning authority. The Department of Water Resources employs one NFIP coordinator who helps communities join and comply with the NFIP. The committee was informed if a database to track communities participating in the NFIP is created, it must be consistently updated to maintain accuracy.

North Dakota Insurance Department

The committee received testimony from representatives of the Insurance Department regarding the lack of information available to insurance agents about communities participating in the NFIP. According to the testimony, the state lacks a central repository to identify which townships participate in the NFIP. Currently, an organized township may enter an agreement with the county to have the county accept floodplain management. The committee was informed information gaps exist because participating communities are not tracked in one centralized area. The testimony contended to more effectively track participating communities in the NFIP, the Legislative Assembly could create a tracking database, statutorily transfer township floodplain management authority to counties, or both.

Department of Emergency Services

The committee received testimony from representatives of the Division of Homeland Security within the Department of Emergency Services regarding the department's role in coordinating emergency management in the state. The testimony contended the administration of the NFIP by a county rather than a township may be the most efficient method to ensure all NFIP policies are legally effective.

North Dakota Township Officers Association

The committee received testimony from representatives of the North Dakota Township Officers Association regarding floodplain management authority in organized townships. Testimony contended township officers need further education, resources, and expertise relating to the administration of the NFIP. The testimony indicated organized townships are not necessarily requesting to relinquish floodplain management authority to the counties. The committee was informed if floodplain management is transferred to the counties and counties use outdated floodplain maps, the townships are concerned about losing zoning and permitting authority within the entire township, not just the floodplain.

North Dakota Association of Counties

The committee received testimony from representatives of the North Dakota Association of Counties regarding floodplain management authority in counties. According to the testimony, counties support reasonable zoning ordinances because zoning ordinances promote health and safety within the community. Testimony contended reasonable zoning practices promote economic development, which helps to limit burdens on county taxpayers. Counties are empowered with broad zoning authority outside city limits. The committee was informed the counties are not attempting to take zoning authority from the townships. However, if a township chooses not to exercise floodplain management, the counties are willing to provide floodplain management on behalf of the nonparticipating township. Testimony indicates if counties receive the authority to enact and implement floodplain management ordinances, counties also must receive the authority to enforce the adopted ordinances.

Committee Considerations

The committee considered a bill draft relating to floodplain management powers and ordinances for counties, cities, and townships. The bill draft would have required DWR to create and manage a central repository listing the communities participating in the NFIP, make counties the default zoning authority for floodplain management in counties and townships, and allow townships to unilaterally acquire floodplain management authority from the county if a board of township supervisors adopts a resolution to exercise that power. Although committee members generally viewed this bill draft positively, committee members also indicated a clear enforcement provision should be expressly granted to cities, townships, and counties exercising floodplain management.

The committee considered a revised version of the bill draft. In the revised version, a city, county, or township is not required to exercise floodplain management. However, if a city, county, or township undertakes floodplain management, the appropriate governing authority must enact a floodplain management ordinance. The revised version also includes an explicit enforcement provision for a city, county, and township exercising floodplain management. At the request of DWR, the revised bill draft includes updated definitions of "floodplain management" and "floodplain management ordinance" to comply with NFIP definitions. Some committee members expressed concern the proposal could infringe on local governance within townships. However, most committee members viewed this bill draft as a mechanism to solve the issue raised by the Insurance Department.

Recommendation

The committee recommends Senate Bill No. 2027 relating to floodplain management powers and ordinances for counties, cities, and townships.

OWNERSHIP OF PROPERTY AND ASSETS BY FOREIGN ADVERSARIES IN NORTH DAKOTA STUDY

Background

Section 4 of Senate Bill No. 2371 (2023) directed a study of the number of persons that own or control any real estate or commercial assets or operate a business within the state which is owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries or individuals acting on behalf of or in conjunction with foreign adversaries or persons listed on the OFAC sanctions list. The study required a review of the definition of "foreign adversary," a review of which federal list accurately encompasses the foreign nations posing threats to the state, a discussion about whether a mechanism exists allowing state agencies and national intelligence agencies to share classified intelligence; which state agencies are best equipped to implement a program to monitor foreign adversaries seeking to operate a business or a charitable enterprise or a beneficial interest in real estate; and the circumstances under which foreign adversaries may own real property in the state.

North Dakota Statutory Provisions

Senate Bill No. 2371 created Sections 11-11-70 and 40-05-26, relating to the powers of counties and municipalities regarding foreign adversaries. Section 11-11-70 applies to a board of county commissioners, including the board in a home rule county, and Section 40-05-26 applies to a board of city commissioners or city council, including a board or council in a home rule city. These sections prohibit the respective county and city entities from approving a development agreement or building plan with an individual or government identified as a foreign adversary under 15 CFR 7.4(a) or a person identified on the OFAC sanctions list. This prohibition does not apply to a foreign adversary that possesses an interest in real property if the foreign adversary is a duly registered business that has been in good standing with the Secretary of State for at least 7 years, has been approved by the Committee on Foreign Investment in the United States (CFIUS), and maintains an active national security agreement with the federal government.

Senate Bill No. 2371 also amended Section 47-01-09 to prohibit a foreign adversary government, a foreign business entity with its principal office located in a country identified as a foreign adversary, or a foreign business entity in which a foreign adversary owns at least 51 percent of the business or directs the operations and affairs of the business, from purchasing or acquiring title to real property in this state. This section exempts from the prohibition a duly registered business that has maintained a status of good standing with the Secretary of State for at least 7 years, has been approved by the CFIUS, and maintains an active security agreement with the federal government. A business or entity violating the law must divest its interests in real property within 36 months of August 1, 2023. The state's attorney in the county where the majority of the real property is situated has the authority to commence a civil action if the entity fails to divest itself of all real property within the required period.

Code of Federal Regulations

Sections 11-11-70 and 40-05-26 both incorporate 15 CFR 7.4(a) as the controlling list identifying foreign adversaries in North Dakota. The federal regulation characterizes the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of North Korea, the Russian Federation, and the Nicolas Maduro Regime in Venezuela as foreign adversaries that have engaged in a long-term pattern or severe instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons. On July 18, 2024, the United States Department of Commerce redesignated 15 CFR 7.4 as 15 CFR 791.4 by adopting an administrative rule as found in Federal Regulation Document No. 2024-15258.

Office of Foreign Assets Control

Sections 11-11-70 and 40-05-26 both reference the OFAC sanctions list. The OFAC is a tool used by the United States Department of the Treasury to review commercial transactions. Using the OFAC, the United States Department of the Treasury administers various individual, country-based, and issue-specific sanctions programs. Congress has granted the President the power to enforce sanctions under the OFAC through legislation, including the International Emergency Economic Powers Act [Pub. L. 95-223; 91 Stat. 1626; 50 U.S.C. 1701, et seq.] and the National Emergencies Act [Pub. L. 94-412; 90 Stat. 1255; 50 U.S.C. 1601, et seq.]. The federal regulations governing the OFAC are in 31 CFR Chapter V.

Committee on Foreign Investment in the United States

Sections 11-11-70, 40-05-26, and 47-01-09 incorporate by reference the CFIUS, which is an interagency committee chaired by the Secretary of the Treasury. The members of the committee include the heads of the Department of Justice, Department of Homeland Security, Department of Commerce, Department of Defense, Department of State, Department of Energy; Office of the United States Trade Representative; and Office of Science and Technology Policy. The Office of Management and Budget, Council of Economic Advisors, National Security Council, National Economic Council, and Homeland Security Council also observe and, as appropriate, participate in the committee's activities. The Director of National Intelligence and the Secretary of Labor are nonvoting, ex officio committee members with roles defined by statute and regulation.

The committee advises the President to survey the national security risks of foreign direct investment in the United States economy. The committee has the authority to review mergers and acquisitions that could result in foreign control of a United States business. The committee also reviews certain nonpassive, noncontrolling investments in United States businesses involved in critical technologies, critical infrastructure, sensitive personal data, and certain real estate transactions. Ultimately, the President decides to prohibit or suspend a covered transaction if the President finds sufficient evidence that the transaction would purport to hinder national security. The President only may make this determination if the President does not believe other statutes would provide adequate authority to protect the United States.

Testimony

Secretary of State's Office

The committee received testimony from representatives of the Secretary of State's office regarding the Secretary of State's role in monitoring foreign adversaries in the state. The committee was informed the Secretary of State's office is an administrative agency without investigative and enforcement powers. Businesses are authorized to conduct business in the state after the Secretary of State's office reviews and approves the required application packet. Dissolved companies in the state of origin cannot legally conduct business in North Dakota. Testimony contended a blanket moratorium on registering all businesses to preclude foreign adversaries from conducting business in North Dakota would cause extreme harm to the business climate in the state. The committee was informed the Secretary of State's office assumes the information provided in business applications is accurate, truthful, and lawful.

Attorney General's Office

The committee received testimony from representatives of the Bureau of Criminal Investigation (BCI) regarding BCI's role in detecting, identifying, and monitoring foreign adversaries. According to the testimony, BCI has access to the federally administered Financial Crimes Enforcement Network. Testimony contended partnerships between the state of North Dakota, the Department of Homeland Security, the Central Intelligence Agency, and the Federal Bureau of

Investigation are critical in monitoring foreign threats. However, the federal government is not obligated to share intelligence with the states. Thus, the state is reliant on the willingness and authority of a federal agency to share intelligence with the state. Testimony contended a state version of CFIUS may provide an effective conduit to receive intelligence resources from the federal government.

The committee also received testimony from representatives of the Attorney General's stating when a law treats categories of people differently, it may be challenged under the Equal Protection Clause of the 14th Amendment of the United States Constitution. Testimony indicated laws treating people differently on the basis of race, religion, national origin, and alienage almost always are subject to strict scrutiny. Additionally, even if the distinction does not involve a suspect class, laws that treat people differently due to a discriminatory animus also may be subject to strict scrutiny. A law subject to strict scrutiny will be found unconstitutional unless the provision furthers a compelling government interest and the law is narrowly tailored to that interest. The testimony also indicated in the 1920s, the United States Supreme Court applied the rational basis test in a series of cases addressing state laws restricting property ownership based on alienage. However, since the 1970s, the United States Supreme Court generally has applied strict scrutiny to alienage classifications, reasoning classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to scrutiny. The committee was informed a Florida provision restricting land purchases by anyone domiciled in a foreign country of concern who is not a citizen or lawful permanent resident of the United States is subject to ongoing litigation in federal court. Laws restricting foreign adversaries from purchasing land also may face vagueness, pre-emption, and due process challenges.

Greater North Dakota Chamber

The committee received testimony from a representative of the Greater North Dakota Chamber indicating the chamber does not have a mechanism or the resources to monitor foreign adversaries conducting business in North Dakota. Testimony contended, while the Greater North Dakota Chamber understands the importance of national security, laws regulating foreign adversaries could negatively impact many aspects of the business community, including future investment, existing business operations, and job creation.

North Dakota Land Title Association

The committee received testimony from a representative of the North Dakota Land Title Association indicating only buyers and their legal representatives have sufficient information to determine property ownership eligibility. Testimony contended if legislation is introduced requiring reporting of a transaction to the state or other agency, the obligation should be the responsibility of the buyer. Any law regulating foreign adversaries must outline a process for a forced divestment or forfeiture by a court of competent jurisdiction after a state agency brings an enforcement action. Testimony indicated, to avoid harmful complications from invalidating property transfers, future legislation should give a state agency enforcement authority to investigate and provide due process to a person subject to divestment. Testimony contended the divestment procedure should mirror the existing forfeiture or foreclosure procedure. Testimony also indicated orders requiring divestment should be recorded by authorized state agencies within local land records. The committee was informed recordation would provide notice of enforcement actions and create a continuous chain of title, which is necessary to protect future transactions. Testimony contended any future legislation should not impose obligations threatening the role of the title industry as a neutral third party in real estate transactions. Testimony indicated, as part of a standard real estate transaction, a title company uses several state and federal databases to ensure the parties comply with applicable state and federal laws.

National Guard

The committee received testimony from a representative of the National Guard indicating the Guard does not have a role in monitoring foreign adversaries in the state. While units of the Guard support defense operations worldwide, the Guard does not have a mission to monitor foreign adversaries in the state. Testimony indicated federal laws and regulations have been implemented to prevent the Guard from conducting information-gathering and monitoring activities. These laws and regulations ensure national security interests remain in balance with the individual liberties of citizens. Testimony contended the regulation of foreign adversaries would be addressed best by a federal and state partnership led by federal agencies monitoring foreign threats. Any changes in authority afforded to the Guard under state law must comply with federal law.

Department of Emergency Services

The committee received testimony from a representative of the Department of Emergency Services indicating the department faces challenges in monitoring foreign adversaries, including limited access to classified information and current and comprehensive databases. The North Dakota State and Local Intelligence Center (NDSLIC), which consists of staff members from the Department of Emergency Services, BCI, Highway Patrol, the National Guard, the Information Technology Department, and United States Department of Homeland Security, serves as the state's fusion center. The primary focus of NDSLIC is to prevent terrorist acts, maintain a repository of suspicious activity reporting, and analyze threat analysis. Testimony indicated the legal authority of NDSLIC is derived from North Dakota Executive Order No. 2014-06. The committee was informed the department engages with local law enforcement officials to spread awareness of NDSLIC and its mission. Complaints reported to the NDSLIC are investigated locally, and investigation results are shared with state and federal partners. Testimony indicated the state has a limited capacity to monitor foreign adversaries without the proper federal partnerships. Testimony contended a practical solution for monitoring foreign adversaries could include a transaction flagging mechanism that would share information with an appropriate federal agency.

North Dakota's Congressional Delegation

The committee received testimony from a member of North Dakota's Congressional Delegation suggesting the CFIUS State's Right to Know Act of 2024 would allow a Governor to ask CFIUS whether a specific transaction falls under the jurisdiction of CFIUS. The Committee on Foreign Investment in the United States lacks a mechanism to share sensitive information with states. Testimony also contended the federal government and defense entities tend to overclassify information. Testimony also contended intelligence secrets should be protected; however, state governments should have access to information required to monitor and prohibit bad actors. Testimony contended state lawmakers should proactively find solutions to address foreign adversaries rather than relying on the federal government.

National Agricultural Law Center

The committee received testimony from a representative of the National Agricultural Law Center regarding approaches by other states in regulating foreign adversaries. According to the testimony, some states have restrictions on foreign investment in water and mineral rights in addition to restrictions on foreign investment in agricultural land. Some states are seeking to restrict the acquisition of agricultural land by domestic entities owned wholly or in part by foreign nationals or entities. The Attorney General has enforcement and investigative powers under most foreign ownership laws. However, the Department of Agriculture and Secretary of State often have the authority to collect and forward information to the appropriate enforcement agency.

North Dakota Farm Bureau

The committee received testimony from a representative of the North Dakota Farm Bureau indicating the Farm Bureau promotes an individual's freedom to sell property to whomever the landowner chooses, except to entities or agents of nations on the federal government's foreign adversary list. Testimony contended prohibiting a foreign-owned business from conducting agricultural research on North Dakota farmland may hinder agricultural growth and production in this state. The committee was informed less than 1 percent of North Dakota's agricultural land is foreign owned. Testimony indicated China-based investors only own three-one hundredths of 1 percent of private agricultural land in the United States. Testimony also indicated the Agricultural Foreign Investment Disclosure Act [Pub. L. 95-460; 92 Stat. 1263; 7 U.S.C. 3501, et seq.] can be an effective tool when enforced. Although, between 1998 and 2021, the United States Department of Agriculture (USDA) assessed penalties 494 times on 395 different investors, all fees assessed were for late filing rather than avoiding filing. No penalties were assessed between 2015 and 2018, or in 2020, due to USDA staffing shortages. The committee was informed the lack of resources at USDA to enforce the Agricultural Foreign Investment Disclosure Act has resulted in practical limits to policing the high volume of annual real estate transactions, with nearly half of all transactions not disclosing a price.

North Dakota Farmers Union

The committee received testimony from a representative of the North Dakota Farmers Union which informed the committee the Agricultural Foreign Investment Disclosure Act is a federal act that publishes foreign ownership of agricultural land in the United States. A person violating the Agricultural Foreign Investment Disclosure Act is subject to federal fines and penalties.

Other Testimony

The committee received comments from members of the public regarding the committee's study of the ownership of assets and property by foreign adversaries. According to the testimony, the Belt and Road Initiative is China's most visible tool for projecting global influence. This initiative aims to control large-scale infrastructure, including ports, highways, energy pipelines, and digital networks. Testimony contended China's adversarial efforts extend beyond infrastructure and seek control of political, economic, and social systems. Testimony argued North Dakota must proactively identify and address vulnerabilities in land ownership, infrastructure investments, and local partnerships. Testimony contended state initiatives are necessary for long-term security and resilience against foreign influence. Testimony also indicated to monitor foreign adversaries effectively, lawmakers need to craft a definition of "foreign adversary" and determine which foreign transactions should be restricted.

Committee Considerations

The committee discussed the reasons for and against restricting foreign adversaries from owning assets and property in the state. Some committee members expressed concerns enacting further restrictions would hinder the business community and job growth. Other committee members expressed concerns regarding the need to enact additional restrictions to protect the citizens and resources of the state. Committee members expressed frustration with the inability of state agencies to access classified and sensitive intelligence collected by the federal government. Committee members attempted to find a balance between protecting the state from foreign influence and respecting individual liberties and the state's long-term economic outlook.

The committee considered bill drafts relating to required disclosures for foreign owners of agricultural land; foreign ownership of real property near military installations; statements listing beneficial ownership interests, establishing a beneficial owner database by BCI, and filing beneficial ownership information statements with the Secretary of State; the certification of a grantee's right to own property; and an appropriation to the Attorney General to conduct a foreign adversary threat assessment. The committee also considered a bill draft relating to the filing of beneficial ownership information statements with the Secretary of State and the duties of the Secretary of State, as well as a subsequent revision to that bill draft.

The committee elected to combine the bill draft relating to required disclosures for foreign owners of agricultural land, the bill draft relating to filing ownership information statements with the Secretary of State, and portions of the bill draft related to certification of a grantee's right to own property into a single bill draft. The bill draft amends existing definitions, repeals an expiration date, prohibits a foreign organization of concern in which a foreign country of concern owns any interest in a foreign organization of concern from owning property in the state, requires a statement of compliance to be filed with the county recorder, requires a person to file a copy of the report required under the Agricultural Foreign Investment Disclosure Act of 1978 [Pub. L. 95-460; 92 Stat, 1263; 7 U.S.C. 3501 et seq.] with the Agriculture Commissioner, and requires a statement of ownership to be filed with the Secretary of State.

Recommendation

The committee recommends Senate Bill No. 2026 relating to the certification of a foreign grantee's right to own property and the filing of foreign ownership information statements with the Secretary of State, the powers of a board of county commissioners, a board of city commissioners, and a city council regarding development by a foreign country of concern or foreign organization of concern, the prohibition on ownership of real property by a foreign country of concern or a foreign organization of concern, and required filings for foreign persons investing in agricultural lands.

MITIGATION PLANS RELATING TO THE OPERATION OF ENERGY CONVERSION OR TRANSMISSION FACILITIES STUDY

Section 22 of Senate Bill No. 2009 (2023) directed a study of the plans for mitigation of adverse wildlife and environmental impacts and monetary payments made to state agencies, contractors, nongovernmental organizations, and others by applicants or other persons for mitigation during the siting and operation of energy conversion or transmission facilities. The study required consideration of the provisions of law affecting the ability of developers to effectively mitigate adverse wildlife habitat and environmental impacts, applicant payments used for the purchase of perpetual or nonperpetual conservation easements, the distinction between an adverse direct environmental effect or an adverse indirect environmental effect, methods to monetarily quantify adverse direct or adverse indirect environmental effects, and alternative programs that may be used or developed for the mitigation of adverse wildlife and environmental effects.

Background

Chapter 49-22 governs the siting of electric energy conversion facilities and electric transmission facilities. Under Chapter 49-22, the Public Service Commission (PSC) is authorized to review, reject, and accept applications for placement of an electric transmission facility or an electric energy conversion facility in the state. The commission also may promulgate rules relating to the siting of these facilities. Section 49-22-04 requires each utility that owns or operates, or plans within the next 10 years to own, operate, or start construction on a facility, to submit a 10-year plan to the PSC for review. The 10-year plan must contain a description, including the nature and location, of the facilities to be owned or operated, or removed from service by the utility during the applicable period; the preferred site on which facilities may be constructed in the ensuing 5 years; any coordinated regional plans with other utilities in the preferred service area; a plan to minimize and mitigate any environmental impacts during the construction and operation of facilities; and a statement of the projected demand for the service area. The commission must assess the impact of the development proposed in the plan to ensure energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

Section 49-22-07 requires a utility to obtain a certificate of site compatibility or a route permit from the PSC before constructing an electric energy conversion facility or an electric transmission facility. Under Section 49-22-08, an application for a certificate must contain, among other things, a description of the size and type of facility, a summary of any studies undertaken regarding the environmental impact of the facility, and a description of the efforts that will be taken to mitigate any foreseen adverse impacts of the facility. Once an application is received, the PSC must hold a public hearing relating to the application. The commission is prohibited from conditioning the issuance of a certificate or permit on the applicant's payment of an assessed mitigation payment or a payment requested by another state agency or entity to mitigate negative impacts on wildlife habitat. In addition to a certificate of site compatibility, a utility installing an electric transmission facility within a designated corridor also must receive a route permit under Section 49-22-08.1.

An application for a route permit must be filed within 2 years of an applicant receiving a certificate of site compatibility and contain, among other items, a plan to mitigate adverse impacts associated with the prospective electric transmission facility.

Under Section 49-22-09, the PSC must consider several factors to aid in its evaluation and designation of sites, corridors, and routes. Factors considered relating to environmental impacts include:

- The available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
- The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
- The adverse direct and indirect environmental effects that cannot be avoided if the proposed site or route is designated.
- The alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
- Any problems raised by federal agencies, other state agencies, and local entities.

The Public Service Commission is required to provide notice to designated state and federal agencies when considering a siting application under Chapter 49-22. When siting these projects, the PSC must provide notice to the: Aeronautics Commission; Attorney General; Department of Agriculture; Department of Health and Human Services; Department of Labor and Human Rights; Department of Career and Technical Education; Department of Commerce; Energy Infrastructure and Impact Office; Game and Fish Department; Industrial Commission; Governor's office; Department of Transportation; State Historical Society of North Dakota; Indian Affairs Commission; Job Service North Dakota; Department of Trust Lands; Parks and Recreation Department; Natural Resources Conservation Service; State Water Commission; United States Department of Defense; United States Fish and Wildlife Service; United States Army Corps of Engineers; Federal Aviation Administration; county commission of the county or counties where the project is located; North Dakota Transmission Authority; North Dakota Pipeline Authority; Department of Environmental Quality; North Dakota Geological Survey; North Dakota Forest Service; Federal Bureau of Land Management; Military Aviation and Installation Assurance Siting Clearinghouse; Twentieth Airforce 91st Missile Wing; and Minot and Grand Forks Air Force Bases.

Section 49-22-09(2) prohibits the PSC from conditioning the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat. Although environmental impact mitigation payments are not required under Chapter 49-22, if an applicant elects to provide a payment to mitigate the environmental impact of the construction or operation of an energy conversion or transmission facility, the applicant must do so in accordance with Section 49-22-09.2. Section 49-22-09.2 requires any payment for environmental mitigation be made to the Agriculture Commissioner for deposit in the environmental impact mitigation fund under Section 4.1-01-21.1.

The environmental impact mitigation fund consists of all money deposited in the fund under Section 49-22-09.2. Section 4.1-01-21.1(2) provides money in the fund only may be used for consultation with environmental scientists or engineers, or industry specialists, for services to analyze and implement mitigation required as a result of the impact of development, and for the creation or restoration of habitats affected by development. Easements or leaseholds purchased by a person to mitigate adverse environmental effects under Chapter 49-22 are limited to the facility's operational life pursuant to Section 4.1-01-21.1. The Agriculture Commissioner must notify the PSC of any mitigation efforts on an energy conversion or transmission facility before the PSC issues a permit under Chapter 49-22.

Testimony

Public Service Commission

The committee received testimony from a representative of the PSC relating to the PSC's role in implementing mitigation plans for the siting and operation of energy conversion or transmission facilities. According to the testimony, effective communication with landowners during the siting process is sometimes difficult due to the number of parties and the complexity of most transactions. The committee was informed the PSC does not determine the spacing between wind towers, and the economic impacts of these projects are discussed primarily by local authorities during the local permitting process. Testimony indicated the PSC primarily focuses on the environmental impacts during the state permitting process. The mitigation factors under Section 49-22-09 merely guide the PSC when issuing permits. Avoidance areas, which include woodlands and wetlands, may not be impacted by a siting project unless another reasonable alternative is available.

Game and Fish Department

The committee received testimony from a representative of the Game and Fish Department relating to the department's role regarding mitigation plans for the siting and operation of energy conversion or transmission facilities. According to the testimony, direct impacts account for actual acres of habitat destroyed by siting projects, while indirect impacts account for disturbed or reduced acres due to siting projects. Certain geographical areas, known as exclusion areas, must be excluded from consideration of a site for an energy conversion facility. These areas include wilderness and wildlife areas; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; nature preserves; hardwood draws; and enrolled woodlands. Other exclusion areas include areas critical to the life stages of threatened or endangered animal or plant species and areas where animal or plant species that are unique or rare to the state would be irreversibly damaged. Testimony indicated the department conducts an impact analysis to provide a project developer with an estimate of a wind project's impact on surrounding wildlife and habitats. The analysis helps to determine whether voluntary mitigation offsets are necessary. Testimony indicated voluntary mitigation offsets are recommended only when impacts cannot be avoided through strategic siting. Offsets are recommended through the allocation of habitat acres, not monetary payments.

Department of Agriculture

The committee received testimony from a representative of the Department of Agriculture regarding the Department of Agriculture's role in implementing mitigation plans for the siting and operation of energy conservation or transmission facilities. Testimony indicated a conservation easement, in relation to an energy facility mitigation project, must be limited in time to no longer than the operational life of the facility. Testimony indicated the department has worked with the PSC to formulate administrative rules to implement the environmental mitigation program under Section 4.1-01-21.1. According to the testimony, the administrative rules aim to foster and implement a collaborative pragmatic approach that provides transparency and regulatory certainty to landowners, producers, and energy companies. The administrative rules also regulate both direct and indirect impacts. Testimony indicated the department is notified of every siting project in the state; however, the department is not required to provide feedback to the PSC for every siting project. The committee was informed the department is not legally required to track the number of acres of farmland lost annually to siting projects.

Apex Clean Energy

The committee received testimony from a representative of Apex Clean Energy regarding the wind energy industry's role in implementing mitigation plans for the siting and operation of energy conversion or transmission facilities. According to the testimony, Apex Clean Energy provides utility-scale wind and solar power, battery storage, distributed energy resources, and green fuels. Testimony indicated Apex Clean Energy is working with the Agriculture Commissioner and landowners to determine the feasibility of certain projects. Testimony contended a project's success depends on the transparency of the discussion and information provided.

NextEra Energy Resources

The committee received testimony from a representative of NextEra Energy Resources regarding the wind energy industry's role in implementing mitigation plans for the siting and operation of energy conversion or transmission facilities. The committee was informed generating affordable, homegrown energy compatible with agriculture is becoming an essential component of farm viability in many areas across the state. Testimony indicated balancing responsible wind energy development and conservation of wildlife and native habitats is attainable. The committee was informed NextEra plans to collaborate with the Agriculture Commissioner to help develop a sensible and practical mitigation program to balance landowner, wildlife, and industry interests. Generally, NextEra does not purchase the land on which the project infrastructure is located. Rather, NextEra will pay a landowner under a written lease for the life of a project. The typical lifespan of a project is 30 years, which can be extended if the project's infrastructure is upgraded during the project's operating period.

Minnkota Power Cooperative

The committee received testimony from a representative of the Minnkota Power Cooperative regarding an electric power cooperative's role in mitigation plans for the siting and operation of energy conversion or transmission facilities. According to the testimony, project managers receive opinions from industry experts to study the environment of a proposed project route or site at the beginning of each project. Testimony contended project managers strive to balance industry needs and landowner rights. According to the testimony, the practice of compensatory mitigation is used to offset mitigation costs but often fails to solve all underlying mitigation issues. The testimony indicated each siting project is unique to the various energy industries in North Dakota. The committee was informed energy providers need latitude to direct their own mitigation programs. Testimony contended a program requiring all mitigation payments to be submitted to the Department of Agriculture would delay project implementation. Testimony contended any future government mitigation programs should remain voluntary, have specific guidelines and rules, and be transparent to industry participants.

Committee Considerations

Committee members generally were encouraged by the implementation of the environmental mitigation program under Section 4.1-01-21.1. Committee members also stressed the importance of bolstering communication with affected landowners regarding future siting projects. Committee members agreed landowner rights, productive agricultural lands, and native habitats and species are important factors that must be considered during siting projects.

Conclusion

The committee makes no recommendation regarding its study relating to the plans for mitigating adverse wildlife and environmental impacts and monetary payments made to state agencies, contractors, nongovernmental organizations, and others by applicants or other persons for mitigation during the siting and operation of energy conversion or transmission facilities.

REQUIRED REPORTS

Model Zoning Review Task Force Report

The committee received a report from the Model Zoning Review Task Force on developing a new or updated model zoning ordinance related to animal feeding operations under Section 4.1-01-28. According to the report, throughout the 2023-24 interim, the task force received input on model setbacks, manure management plans, and livestock odor modeling used in South Dakota and Minnesota. The task force discussed whether setback distances for animal feeding operations should be adjusted under Section 23.1-06-15(7), the feasibility of incorporating livestock odor modeling to determine appropriate setbacks, and whether setbacks should be based upon the type of animal within an animal feeding operation. The report indicates the Model Zoning Review Task Force recommends adjusting the setbacks under Section 23.1-06-15(7), regardless of animal species, to be:

Number of Animal Units	Proposed Setback Distance
0-300	None
301-999	One-quarter of 1 mile
1000-3500	One-half of 1 mile
3501-7500	Three-fourths of 1 mile
7501-10,000	1 mile
10,001-17,500	1 and one-quarter mile
17,501-25,000	1 and one-half mile
25,001-50,000	1 and three-fourths miles
50,001-100,000	2 miles

Environmental Impact Mitigation Fund Disbursement Report

The committee received a report from the Agriculture Commissioner regarding Environmental Impact Mitigation Fund (EIMF) disbursements under Section 4.1-01-28. According to the report, during the 2023 legislative session, the Legislative Assembly appropriated $250,000 to the EIMF for the 2023-25 biennium. Since the beginning of the 2023-25 biennium, the Agriculture Commissioner has expended $114,454 from the EIMF for professional consultation fees. The EIMF has received $750,000 in revenues from NextEra in conjunction with the construction of its Oliver Wind IV Energy Center project wind energy conversion facility in Oliver County. As of September 23, 2024, the balance of the EIMF is $885,546.

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 supervising the North Dakota Agricultural Experiment Station. The law was amended in 1999 to include responsibility for the North Dakota State University 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 September 2023, and concluding on January 3, 2024, SBARE received input from various stakeholder groups, citizens, organizations, and other interested parties who shared their needs, ideas, and thoughts about agricultural research and extension efforts in the state. Input sessions were held in person and virtually in Minot, Dickinson, and Fargo, and the input consisted of oral and written testimony. The prioritization process included evaluating, ranking, and prioritizing stakeholder input. After reviewing the stakeholder input, SBARE's top needs for the upcoming biennium are related to the North Dakota Agricultural Experiment Station, North Dakota State University Extension Service programmatic needs, and capital improvement projects. Specific initiatives relate to biofuels, carbon offset programs, soil conservation practices, overall health of livestock herds, microbial biological markets, global trade patterns, precision farming and ranching, and agricultural research.

BUDGET SECTION

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

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

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

Budget Section members were Senators Brad Bekkedahl (Chairman), Randy A. Burkhard, Kyle Davison, Dick Dever, Micheal Dwyer, Robert Erbele, Kathy Hogan, David Houge, Jerry Klein, Karen K. Krebsbach, Curt Kreun, Tim Mathern, Scott Meyer, Merrill Piepkorn, Jim P. Roers, David S. Rust, Donald Schaible, Ronald Sorvaag, Shawn Vedaa, and Terry M. Wanzek and Representatives Bert Anderson, Larry Bellew, Glenn Bosch, Josh Boschee, Mike Brandenburg, Jay Fisher, Karla Rose Hanson, Zachary Ista, Dennis Johnson, Keith Kempenich, Gary Kreidt, Mike Lefor, Bob Martinson, Lisa Meier, Alisa Mitskog, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Emily O'Brien, Brandy Pyle, David Richter, Dan Ruby, Mark Sanford, Mike Schatz, Randy A. Schobinger, Greg Stemen, Michelle Strinden, Steve Swiontek, and Don Vigesaa.

Representative Bellew was a member of the Budget Section until he resigned from the Legislative Assembly on December 31, 2023. Representative Schobinger was a member of the Budget Section until he died on August 13, 2024.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

The following duties assigned to the Budget Section by law or by Legislative Management directive were acted on or reports were received during the 2023-24 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. **Sources of funds received for construction projects of entities under the control of the State Board of Higher Education (SBHE) (Section 15-10-12.3)** - This section requires each institution under the control of SBHE undertaking a capital construction project that was approved by the Legislative Assembly and for which local funds are to be used to present a biennial report to the Budget Section detailing the source of all funds used in the project.
4. **SBHE's semiannual project variance reports (Section 15-10-47)** - This section requires the Office of Management and Budget (OMB) to provide to the Budget Section upon request information relating to SBHE's semiannual project variance reports regarding construction projects valued at more than $250,000.

5. **Annual report from the NDSU Main Research Center (Section 15-12.1-05)** - This section requires, within the duties of the NDSU Main Research Center, an annual report to be provided to the Budget Section regarding any adjustments or increases of FTE positions.

6. **Status of the State Board of Agricultural Research and Education (SBARE) (Section 15-21.2-17(10))** - This section requires, within the duties of SBARE, a status report to be provided to the Budget Section.

7. **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.

8. **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.

9. **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 which exceed $500,000.

10. **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.

11. **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.

12. **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.

13. **Job insurance trust fund (Section 52-02-17)** - This section requires Job Service North Dakota to 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. The Legislative Management has assigned this responsibility to the Budget Section.

14. **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.

15. **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.

16. **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.

17. **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 federal funds of more than $50,000 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 federal funds of more than $50,000 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.

18. **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.

19. **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.

20. **Transfers of spending authority from the state contingencies appropriation exceeding $50,000 (Section 54-16-09)** - This section provides, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than $50,000 from the state contingencies line item to the appropriate line item in the appropriation of the state officer who requested the transfer. Budget Section approval is not required if the transfer is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis, or to avoid an imminent financial loss to the state. A total of $400,000 was provided for the 2023-25 biennium.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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.

28. **Retirement and Investment Office (RIO) incentive compensation program (Sections 5 and 7 of Senate Bill No. 2022 (2023))** - These sections require a report from RIO each interim regarding the status of the incentive compensation program for FTE investment and fiscal operations positions, including the provisions of the program; the total amount of incentives paid out to employees each year; and the minimum, maximum, and average payout per eligible FTE position.

29. **Legislative Council new and vacant FTE funding pool (Section 6 of House Bill No. 1001 (2023))** - This section requires the Legislative Council to provide a report regarding the use of funding from the Legislative Council new and vacant FTE funding pool containing information on new FTE positions, **including the date hired;** vacant FTE positions, including the dates the positions are vacated and filled; and additional salaries and wages funding needed due to savings from vacant positions being less than anticipated.

30. **Judicial branch new and vacant FTE funding pool (Section 6 of House Bill No. 1002 (2023))** - This section requires the Supreme Court to provide a report regarding the use of funding from the judicial branch new and vacant FTE funding pool containing information on new FTE positions, including the date hired; vacant FTE positions, including the dates the positions are vacated and filled; and additional salaries and wages funding needed due to savings from vacant positions being less than anticipated.

31. **Federal funds report** - Receive a report from the Legislative Council staff in the fall of 2024 on the status of the state's federal funds receipts for the current biennium and estimated federal funds receipts for the subsequent biennium.

32. **Report regarding any transfers between line items in excess of $50,000 (Section 3 of House Bill No. 1004 (2023))** - This section requires the Department of Health and Human Services (DHHS) to report to the Budget Section after June 30, 2024, on any transfers in excess of $50,000 made during the 2023-25 biennium between line items within items within Section 1 of House Bill No. 1004 (2023), subdivisions 1, 2, and 3 of Section 1 of Senate Bill No. 2012 (2023), and any other appropriation authority for DHHS approved by the 68th Legislative Assembly for the biennium beginning July 1, 2023, and ending June 30, 2025.

33. **Report regarding any transfers between line items in excess of $50,000 (Section 4 of House Bill No. 1004 (2023))** - This section requires DHHS to report to the Budget Section after June 30, 2024, on any transfer made in excess of $50,000 between line items within Section 1 of House Bill No. 1004 (2023), subdivisions 1, 2, and 3 of Senate Bill No. 2012 (2023), and any other appropriation authority for DHHS approved by the 68th Legislative Assembly to subdivision 4 of Senate Bill No. 2012 (2023), for the biennium beginning July 1, 2023, and ending June 30, 2025.

34. **Council on the Arts line item transfer (Section 5 of House Bill No. 1010 (2023))** - This section requires a report from the Council on the Arts after June 30, 2024, on any transfer made in excess of $50,000 between line items in Section 1 of House Bill No. 1010 (2023).

35. **Flexible transportation fund (Section 10 of House Bill No. 1012 (2023))** - This section requires periodic reports from the Director of the Department of Transportation (DOT) on the status of the flexible transportation fund and any projects receiving allocations from the fund.

36. **Agriculture research and related entities FTE positions (Section 10 of House Bill No. 1020 (2023))** - 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.

37. **Opioid settlement fund (Section 3 of House Bill No. 1447 (2023))** - This section requires an annual report from DHHS on the status of the opioid settlement fund and of spending decisions made by the department and political subdivisions under the new chapter to Title 50.

38. **Report from the Governor on federal and other funds received (Section 3 of Senate Bill No. 2001 (2023))** - 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.

39. **Report regarding any transfers between line items in excess of $50,000 (Section 5 of Senate Bill No. 2012 (2023))** - This section requires DHHS to report to the Budget Section after June 30, 2024, on any transfers in excess of $50,000 made during the 2023-25 biennium between line items within items within Section 1 of House Bill No. 1004 (2023), subdivisions 1, 2, 3, and 4 of Section 1 of Senate Bill No. 2012 (2023), and any other appropriation authority for DHHS approved by the 68th Legislative Assembly for the biennium beginning July 1, 2023, and ending June 30, 2025.

40. **Executive branch new and vacant FTE funding pool (Section 16 of Senate Bill No. 2393 (2023))** - This section requires a report from OMB at each meeting of the Budget Section regarding salaries and wages, vacant position information, and the use of funding from the executive branch new and vacant FTE funding pool.

41. **Flexible transportation fund projects (Section 6 of House Bill No. 1541 (2023))** - This section requires the Budget Section to approve any project that utilizes more than $10 million from the flexible transportation fund, except for projects that match federal or private funds and the amount utilized from the fund is 50 percent or less of total project costs.

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 2024 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.
3. **State fiscal recovery funds (Section 4 of Senate Bill No. 2393 (2023))** - This section requires a report from OMB regarding the transfer on December 1, 2024, of any uncommitted federal State Fiscal Recovery Fund appropriation authority from the state agency that received the appropriation authority to DOCR and the transfer of any uncommitted accumulated interest and earnings of the State Fiscal Recovery Fund to DOCR during the biennium beginning July 1, 2023, and ending June 30, 2025.

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 2023-24 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. **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 SBHE which are financed by donations, gifts, grants, and bequests. Budget Section approval can only be provided 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. **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.
5. **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.
6. **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.
7. **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.

8. **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.
9. **Termination of food stamp program (Section 50-06-05.1(16))** - This section provides, subject to Budget Section approval, DHHS 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.
10. **Termination of energy assistance program (Section 50-06-05.1(18))** - This section provides, subject to Budget Section approval, DHHS 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.
11. **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.
12. **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 that would eliminate or make impossible the accomplishment of a program or objective for which funding was provided by the Legislative Assembly.
13. **Acceptance of federal funds not designated 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.
14. **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 provision 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.
15. **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.
16. **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.
17. **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.
18. **Purchases of "put" options (Section 54-44-16)** - This section requires OMB to report any purchases of "put" options to the Budget Section.
19. **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 legislative organizational session. The Budget Section was assigned this responsibility.
20. **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.
21. **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.

22. **Requests by 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.
23. **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.
24. **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.
25. **Department of Water Resources carryover authority (Section 21 of Senate Bill No. 2020 (2023))** - This section authorizes the Department of Water Resources to seek Emergency Commission and Budget Section approval under Section 54-16-04.2 to increase carryover spending authority of funds appropriated in the 2021-23 biennium and continued into the 2023-25 biennium.
26. **Western Area Water Supply loan (Section 2 of Senate Bill No. 2196 (2023))** - This section requires Budget Section approval for a payment by the State Water Commission to the Bank in the amount of the default certified to the Budget Section by the Bank if the Western Area Water Supply Authority defaults on its payment of principal or interest on the infrastructure revolving loan under the new section to Chapter 61-40.
27. **Federal block grant hearings (House Concurrent Resolution No. 3001 (2023))** - This resolution authorizes the Budget Section, through September 30, 2025, to hold any required legislative hearings for federal block grants.

OFFICE OF MANAGEMENT AND BUDGET

2021-23 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 2021-23 biennium:

Unobligated general fund balance - July 1, 2021		$1,122,353,345
Add		
General fund collections		5,319,841,937
Total estimated revenues available		$6,442,195,282
Less		
Legislative appropriations - One-time	($114,598,493)	
Legislative appropriations - Ongoing	(4,878,358,837)	
2023-25 appropriations spent through emergency clause	(1,846,593)	
Supplemental and deficiency appropriations	(65,852,655)	
Unspent authority	282,519,161	
Other adjustments	1,712,500	
Total appropriations		(4,776,424,917)
Estimated ending general fund balance - June 30, 2023 - Before transfers and adjustments		$1,665,770,365
Transfer to budget stabilization fund[1]		(176,601,907)
Other adjustments		(858,286)
Ending general fund balance - June 30, 2023		$1,488,310,172

[1]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.

2021-23 Biennium General Fund Turnback

The Budget Section received a report from OMB on the 2021-23 biennium agency unspent general fund appropriation amounts (turnback). Unspent 2021-23 biennium general fund appropriation authority totaled approximately $282.5 million. Major unspent general fund appropriations include:

- The Department of Public Instruction had turnback of $55.3 million, which was a result of reduced state school aid spending due to lower than anticipated enrollment growth.
- DHHS had turnback of $185.4 million, which primarily related to lower than anticipated cost and caseload levels and the enhanced Coronavirus (COVID-19) federal medical assistance percentage.

2021-23 Biennium Capital Construction Carryover

The Budget Section received a report from OMB on 2021-23 biennium capital construction carryover. The Office of Management and Budget reported funding of $31.9 million for the 2021-23 biennium was continued into the 2023-25 biennium. Of the total amount, $10.3 million was to continue DOT projects.

2023-25 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 2023-25 biennium. The following is a summary of the status of the state general fund, based on actual revenue collections through August 2024, and reflecting the 2023 legislative forecast for the remainder of the 2023-25 biennium:

Unobligated general fund balance - July 1, 2023		$1,488,329,948
Balance obligated for authorized carryover from the 2021-23 biennium		70,628,658
Total beginning general fund balance - July 1, 2023		$1,558,958,606
Add		
General fund collections to date	$3,378,656,227	
Remaining forecasted general fund collections	1,941,352,994	
Total estimated general fund collections		5,320,009,221
Total estimated revenues available		$6,878,967,827
Less		
Legislative appropriations - One-time	($240,590,721)	
Legislative appropriations - Ongoing	(5,856,738,816)	
Authorized carryover from previous biennium	(70,628,658)	
2023-25 authority spent in 2021-23 pursuant to emergency clause	1,846,593	
Total appropriations		($6,166,111,602)
Estimated ending general fund balance - June 30, 2025 - Before transfers		$712,856,225
Transfer to budget stabilization fund[1]		
Estimated ending general fund balance - June 30, 2025		$712,856,225

[1]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, 2024, the balance in the budget stabilization fund was $919.6 million. As of August 31, 2024, the balance in the legacy fund was $10.9 billion, the balance in the foundation aid stabilization fund was $543.9 million, the balance in the social services fund was $252.8 million, and the unobligated balance in the strategic investment and improvements fund was $809.5 million.

2023-25 Biennium Revised Revenues and Preliminary 2025-27 Revenues

The Budget Section received updates on OMB's projected 2023-25 biennium revised revenue forecast and preliminary 2025-27 revenue forecast. Items noted include:

- Ongoing general fund revenues are estimated to be $3.8 billion for the 2023-25 biennium and $4.0 billion for the 2025-27 biennium.
- Oil prices are estimated to be $63 per barrel in fiscal year 2026 and $61 per barrel in fiscal year 2027. Oil production is estimated to remain at approximately 1.1 million barrels per day through fiscal year 2027.

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
June 2023		
Department of Corrections and Rehabilitation	Weather-related essential services	$8,000,000
Department of Corrections and Rehabilitation	Temporary workload adjustments	$1,000
Parks and Recreation Department	Position reclassification	$641
Attorney General	Workload adjustments	$1,134
Attorney General	Temporary workload adjustments	$1,500
State Library	Position reclassification	$1,007
Office of Management and Budget	Severance pay	$7,450
North Dakota Beef Commission	Promotion increase	$583

Agency	Description	Amount
Judicial branch	Position reclassification	$1,668
Department of Commerce	Temporary workload adjustments	$17,745
Department of Career and Technical Education	Workload adjustment	$825
Adjutant General	Temporary workload adjustment	$2,572
Department of Health and Human Services	Workload adjustments	$6,069
Department of Health and Human Services	Position reclassification	$8,671
Department of Health and Human Services	Leave of absence adjustments	$1,319
Department of Health and Human Services	Temporary workload adjustments	$3,230
Department of Health and Human Services	Shift differential	$3,710
Department of Health and Human Services	Probation adjustment	$517
Department of Health and Human Services	Equity increase	$647
Department of Health and Human Services	Promotion increase	$3,657
Department of Health and Human Services	Part-time to full-time position adjustment	$1,562
Department of Health and Human Services	Severance pay	$53,502
September 2023		
Center for Distance Education	Temporary workload adjustments	$2,167
School for the Blind	Summer teacher contracts	$17,329
Department of Health and Human Services	Temporary workload adjustments	$1,551
Judicial branch	Salary correction	$1,603
Department of Health and Human Services	Part-time to full-time adjustments	$2,382
Department of Health and Human Services	Temporary workload adjustments	$6,842
Department of Health and Human Services	Position reclassification	$95,730
Department of Health and Human Services	Overtime payments	$3,906
Department of Health and Human Services	Salary corrections	$6,920
Department of Health and Human Services	Workload adjustments	$1,507
Department of Health and Human Services	Donated leave hours	$795
Industrial Commission	Salary correction	$3,431
December 2023		
Public Employees Retirement System	Donated leave hours	$819
Center for Distance Education	Temporary workload adjustment	$558
Department of Health and Human Services	Workload adjustments	$12,714
Department of Health and Human Services	Overpayment deduction	$2,500
Department of Health and Human Services	Donated leave hours	$1,383
Department of Environmental Quality	Reclassification and equity increases	$1,281
Department of Corrections and Rehabilitation	Donated leave hours	$10,123
Department of Corrections and Rehabilitation	Unpaid leave adjustment	$739
March 2024		
Office of Management and Budget	Temporary workload adjustments	$3,221
Commission on Legal Counsel for Indigents	Temporary workload adjustments	$1,952
Retirement and Investment Office	Temporary workload adjustments	$9,756
Public Employees Retirement System	Temporary workload adjustments	$4,391
Department of Public Instruction	Temporary workload adjustments	$1,000
Department of Health and Human Services	Temporary workload increases	$190,241
Department of Corrections and Rehabilitation	Temporary workload adjustments	$2,891
Parks and Recreation Department	Temporary workload adjustments	$2,250
Department of Water Resources	Temporary workload adjustments	$500
Attorney General	Equity increase	$758
Public Employees Retirement System	Temporary workload adjustments	$3,574
Veterans' Home	Position certification adjustment	$992
Department of Health and Human Services	Equity increases	$6,042
Department of Health and Human Services	Workload/responsibility increase	$17,017
Department of Health and Human Services	Reclassification	$5,469
Department of Health and Human Services	Military leave not reported	$2,503
June 2024		
Office of Management and Budget	Temporary workload adjustments	$3,221
Commission on Legal Counsel for Indigents	Temporary workload adjustments	$2,000
Retirement and Investment Office	Temporary workload adjustments	$8,680
Public Employees Retirement System	Temporary workload adjustments	$14,560
Department of Public Instruction	Temporary workload adjustments	$3,800
Veterans' Home	Temporary workload adjustment	$1,111
Department of Veterans' Affairs	Temporary workload adjustments	$6,673
Department of Health and Human Services	Temporary workload increases	$187,456
Department of Corrections and Rehabilitation	Temporary workload adjustments	$1,800
Parks and Recreation Department	Temporary workload adjustments	$2,250
Department of Water Resources	Temporary workload adjustments	$2,000
Center for Distance Education	Retroactive pay	$8,587

Agency	Description	Amount
Department of Health and Human Services	Retroactive pay	$57,634
Industrial Commission	Retroactive pay	$18,750
Department of Mineral Resources	Retroactive pay	$2,000
Adjutant General	Retroactive pay	$1,738
Department of Transportation	Retroactive pay	$1,962
September 2024		
Judicial branch	Completed action plan	$1,960
Department of Health and Human Services	Salary correction	$3,829
Department of Health and Human Services	Donated leave	$566
Department of Health and Human Services	Temporary workload adjustment	$1,259
Department of Health and Human Services	Leave adjustment	$638
Department of Health and Human Services	Reclassification pay	$10,089
Department of Health and Human Services	Increase to new minimum	$2,037
Bank of North Dakota	Interim president	$14,946
Adjutant General	Salary correction	$816
North Dakota Racing Commission	Probationary adjustment	$2,933
Office of Management and Budget	Workload adjustment	$1,879
Information Technology Department	Workload adjustment	$2,653
Tax Department	Staffing changes	$2,100
Commission on Legal Counsel for Indigents	Turnover adjustment	$3,000
Retirement and Investment Office	New retirement plan workload adjustments	$19,177
Department of Public Instruction	Additional project workload	$1,200
Veterans' Home	Workload adjustment	$823
Department of Veterans Affairs	Workload increase	$8,057
Department of Health and Human Services	Workload increase	$13,985
Job Service North Dakota	Workload increase	$583
Department of Agriculture	Workload increase	$500
Parks and Recreation Department	Workload increase	$2,750

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 2023-25 biennium to date through June 2024, approximately $22.2 million had been received by the state and deposited in the tobacco settlement trust fund. The entire $22.2 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 $610.4 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
June 2023		
Department of Veterans' Affairs	October 2023 - September 2024	$749,971
Department of Health and Human Services	March 2023 - March 2024	$1,000,000
Department of Health and Human Services	September 2023 - September 2024	$1,250,000
Aeronautics Commission	May 2023 - May 2027	$176,400
Department of Corrections and Rehabilitation	March 2023 - June 2024	$95,000
Department of Transportation	September 2023 - September 2032	$21,440,000
Department of Transportation	September 2023 - September 2032	$9,850,000
Department of Transportation	September 2023 - September 2032	$2,410,000
September 2023		
Department of Health and Human Services	September 2023 - September 2026	$783,856
Department of Agriculture	September 2023 - May 2027	$4,690,280
Game and Fish Department	July 2023 - June 2025	$2,500,000
Department of Transportation - 6 projects	October 2024 - November 2029	$180,660,000

Agency	Time Period of Grant	Amount
December 2023		
Department of Transportation	October 2024 - December 2027	$360,000
Department of Transportation	December 2024 - December 2026	$1,000,000
March 2024		
Department of Mineral Resources	April 2024 - April 2029	$25,000,000
Department of Transportation	December 2024 - December 2026	$1,000,000
Department of Transportation	January 2025 - January 2030	$25,000,000
Department of Transportation	August 2025 - February 2028	$1,920,000
June 2024		
Department of Public Instruction	January 2025 - December 2030	$60,000,000
Department of Corrections and Rehabilitation	October 2024 - October 2027	$550,000
Department of Commerce	January 2026 - January 2030	$50,000,000
Department of Commerce	October 2024 - October 2027	$20,000,000
Game and Fish Department	July 2025 - June 2027	$5,000,000
Department of Transportation	March 2026 - March 2030	$2,700,000
Department of Transportation	March 2026 - March 2030	$9,400,000
Department of Transportation	March 2028 - March 2032	$11,700,000
Department of Transportation	March 2026 - March 2031	$29,900,000
Department of Transportation	March 2028 - March 2032	$32,500,000
Department of Transportation	June 2027 - March 2031	$101,000,000
September 2024		
Department of Public Instruction	October 2024 - October 2029	$3,000,000
Department of Corrections and Rehabilitation	October 2024 - September 2027	$200,000
Department of Corrections and Rehabilitation	October 2024	$587,000
Department of Corrections and Rehabilitation	October 2024 - September 2028	$728,500
Department of Transportation	May 2026 - March 2030	$13,680,000
Department of Transportation	February 2025 - February 2027	$900,000
Department of Transportation	September 2025 - February 2027	$900,000

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
June 2023		
Attorney General	October 2022 - September 2026	$644,469
Department of Corrections and Rehabilitation	February 2023 - June 2024	$227,297
Adjutant General	September 2022 - August 2026	$2,287,118
Department of Transportation	September 2024 - September 2029	$400,000
Department of Transportation	September 2023 - November 2029	$30,000,000
September 2023		
Secretary of State	June 2023 - June 2024	$462,135
Aeronautics Commission	May 2023 - May 2027	$176,400
Department of Transportation	March 2022 - September 2024	$532,500
Department of Transportation	September 2023 - September 2032	$9,850,000
December 2023		
Secretary of State	September 2023 - March 2025	$145,425
State Historical Society	September 2023 - September 2028	$50,000
March 2024		
Game and Fish Department	July 2023 - June 2025	$2,499,976
Department of Transportation	February 2026 - November 2029	$55,000,000
June 2024		
Department of Mineral Resources	April 2024 - April 2029	$25,000,000
September 2024		
Aeronautics Commission	July 2024 - June 2028	$750,897
Aeronautics Commission	June 2028	$2,231,738
Aeronautics Commission	June 2028	$1,304,253
State Historical Society	September 2024 - August 2027	$300,000
Game and Fish Department	August 2024 - August 2025	$168,723

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 2024, OMB reported project variance reports for North Dakota University System projects as of June 30, 2024, as follows:

	Project Authorization	Adjusted Authorization	Difference
Projects Specifically Authorized by the Legislative Assembly			
Bismarck State College	$36,922,561	$44,960,000	$8,037,439
Dakota College at Bottineau	$11,732,199	$11,232,199	($500,000)
Dickinson State University	$33,967,079	$39,828,102	$5,861,023
Lake Region State College	$1,304,829	$1,304,829	$0
Mayville State University	$53,854,901	$54,253,871	$398,970
Minot State University	$32,504,424	$37,269,424	$4,765,000
NDSU Extension Service	$95,598,000	$97,381,230	$1,783,230
Forest Service	$62,480	$0	($62,480)
North Dakota State University	$320,000,000	$333,400,000	$13,400,000
University of North Dakota	$358,600,000	$311,300,000	($47,300,000)
Valley City State University	$56,115,945	$56,115,945	$0
Williston State College	$36,600,000	$36,600,000	$0
Projects Approved by the State Board of Higher Education			
Dakota College at Bottineau	$3,400,000	$5,916,711	$2,516,711
Dickinson State University	$5,000,000	$5,000,000	$0
Lake Region State College	$443,437	$0	($443,437)
North Dakota State College of Science	$19,975,000	$19,975,000	$0
North Dakota State University	$17,700,000	$23,700,000	$6,000,000
University of North Dakota	$158,027,331	$162,599,614	$4,572,283

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 2023-25 biennium pursuant to Section 3 of Senate Bill No. 2001 (2023). The report indicated the following additional funds totaling $238,750 were received by the Governor's office through September 2024:

Source	Amount	Purpose
Dakota Medical Foundation	$21,500	Expenses of recovery reinvented program
Blue Cross Blue Shield	$5,000	Expenses of Governor's Summit on Innovative Education
Southeast Education Cooperative	$2,500	Expenses of Governor's Summit on Innovative Education
Minnkota Power Cooperative	$1,000	Expenses of Governor's Summit on Innovative Education
Bioscience Association of ND	$2,500	Expenses of Governor's Summit on Innovative Education
Bytespeed LLC	$2,500	Expenses of Governor's Summit on Innovative Education
Border States Electric	$2,500	Expenses of Governor's Summit on Innovative Education
Creedence Energy Services	$2,500	Expenses of Governor's Summit on Innovative Education
Be More Colorful, LLC	$2,500	Expenses of Governor's Summit on Innovative Education
ComDel Innovation, Inc.	$1,000	Expenses of Governor's Summit on Innovative Education
SAS Institute	$2,500	Expenses of Governor's Summit on Innovative Education
Sanford Health	$5,000	Expenses of Governor's Summit on Innovative Education
Dakota Medical Foundation	$50,000	Expenses of recovery reinvented program

Source	Amount	Purpose
Basin Electric Power Cooperative	$2,500	Expenses of Governor's Summit on Innovative Education
Burgum Foundation	$10,000	Expenses of Governor's Summit on Innovative Education
Marathon Oil	$5,000	Expenses of Governor's Summit on Innovative Education
Creedence Energy Services	$2,500	Expenses of Governor's Summit on Innovative Education
Dakota Medical Foundation	$30,000	Expenses of recovery reinvented program
Lab Midwest LLC	$5,000	Expenses of Governor's Summit on Innovative Education
Gateway To Science Center	$2,500	Expenses of Governor's Summit on Innovative Education
Vital Network	$2,500	Expenses of Governor's Summit on Innovative Education
Burgum Foundation	$7,500	Expenses of Governor's Summit on Innovative Education
Basin Electric Power Cooperative	$2,500	Expenses of Governor's Summit on Innovative Education
Be More Colorful, LLC	$2,500	Expenses of Governor's Summit on Innovative Education
Marathon Oil	$5,000	Expenses of Governor's Summit on Innovative Education
BNI Coal Ltd.	$250	Expenses of Governor's Summit on Innovative Education
Dakota Medical Foundation	$30,000	Expenses of recovery reinvented program
Dakota Medical Foundation	$30,000	Expenses of recovery reinvented program

NEW AND VACANT FTE FUNDING POOLS

Executive, Legislative, and Judicial Branch Reports

The Budget Section received reports from OMB, the Legislative Council, and the Supreme Court regarding the use of the executive, legislative, and judicial branch new and vacant FTE funding pools. The reports included information regarding new and vacant FTE positions, including funding used from the pools for the positions, the dollar amount of savings from vacant FTE positions, and the use of salary savings from the vacant FTE positions.

Through July 2024, OMB reported the executive branch had vacant FTE position savings of $80.6 million, of which $40.5 million was used for other purposes, including accrued leave payouts, bonuses, temporary salaries, overtime, and other purposes. The Office of Management and Budget also reported as of July 31, 2024, $42.1 million, or 43 percent of the $98.2 million executive branch new and vacant FTE pool was still available.

Through May 2024, Legislative Council reported vacant FTE savings of $352,650 and the Supreme Court reported vacant FTE savings of $839,838.

NORTH DAKOTA UNIVERSITY SYSTEM

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 12 projects were authorized in prior bienniums and continued into the 2021-23 biennium. Six of the projects were completed in the 2021-23 biennium and six were continued into the 2023-25 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 8.06 FTE positions between December 1, 2022, and November 30, 2023, resulting in a total of 365.53 FTE positions as of November 30, 2023.

Branch Research Centers and Agronomy Seed Farm

The branch research centers removed 3.50 FTE positions between December 1, 2022, and November 30, 2023, resulting in 108.30 FTE positions as of November 30, 2023. The Agronomy Seed Farm reported no changes in FTE positions were made between December 1, 2022, and November 30, 2023, maintaining a total of 3 FTE positions as of November 30, 2023.

North Dakota State University Extension Service

The NDSU Extension Service reported to the Budget Section regarding the FTE position adjustments made at the NDSU Extension Service pursuant to Section 11-38-12. The NDSU Extension Service added 5.09 FTE positions between December 1, 2022, and November 30, 2023, resulting in a total of 255.79 FTE positions as of November 30, 2023.

Northern Crops Institute

The Northern Crops Institute reported to the Budget Section regarding the FTE position adjustments made at the Northern Crops Institute pursuant to Section 11-38-12. The Northern Crops Institute added 2 FTE positions between December 1, 2022, and November 30, 2023, resulting in a total of 23.15 FTE positions as of November 30, 2023.

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, 2022, and November 30, 2023, resulting in a total of 43.88 FTE positions as of November 30, 2023.

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 2024, regarding the status of board activities pursuant to Section 15-12.1-17(10).

ADJUTANT GENERAL

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

The Budget Section received a report pursuant to Section 37-03-18 regarding the 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 as of September 2024, the program has provided over $157,000 to support ND Cares events, survivor outreach events, 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. Through September 2024, a total of $1.8 million was used from the disaster relief fund to match $11.3 million of federal funding for public assistance and hazard mitigation payments.

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 51 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 has been claimed. The department reported the $494,134 remaining tax credits available as of September 2024 has been reserved for the Hope RFO.

The department reported the following tax credit summary as of September 2024:

Renaissance Tax Credits	Total Credits Authorized	Total Credits Claimed	Total Credits Available	
			Committed	Uncommitted
Category 1 (0 to 5,000 population)	$1,122,500	$628,366[1]	$494,134	$0
Category 2 (5,001 to 30,000 population)	250,000	250,000[2]	0	0
Category 3 (Over 30,000 population)	9,127,500	9,127,500[3]	0	0
Total	$10,500,000	$10,005,866	$494,134	$0

[1]Category 1 cities - Casselton ($37,500), Hazen ($15,500), Mayville ($252,650), and Hope ($322,716).

[2]Category 2 cities - Jamestown ($150,000) and West Fargo ($100,000).

[3]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 2023 and September 2024. 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 2023 the total dollar amount of outstanding checks decreased from $8.1 million in fiscal year 2022 to $6.7 million for fiscal year 2023. The State Treasurer reported the total number of outstanding checks as of September 2023 was 22,850 with an amount totaling $6.8 million. The State Treasurer reported 5,950 outstanding checks from fiscal year 2021 totaling $917,189 would be transferred to the Department of Trust Lands' Unclaimed Property Division in October 2023.

The State Treasurer reported in September 2024 the total dollar amount of outstanding checks increased by 22.4 percent from fiscal year 2023 to fiscal year 2024. The State Treasurer reported 5,322 checks totaling $1,035,332 issued in fiscal year 2022 will be transferred to the Unclaimed Property Division in October 2024. As of September 2024, there were 21,201 outstanding checks totaling $8.2 million issued during fiscal years 2022, 2023, and 2024.

DEPARTMENT OF TRUST LANDS

Investment Performance

The Budget Section received reports from the Department of Trust Lands in September 2023 and September 2024 regarding the investment of assets under the control of the Board of University and School Lands. The department reported as of May 2024, approximately $7.4 billion of assets were under the control of the board. The net return for the permanent trust funds as of June 30, 2024, was 9.33 percent for the prior year compared to a benchmark of 9.03 percent, 3.33 percent for the prior 3 years compared to a benchmark of 2.73 percent, and 5.66 percent for the prior 5 years compared to a benchmark of 6.44 percent. As of June 30, 2024, the net return on investments for the strategic investment and improvements fund was negative 2.35 percent for the prior 6 months compared to a benchmark of 2.00 percent and 5.52 percent for the prior year compared to a benchmark of 5.14 percent. In fiscal year 2024, the department paid $75.3 million, or 112 basis points, of fund management fees to private entities for managing approximately $6.7 billion of assets.

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 2024 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, 2023, the balance of the unemployment trust fund was $327.9 million, $43.1 million more than the target balance of $284.8 million. The average high-cost multiplier for the period was 1.04, 0.04 above the projected target of 1.0.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Transfers in Excess of $50,000

The Budget Section received a report from DHHS regarding transfers in excess of $50,000 pursuant to Section 5 of Senate Bill No. 2012 (2023) and Sections 3 and 4 of House Bill No. 1004 (2023). Through September 2024, the department reported transfers have been made between line items and subdivisions to better align staff with the structure of the department.

Opioid Settlement Fund

The Budget Section received a report from DHHS regarding the status of the opioid settlement fund pursuant to Section 50-36-04. The report indicated a total of $8 million is available from the fund for the 2023-25 biennium and organizations have been applying for grants for opioid use prevention and overdose prevention efforts in the state.

COUNCIL ON THE ARTS

Transfers in Excess of $50,000

The Budget Section received a report from the Council on the Arts regarding transfers in excess of $50,000 pursuant to Sections 5 of House Bill No. 1010 (2023). Through September 2024, $90,000 was transferred from the operating expenses line item to the salaries and wages line time for temporary salaries to administer the Arts Across the Prairie initiative.

LEGACY AND BUDGET STABILIZATION FUND

Advisory Board Report

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

Legacy Fund

The Legacy and Budget Stabilization Fund Advisory Board reported as of March 31, 2024, the market value of the legacy fund was $10.5 billion. The unaudited fund performance for the fiscal year through March 31, 2024, was 9.8 percent compared to a target return of 8.95 percent. The board reported that during the 5-year period ended June 30, 2023, the return was 5.47 percent compared to a target return of 5.03 percent.

Budget Stabilization Fund

As of March 31, 2024, the market value of the budget stabilization fund was $964.3 million. The Legacy and Budget Stabilization Fund Advisory Board reported the unaudited investment returns, net of fees, averaged 1.61 percent during the 5 years ended June 30, 2023, compared to a policy benchmark of 1.13 percent. Unaudited fund performance for the fiscal year through March 31, 2024, net of fees, was 5.50 percent compared to a policy benchmark of 3.88 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 2023, an application round for the housing incentive fund was held and a total of eight applications were received. Four projects received funding, including 8 units in Cavalier, 70 units in Jamestown, 16 units in Rolla, and 96 units in Bismarck.

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 363 fire departments received a total of $11,118,788 of distributions in 2021 and $9,794,235 of distributions in 2022.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Inmate Report - New Numbers

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 2024 the maximum operational capacity for male inmates is 1,624 while the maximum operational capacity for female inmates is 262. The female capacity increased from 224 to 262 on October 1, 2023, when a female treatment and recovery unit opened. The male population exceeded capacity in July 2023 but the department has not implemented its inmate prioritization plan. The department implemented its inmate prioritization plan from March through October 2023 due to the female population exceeding capacity. The department anticipates requesting additional funding from the 2025 Legislative Assembly to address capacity issues.

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 2023-25 biennium beginning balance in the fund was $25.3 million. As of June 2024, the estimated fund balance was $33.4 million, and the estimated June 30, 2025, balance is $37.4 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 2024, the board reported the North Dakota outdoor heritage fund has received $87.3 million of oil and gas tax collections since the inception of the fund. A total of $89.4 million has been awarded to 239 projects throughout the state with $4.3 million of the funds returned due to projects being under budget.

DEPARTMENT OF TRANSPORTATION

Flexible Transportation Fund

The Budget Section approved the Department of Transportation's request to use funding from the flexible transportation fund pursuant to Section 24-02-37.3 for the following projects:

- $19.1 million for a North Dakota Highway 49 project.
- $27 million for a North Dakota Highway 14 project.

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

Investment of Oil and Gas Tax Receipts

Pursuant to Section 57-51.2-02, the Three Affiliated Tribes of the Fort Berthold Reservation reported to the Budget Section fees, expenses, and charges the tribe imposes on the oil industry and essential infrastructure projects completed by the Three Affiliated Tribes using oil and gas tax receipts. Expenditures totaled $146,221,000 during fiscal year 2023, including $29,654,000 for public safety projects, $3,879,000 for environmental projects, and $112,688,000 for infrastructure projects.

RETIREMENT AND INVESTMENT OFFICE

Incentive Compensation Program

Pursuant to Section 54-52.5-04, the Budget Section received a report from RIO regarding the incentive compensation program. The office reported The State Investment Board approved an incentive compensation program based on in-house investment returns compared to benchmarks. Select employees are eligible to receive an annual bonus ranging from 25 to 100 percent of base salary levels.

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 required public hearing during the 2025 legislative session.

Recommendation

The Budget Section recommends Senate Concurrent Resolution No. 4001 to authorize the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 69th Legislative Assembly through September 30, 2027.

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, 2023, and June 30, 2025. The report indicated agencies estimate $5.8 billion of federal funds will be received during the 2023-25 biennium, $397.4 million less than appropriated. Agencies estimate $5.5 billion of federal funds will be received for the 2025-27 biennium, $245.1 million less than is estimated to be received during the 2023-25 biennium.

The Budget Section reviewed a memorandum on the largest variances by agency for the 2023-25 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 2023-25 biennium relating to federal funds appropriated and federal funds estimated to be received and the major variances estimated for the 2025-27 biennium compared to the 2023-25 biennium.

LEGISLATIVE COUNCIL STAFF REPORTS

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

- *68th Legislative Assembly Budget Status Report for the 2023-25 Biennium*. The report provides information on the status of the general fund and estimated June 30, 2025, ending balance, legislative changes to general fund revenues, and legislative appropriation changes.
- *68th Legislative Assembly Legislative Changes to State Agency Budgets for the 2023-25 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 2023 session.

- *68th Legislative Assembly State Budget Actions for the 2023-25 Biennium*. The report provides information on the 2023-25 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.
- *68th Legislative Assembly State Budget Actions for the 2023-25 Biennium Supplement*. The report provides information on revenue changes and appropriations made during the October 2023 special legislative session.
- *Estimated Revenue Sources and Distributions for Major State Funds for the 2023-25 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 2023-25 biennium based on the 2023 legislative revenue forecast.
- *2023-25 Biennium Report on Compliance with Legislative Intent*. The report provides the current status of major budget changes and initiatives approved by the 2023 Legislative Assembly for various agencies.
- *2023* and *2024 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:

- Targeted market equity funding pool - Update on allocations - The Office of Management and Budget reported $82.5 million from the executive branch targeted market equity funding pool was allocated to 6,582 employees in executive branch state agencies.
- Career academies funding - Status of funding - OMB - The Office of Management and Budget reported $6.3 million was accessed from a $68.3 million line of credit from the Bank for costs to build career academies through the statewide area and career center initiative grant program. The funding was used until federal funding from the federal Coronavirus Capital Projects Fund became available.
- Legacy fund earnings - New allocation calculation - The Retirement and Investment Office reported Senate Bill No. 2330 (2023) implemented a percent of market value definition to provide that legacy fund earnings to be transferred to the general fund at the end of a biennium are an amount equal to 7 percent of the 5-year average value of the fund. Legacy fund earnings to be transferred at the end of the 2021-23 biennium under the percent of market value definition are $486.6 million while actual legacy fund earnings for the 2021-23 biennium are $458 million.
- Military museum - Update on construction - The State Historical Society provided an update on the military museum project. The total project cost is estimated to be $54.8 million and the project is estimated to be complete in the 3rd quarter of 2027.
- Fertilizer development incentive program - Status of program - The Industrial Commission reported on the newly created fertilizer development incentive loan program. Two projects were selected to be awarded loan funding through the program. However, one project declined the loan, which resulted in the other project being awarded the full $125 million loan amount.
- Bank of North Dakota - Lines of credit - The Bank of North Dakota reported on lines of credit authorized for state agencies. As of March 2024, the amount of outstanding lines of credit is $29.7 million with anticipated outstanding lines of credit to be approximately $356.4 million by the end of 2024. The current interest rate on the lines of credit is 6.85 percent.
- North Dakota University System enrollment - Response to Minnesota North Star Promise program - The North Dakota University System provided an update on institution responses to the Minnesota North Star Promise program that provides free tuition to low-income students. North Dakota State University, Valley City State University, Dickinson State University, and Bismarck State College have implemented programs to provide tuition assistance to low-income students.
- Industrial Commission - Update on oil and gas development in the state - The Industrial Commission reported oil production in the state was approximately 1.1 million barrels per day in March 2024. The price of oil will significantly affect the level of oil production in the state.

AGENCY REQUESTS CONSIDERED BY THE BUDGET SECTION

Pursuant to Sections 37-17.1-27, 54-16-04(2), 54-16-04.1, 54-16-04.2, and 54-16-09, the Budget Section considered agency requests authorized by the Emergency Commission. The following agency requests were approved from June 29, 2023, through September 18, 2024:

Department of Commerce

- September 21, 2023, to transfer $1.55 million of federal funds from the grants line item to the operating expenses line item for a parks and recreation grant program.

Secretary of State

- September 21, 2023, to increase federal funds spending authority by $462,135 in the election reform line item for the 2023-25 biennium to accept federal Department of Defense funds for a secure ballot delivery portal for the Uniformed and Overseas Citizens Absentee Voting Act population.
- December 13, 2023, to increase federal funds spending authority by $145,425 in the election reform line item for the 2023-25 biennium to receive funding from the federal Department of Emergency Services for online harassment and targeting prevention services and public awareness campaigns regarding election security and integrity measures.
- December 13, 2023, to transfer $200,000 from the general fund to the election fund from funds appropriated to the Secretary of State in Senate Bill No. 2002 (2023) to match federal Help America Vote Act funds.
- June 19, 2024, to increase appropriation authority by $1 million from federal funds from the Help America Vote Act in the election reform line item for the 2023-25 biennium.

Department of Public Instruction

- September 21, 2023, to increase federal funds spending authority by $4,031,338, including funding in the operating expenses line item ($851,338) and the grants - other grants line item ($3,180,000), to accept and expend a state apprenticeship expansion formula grant, administered by the United States Department of Labor.
- March 20, 2024, to transfer $85 million of federal funds from the grants - other grants line item to the emergency education relief - schools line item to be used to reimburse school districts for qualified expenditures from the federal Elementary and Secondary School Emergency Relief Fund.
- September 18, 2024, to increase special funds spending authority by $700,000 in the operating expenses line item to accept and expend special funds received from school district reimbursements for food processing contracts negotiated statewide.
- September 18, 2024, to increase federal funds spending authority for the Department of Public Instruction by $11,123,983, including funding in the operating expenses line item ($556,200) and the grants - other grants line item ($10,567,783), to accept and expend a comprehensive literacy state development grant.

Adjutant General

- September 21, 2023, to provide $111,380 from the state contingencies appropriation for correcting snow removal grant amounts to certain political subdivisions due to errors in calculating the initial grant awards as authorized in Senate Bill No. 2183 (2023) during the 2021-23 biennium.
- September 21, 2023, to increase federal funds spending authority by $515,000 to complete the bridge training site project located at the Camp Grafton Training Center.
- September 21, 2023, to increase federal funds spending authority by $2 million to complete construction of the fitness facility at the Camp Grafton Training Center.
- June 19, 2024, to increase federal funds spending authority by $3,159,000 to complete the bridge training site project located at the Camp Grafton Training Center.
- June 19, 2024, to transfer $281,474 of special funds from the salaries and wages line item to the capital assets line item to complete the state radio console replacement project.
- September 18, 2024, to increase federal funds authority by $500,000 to provide contingency funding to complete the Dickinson Readiness Center project.

Agriculture Commissioner

- September 21, 2023, to increase federal funds spending authority during the 2023-25 biennium by $2,345,140, including $61,650 for temporary salaries, $6,110 for operating expenses, and $2,277,380 for a resilient food systems infrastructure grant program funded by the United States Department of Agriculture - Agriculture Marketing Service.

Highway Patrol

- December 13, 2023, to accept and expend $500,000 of federal funds from a federal Department of Justice grant to enhance storage and upload capabilities for body cameras and provide additional camera training.

Office of Management and Budget

- March 20, 2024, to increase federal funds spending authority by $399,500 to reauthorize the spending of federal Governor's Emergency Education Relief funds, for which spending authority expired on June 30, 2023.

- June 19, 2024, for a line item transfer of $468,770 from the capital carryover line item to the operating expenses line item for costs to demolish the State Office Building.

Department of Corrections and Rehabilitation

- March 20, 2024, to transfer $275,771 from carryover funding designated for deferred maintenance and extraordinary repairs to the adult services line item, to provide a total of $1,825,771 for the construction of a new James River Correctional Center maintenance shop.

Department of Mineral Resources

- June 19, 2024, to increase federal funds spending authority by $2,406,989 to accept and expend funds from a federal grant to plug and reclaim abandoned oil wells and oil well sites.

Aeronautics Commission

- June 19, 2024, to increase other funds spending authority by $900,000, including $400,000 of federal funds and $500,000 of special funds from the Aeronautics Commission fund, for the International Peace Garden airport rehabilitation project.

State Treasurer

- June 19, 2024, to provide $175,000 from the state contingencies appropriation for payments in lieu of taxes associated with carbon dioxide pipelines while the pipelines are exempt from property taxes for the first 10 years of operation.

Insurance Commissioner

- June 19, 2024, to increase special funds authority from the insurance regulatory trust fund by $1.5 million for costs to contract with consultants for studies of the property insurance sector resulting from recommendations of the environmental, social, and governance study approved by the 68th Legislative Assembly and conducted by the Bank.

Center for Distance Education

- September 18, 2024, to increase special funds spending authority by $2.5 million in the center for distance education line item for cybersecurity training and for expenses related to increased course enrollments.

State Library

- September 18, 2024, to transfer $200,000 of federal funds spending authority from the grants line item to the operating expenses line item to increase funding for electronic materials to support library consortiums.

Attorney General

- September 18, 2024, to transfer $3 million of spending authority from the operating expenses line item to the statewide litigation funding pool line item for additional statewide litigation costs.

Legislative Council

- September 18, 2024, to add 2 FTE policy positions and 1 FTE communications position.

BUDGET SECTION DIVISIONS

In March 2024, the Budget Section approved a motion to request the Legislative Management Chairman to establish Budget Section divisions for the purpose of reviewing agency-specific budget information and other budget-related areas to assist in preparing for the regular legislative session. The Legislative Management Chairman established the four Budget Section divisions of leadership, government operations, human resources, and education and environment. The divisions met in June and September 2024, and the following is a summary of the actions of each division.

Leadership

The Leadership Division reviewed state budget information, including:

- Information on budget and fiscal trends, including flowcharts relating to oil and gas tax revenues and allocations, legacy fund investments and earnings, and the revenues and distributions for major state funds.

- Revised general fund revenue estimates for the 2023-25 biennium and a preliminary forecast for the 2025-27 biennium based on estimates from OMB and S&P Global.

- A preliminary budget outlook for the 2025-27 biennium reflecting a potential budget gap of $950 million between ongoing general fund appropriations and ongoing general fund revenues based on potential increases in ongoing general fund appropriations and revenues.
- Information on budgeting processes in other states to capture savings from vacant FTE positions.

The division also received information on the results of a treasury and cash management study. Recommendations from the study include enhancing the treasury function within the State Treasurer's office and expanding options for investing state funds beyond the Bank of North Dakota.

Government Operations

The Government Operations Division received budget and program updates including:

- DOT, including state transportation revenues, federal aid programs, and the status of highway projects for the 2023-25 biennium.
- The agriculture research and extension agencies, including the allocation of FTE positions and the status of capital projects.
- The Insurance Department, including insurance tax distributions to fire departments and an overview of the State Fire Marshal's office.

The Department of Transportation reported the estimated revenue of the newly created flexible transportation fund totals $222.5 million for the 2023-25 biennium, including $171.5 million from motor vehicle excise tax collections and $51 million from the strategic investment and improvements fund. The division received an update regarding the status of agriculture research capital projects totaling approximately $102 million for the 2023-25 biennium, including $87 million for an agriculture laboratory at NDSU and $15 million for capital projects at other branch research centers.

Human Resources

The Human Resources Division received budget and program updates from the DHHS. Areas reviewed include:

- The department's organizational chart.
- The status of new child care, workforce, and medical services programs.
- The status of the department's salary equity pool and vacant FTE positions.
- The programs in the Public Health, Medical Services and Behavioral Health divisions.

The division received an update regarding the status of the new State Hospital project. The department reported the entire $12.5 million appropriation for design costs of the new State Hospital has been spent. The department reported it could continue the design phase by using funding made available in Section 18 of Senate Bill No. 2012 (2023) for projects at the State Hospital. The division recommends supporting the department's intent to use the funding made available for projects at the State Hospital to continue the design phase of the new State Hospital.

Education and Environment

The Education and Environment Division received budget and program updates from the Department of Public Instruction. Areas reviewed include:

- The department's organizational chart.
- The status of the department's salary equity pool and vacant FTE positions.
- The status of the paraprofessional-to-teacher program.
- The grants awarded in the Grants - passthrough grants, Grants - program grants, and Grants - other grants line items.
- The status of federal Elementary and Secondary School Emergency Education Relief funding received by the department.

The Education and Environment Division also received budget and program updates from the University System office. Areas reviewed include:

- The office's organizational chart.
- The status of the office's and University System institutions' salary equity pool distributions.
- The higher education funding formula.

- The schedule of bond payments for capital projects financed with state bonds.
- The student financial assistance programs administered by the office.
- The use of funding for competitive research, education incentive programs, student mental health, veterans' assistance grants, shared campus services, and the nursing education consortium.

EDUCATION COMMITTEE

The Education Committee was assigned three studies:

- Section 2 of House Bill No. 1238 (2023) directed a study of the implementation of effective parameters for the ending fund balance for a school district to enable a school district to achieve credit scores sufficient to bond at a reduced cost to taxpayers while ensuring equitable and adequate education. The study required identification of efficient ways to analyze information on district expenditures; a review of the ending fund balance's impact on a district's short- and long-range planning, related facilities, staffing, and programming; an evaluation of possible trends between state investment, district expenditures, and student performance; and a review of the dramatic increase in behavioral and mental health issues of students, which are addressed by schools with school budgets, in addition to the traditional scope of academic preparation.
- Section 13 of Senate Bill No. 2284 (2023) directed a study of school choice models implemented nationally for K-12 schools, including charter schools, magnet schools, private schools, voucher systems, and home schools. The study required consideration of input from stakeholders, including public and nonpublic teachers and administrators, parents of students, representatives from the Department of Public Instruction (DPI), a representative from the Governor's office, and representatives from regional education associations (REAs). The study also required a review of regulations implemented by state regulatory agencies to ensure accountability for various school choice models; a comparison of nontraditional school choice models implemented by other states; an analysis of the impact of enrollment fluctuation, including the impact on state aid; a review of the state's student population and enrollment capacity and tuition costs of nonpublic schools; and a review of services nonpublic schools are able to offer students with special needs.
- Section 15 of Senate Bill No. 2284 (2023) directed a study of the feasibility, desirability, and impact of replacing storm days with virtual instruction days. The study required consideration of input from DPI, public school administrators and teachers, and other stakeholders. The study also required a review of relevant statutes, plans approved by school boards, and current practices related to storm days.

The Legislative Management assigned the committee the responsibility to receive the following 14 reports from the Superintendent of Public Instruction:

- Annual reports regarding the implementation of intervention measures for chronically low-performing schools, pursuant to North Dakota Century Code Section 15.1-02-23.
- A report in even-numbered years regarding a comparison of academic performance of students participating in virtual instruction versus those not participating in virtual instruction using the statewide prekindergarten through grade 12 strategic vision framework goals, pursuant to Section 15.1-07-25.4.
- A biennial report regarding proposals to allow students enrolled in grades 6 through 12 to earn course credit through educational opportunities with a sponsoring entity, pursuant to Section 15.1-07-35.
- A report regarding the implementation and effectiveness of reading curriculum and professional development training requirements in improving educational outcomes and reading competency of students, pursuant to Section 15.1-21-12.1.
- Annual reports regarding the categories and amount spent by each school district on school safety and security measures during the previous school year, pursuant to Section 15.1-07-36.
- A report regarding dyslexia screening and intervention, pursuant to Section 15.1-32-26.
- Quarterly reports regarding the implementation and effectiveness of the appropriation provided to DPI for the purposes of supporting professional learning related to the science of reading and implementing systematic direct literacy instruction to improve educational outcomes, including the number of teachers trained, an anticipated timeline of results trends, and any results trends available, pursuant to Section 18 of Senate Bill No. 2284 (2023).
- A report regarding any updates to the strategic vision and the collaborative report of the strategic plans of each steering committee member entity receiving state education funds, pursuant to Section 15.1-02-04.
- Annual reports regarding the financial condition of school districts, pursuant to Section 15.1-02-09.
- Annual reports regarding a compilation of annual school district employee compensation reports, pursuant to Section 15.1-02-13.
- A report regarding any request from a school or school district for a waiver of any rule governing the accreditation of schools, pursuant to Section 15.1-06-08.
- A report regarding waiver applications, pursuant to Section 15.1-06-08.1.

- Annual reports regarding the innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules, and a review of evaluation date results, pursuant to Section 15.1-06-08.2.
- Annual reports regarding the compilation of test scores of a test aligned to the state content standards in reading, mathematics, and science, given annually to students statewide, pursuant to Section 15.1-21-10.

The Legislative Management also assigned to the committee the responsibility to receive two additional reports:

- A report from the North Dakota Education Standards and Practices Board 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 from the Kindergarten Through Grade Twelve Education Coordination Council regarding the activities of the council, pursuant to Section 15.1-01-04(9).

Committee members were Senators Michelle Axtman (Chairman), Todd Beard, Cole Conley, Jay Elkin, Judy Estenson, Justin Gerhardt, and Kent Weston and Representatives LaurieBeth Hager, Patrick Hatlestad, Dori Hauck, Pat D. Heinert, Jim Jonas, Donald W. Longmuir, Andrew Marschall, David Monson, Eric James Murphy, Mitch Ostlie, David Richter, Cynthia Schreiber-Beck, and Kelby Timmons.

Senator Doug Larsen served on the committee until his death on October 1, 2023.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

SCHOOL DISTRICT ENDING FUND BALANCE STUDY

Section 2 of House Bill No.1238 (2023) directed a study of the implementation of effective parameters for the ending fund balance for a school district to enable a school district to achieve credit scores sufficient to bond at a reduced cost to taxpayers while ensuring equitable and adequate education. The study required identification of efficient ways to analyze information on district expenditures; a review of the ending fund balance's impact on a district's short- and long-range planning, related facilities, staffing, and programming; an evaluation of possible trends between state investment, district expenditures, and student performance; and a review of the dramatic increase in behavioral and mental health issues of students, which are addressed by schools with school budgets, in addition to the traditional scope of academic preparation.

Background

Ending Fund Balance Limitations

Section 15.1-27-35.3, enacted with the passage of Senate Bill No. 2200 (2007), established the permissible amount of a school district's ending fund balance and provided for a reduction in state aid by any amount exceeding the statutory ending fund balance limitation.

The permissible ending fund balance was directly related to the school district's actual expenditures. As enacted, Section 15.1-27-35.3 limited a school district's ending fund balance to an amount equal to 50 percent of a school district's actual expenditures plus $20,000, with a decrease slated for the following year. On July 1, 2008, the allowable ending fund balance was lowered from 50 to 45 percent of a school district's actual expenditures, plus $20,000.

Six years later, the Legislative Assembly decreased the ending fund balance limitation a second time with the passage of House Bill No. 1013 (2013). Proponents of the decrease reasoned that school districts do not need to maintain excessive cash on hand, particularly in districts receiving substantial funding from oil and gas revenue. Proponents contended decreasing the allowable ending fund balance would result in property tax relief for constituents. As a result of House Bill No. 1013 (2013), on July 1, 2015, the ending fund balance limitation decreased from 45 to 40 percent of actual expenditures plus $20,000, and on July 1, 2017, the limitation decreased again to 35 percent of actual expenditures, plus $20,000.

Senate Bill No. 2321 (2017) retained the ending fund balance limitation of 35 percent of actual expenditures but increased the additional amount a school district may retain from $20,000 to $50,000, or $100,000 if the school district was in a cooperative agreement for 2 years. Supporters of the bill sought a substantial increase in the permissible ending fund balance to address the difficulty small schools faced when a significant cost, such as replacing a boiler, was incurred unexpectedly. Several rural school districts offered testimony in favor of the bill.

Ending Fund Balance Limitation Moratorium

In 2021, the statutory limitations on a school district's ending fund balance were suspended to prevent school districts from being penalized for increased cash on hand as a result of the Coronavirus (COVID-19) pandemic. School closures resulted in lower than anticipated expenditures, and an influx of federal funding disbursements in response to the pandemic created an unexpected surplus in cash. The Legislative Assembly determined penalizing schools for higher than usual ending fund balances was not the best course of action in this unprecedented scenario. With the emergency passage of Senate Bill No. 2165 (2021), the Legislative Assembly suspended the operation of Section 15.1-27-35.3 until July 1, 2023.

Continued Moratorium and Study

House Bill No. 1238 (2023) extended from July 1, 2023, to July 1, 2027, the moratorium on the penalty for exceeding the unobligated general fund balance limitations. The Executive Director of North Dakota Small Organized Schools provided testimony in support of House Bill No. 1238 during the 2023 legislative session. Testimony indicated small and rural schools face budgetary concerns when a large expenditure arises, such as an air handling system or bus purchase, and the school district's ending fund balance is insufficient to cover the expense. The bill also provided for this study, which afforded the committee an opportunity to review a variety of policy considerations and determine the desirable parameters for a school district's ending fund balance.

School District Expenditure Data

The total expenditures of a school district vary widely. Applying an ending fund balance limitation to a school district with relatively low total expenditures can be more impactful. The expenditure disparities between school districts are apparent when comparing school districts within the lower and upper bounds of school expenditure data from the 2021-22 school year. For instance, the total expenditures for Manning and Zeeland were $382,282 and $1,396,205, respectively, compared with Fargo and Bismarck, spending $189,592,783 and $194,559,620, respectively.

Youth Behavioral Health and Mental Health Challenges

The ending fund balance study also required a review of the dramatic increase in behavioral and mental health issues of students, which result in additional school district expenditures. Kindergarten through grade 12 students continue to report increased mental health challenges, which in many cases were exacerbated by the COVID-19 pandemic. Many students face short- or long-term challenges in managing social relationships, learning, decisionmaking, anxiety, depression, worry, and isolation. Data collected by the World Health Organization indicates half of all mental illnesses begin by the age of 14. Statistics provided in the 2020 North Dakota Young Adult Survey indicate 1 in 10 young adults in North Dakota seriously considered suicide in 2020 and 1 in 50 attempted suicide. The early onset and prevalence of these health challenges makes early intervention and support critical.

Youth behavioral and mental health challenges often are addressed by school counselors and school psychologists. School counselors deliver fundamental services to a broad range of students, whereas school psychologists provide comprehensive services to students in need of mental health care. The National Association of School Psychologists recommends providing one psychologist for every 500 students; the American School Counselor Association recommends one counselor for every 250 students. States with staffing ratio policies generally require the highest concentration of mental health professionals at the high school level. North Dakota requires one counselor for every 300 students in K-12, permitting up to one-third of the counselors required in grades 7 through 12 to be career advisors. There is no requirement for school psychologists. Other state legislatures have approached behavioral and mental health issues in education by enacting legislation to support a positive school climate, require mental health and wellness curricula, promote suicide prevention services, create task forces to study student behavior and discipline, promote professional development related to mental health, permit student absenteeism related to mental health, and require staffing ratios for mental health professionals.

Testimony

Department of Public Instruction

The committee received testimony from a representative of DPI regarding school district ending fund balances. Testimony indicated the COVID-19 pandemic led to increased funding and larger ending fund balances. Testimony indicated the ending fund balance pertains only to the general fund, allowing districts to transfer general fund dollars to the building fund to avoid penalties; however, a school district may not return these funds to the general fund. Legislation beginning in 2017, and the subsequent moratorium following the pandemic, have allowed for higher permissible balances to assist smaller schools with necessary expenses, including unexpected expenses and funds set aside for future teacher salaries. Notably, 70 to 80 percent of a district's ending fund balance typically is allocated for teacher salaries.

The committee received additional testimony from representatives of DPI regarding best practices for school district spending and anticipated budgeting needs. The committee was informed federal Elementary and Secondary School Emergency Education Relief funds, primarily used for construction and to address learning loss post-COVID-19, expire in 2024. According to the testimony, 23 individuals attended a finance workshop focused on outcome-based budgeting, and DPI offers tools to help districts evaluate spending effectiveness. Testimony indicated budget challenges may lead to reductions in staff or salaries, forcing districts to assess program effectiveness. The committee was informed there is a lack of data on behavioral and mental health issues among students. Testimony emphasized the importance of quantitative data to inform policy decisions. Senate Bill No. 2351 (2023) would have created a data collection system for tracking behavioral challenges in schools and would have clarified schools' legal authority for student discipline.

North Dakota Small Organized Schools

The committee received testimony from a representative of North Dakota Small Organized Schools. Testimony contended the temporary moratorium on reducing state aid payments to school districts with an ending fund balance exceeding the state limit is highly valued, and there is hope for it to become permanent. According to the testimony, the ending fund balance policy disproportionately affects smaller school districts, which struggle more than larger districts that often maintain carryover balances primarily for favorable bond ratings because the larger districts do not come close to exceeding the ending fund balance limit. Testimony advocated for the elimination of the sunset provision to allow school districts greater financial management flexibility.

Committee Considerations

The committee expressed interest in repealing Section 15.1-27-35.3 or increasing the limitation on the ending fund balance to ensure small schools are prepared for unexpected expenses. The committee indicated the limitation on the ending fund balance could vary depending on school size. The committee also noted repealing the statute would align with the committee's preference for local control.

Conclusion

The committee makes no recommendation regarding its study of school district ending fund balance requirements.

SCHOOL CHOICE MODELS STUDY

Section 13 of Senate Bill No. 2284 (2023) directed a study of school choice models implemented nationally for K-12 schools, including charter schools, magnet schools, private schools, voucher systems, and home schools. The study required consideration of input from stakeholders, including public and nonpublic teachers and administrators, parents of students, representatives from DPI, a representative from the Governor's office, and representatives from REAs. The study also required a review of regulations implemented by state regulatory agencies to ensure accountability for various school choice models; a comparison of nontraditional school choice models implemented by other states; an analysis of the impact of enrollment fluctuation, including the impact on state aid; a review of the state's student population and enrollment capacity and tuition costs of nonpublic schools; and a review of services nonpublic schools are able to offer students with special needs.

Background

Several models exist to provide families with options for K-12 education, whether through public or nontraditional schools.

Charter Schools

A charter school operates under a performance contract between the charter school and the authorizing entity, such as the state or an approved government entity. Charter schools commit to obtaining specific, measurable educational objectives in exchange for a charter that allows a school to operate with greater autonomy. A charter school may have more freedom in curriculum design, focusing on content areas such as science, technology, engineering, and mathematics education, the arts, or language immersion, or tailoring instruction for students with autism. Some states permit more flexibility for staffing charter schools, including employing uncertified educators.

A charter school is publicly funded. Despite greater freedom in operations and management, as a public school, a charter school must adhere to regulations imposed on public schools. For example, charter schools must meet academic and financial standards, comply with the federal Individuals with Disabilities Education Act, and may not have a religious affiliation or charge tuition.

Minnesota was the first state to pass a charter school law in 1991. Forty-five states, in addition to Washington, D.C., Guam, and Puerto Rico, allow charter schools. Montana, North Dakota, South Dakota, Nebraska, and Vermont are the only states without authority for charter schools.

The availability of charter schools may lead to the closure or consolidation of rural schools already struggling with low enrollment and tight budgets. Rural charter schools make up 11 percent of all charter schools nationally.

Magnet Schools

Magnet schools emerged in the 1960s as a response to school segregation protests and the civil rights movement. School choice provided a model to address educational inequality without forcing desegregation.

Magnet schools are founded on five pillars that include diversity, innovative curriculum and professional development, academic excellence, leadership and family, and community partnerships. Magnet schools offer a special curriculum capable of attracting substantial numbers of diverse students and may focus on a particular academic subject, language immersion, the arts, gifted study, or an instructional approach like Montessori.

Magnet schools are public schools and must adhere to the same funding structure and regulations as public schools. In addition, magnet schools may receive federal grants from the Magnet Schools Assistance Program, authorized in 1965. The purpose of the program is to voluntarily desegregate communities by providing funding to promote diversity, improve student success, and sustain long-term high performance that continues after federal funding ceases.

Private Schools

Private schools rely on tuition, private grants, and donations for funding. Because private schools do not receive government funding, private schools operate under different curriculum and personnel standards. Private schools are not required to enroll every student who wishes to attend, may expel a child for behavior or academic performance, and are not required to comply with government regulations like the Individuals with Disabilities Education Act, which requires a school to provide an individualized education program to students in need of special education services. Private schools often are associated with religious institutions.

Voucher Systems

The school voucher model first emerged in the 1980s. A school voucher is a certificate representing government funding that may be used for educational costs at any approved school a parent chooses. School vouchers may provide an opportunity for a student living in a low-performing public school district to attend a high-achieving private or religious school instead, extending the free market of choice to education for all students by subsidizing the cost of tuition. Proponents of the voucher system contend school choice creates better schools through competition. However, because private schools are not subject to the same requirement as public schools to admit every child, the beneficiaries of the program may remain limited to a subset of students, based on standards for admission.

There are a variety of voucher programs. Some states provide traditional voucher programs, which give parents or the selected school a voucher worth a certain amount of public education funding, usually less than the per student state aid payment, to use for tuition for an approved private school. Other states provide education savings account (ESA) programs, in which states deposit educational funds in accounts for parents to spend on educational costs, including home schooling curriculum, private tuition, tutoring, or approved therapy. Another type of voucher program involves tax credit scholarships, in which tax credits are provided to taxpayers who donate to a scholarship organization of the taxpayer's choice and the scholarships are distributed to eligible students to use for tuition at a private school.

The Education Commission of the States reported in 2021 that 16 states and the District of Columbia had voucher programs, 6 states had ESA programs, and 19 states had scholarship tax credit programs. Key elements to consider in implementing voucher programs are funding mechanisms, eligibility conditions, and appropriate scholarship or voucher amounts. Some states limit voucher programs to students meeting certain criteria, including living beneath specified income thresholds, in low-performing school districts, or with a disability. Other states use the federal poverty guidelines issued by the United States Department of Health and Human Services as a metric for determining eligibility.

Home Schools

Home schooling is permitted by law in all 50 states. Home schooling offers parents flexibility to tailor curriculum and instruction to fit the educational needs of their children and promote personal values. The primary reasons driving the selection of home schooling include concern about school safety, drugs, or negative peer pressure; a desire to provide moral instruction, religious instruction, or a nontraditional approach to education; emphasis on family life together; dissatisfaction with academic instruction at other schools; and special needs, a physical or mental health problem, or a temporary ailment.

Chapter 15.1-23 governs home education. If a parent wishes to home school his or her child, the parent must provide a statement of intent to the superintendent of the child's school district of residence each year. A supervising parent must teach the subjects required by law and keep records of the child's academic progress. Additional monitoring is required if the supervising parent does not have a high school diploma or general education development diploma or if the child scores below the 50^{th} percentile on a standardized assessment. A child may receive a diploma from the child's school district of residence, the Center for Distance Education (CDE), or an approved nonpublic high school if the child has met the school's requirements through home education.

Other States' School Choice Models

In 2023, several states passed legislation to expand school choice options, while others experienced setbacks. For instance, Florida eliminated income-related restrictions for its ESA program, allowing all students access, whereas Indiana expanded its school voucher program based on household income levels. Conversely, states like Texas faced resistance to school choice legislation, with significant reforms failing to pass. Arizona provides various educational options, including open enrollment, magnet schools, charter schools, home school, and five voucher programs. Overall, the landscape of school choice in the United States continues to shift, with different states pursuing various approaches to enhance educational opportunities for families.

State Law

Open enrollment is a school choice policy that permits a student to attend a public school other than the student's school of residence. House Bill No. 1376 (2023) provides a parent may file an open enrollment application with the school board of the parent's choice. Section 15.1-31-06 directs each school district to set standards for acceptance and denial of open enrollment applications. Although the school district may admit or deny an application based on the school district's predetermined set of criteria, House Bill No. 1376 provides the only reason a school board may refuse to consider an open enrollment application is if enrollment has reached maximum capacity. As a result, a school of residence may not deny enrollment to a student who wishes to attend an approved virtual school.

The Center for Distance Education is the state-sanctioned virtual school, funded by the state and administered by the Superintendent of Public Instruction, pursuant to Section 15-09-06. The Center for Distance Education provides virtual courses to over 4,000 students. School districts that enroll students at CDE pay the associated enrollment fee but are not required to pay the foundation aid payment for the student.

Vetoed Legislation

House Bill No. 1532 (2023) would have established an educational reimbursement program to reimburse approved nontraditional schools for the tuition costs for eligible families, functioning as a traditional school voucher program. The program would have provided funding directly to schools to offset tuition costs in an amount up to 30 percent of the per student state aid payment rate for families whose incomes were less than 500 percent of the federal poverty level. The program would have required the Superintendent of Public Instruction to administer the program and refer any evidence of fraud to the Attorney General and required the State Auditor to audit program funds dispersed to qualified schools. However, the bill was vetoed by the Governor on April 21, 2023. In the Governor's veto message, he expressed support for school choice but emphasized North Dakota's approach should be more comprehensive, citing a lack of meaningful incentives for expanding nontraditional K-12 schools, inadequate public transparency and accountability standards, and the need for effective measures tailored for rural areas. He suggested a more robust school choice bill could be developed during the interim, referencing Arizona and Iowa as model states for potential reforms.

Testimony

The Hunt Institute

The committee received testimony from a representative of The Hunt Institute regarding an overview of school choice programs, detailing various public school options such as charter schools, open enrollment, and magnet schools. Testimony indicated private school choice options include vouchers and ESAs. Public school choice includes charter schools, which are publicly funded but privately managed, offering greater operational autonomy and increased accountability. According to the testimony, charter schools generally receive 70 percent of the per student state aid funding traditional public schools receive, which limits their ability to provide services for students with disabilities and transportation. Testimony contended charter schools offer greater operational flexibility and have seen significant growth nationally, serving about 3.7 million students in 2021.

The committee was informed challenges exist for rural charter schools, including funding disparities and lower enrollment numbers. Testimony indicated charter schools may choose students from among applicants, resulting in students expelled from charter schools typically returning to public schools. Testimony contended, despite these hurdles, charter schools may revitalize communities by providing high-quality education options. Testimony indicated the Legislative Assembly could adjust the school funding formula to address revenue losses from declining enrollment and the implementation of caps on student enrollment could help protect smaller schools from closure, although most families tend to remain with public schools due to familiarity. According to the testimony policies that support rural school choice are necessary, such as improving school finance structures, ensuring transportation access, and establishing equitable enrollment processes.

Testimony indicated open enrollment allows families to choose schools outside their assigned districts, with laws in place in 46 states and the District of Columbia. Magnet schools offer specialized programs, often featuring selective admissions, and aim to foster diversity. For private schools, choices include vouchers, which allow public funding to be used for private schooling; tax credit scholarships, to provide tax breaks for donors supporting private education; and ESAs, to enable families to use public funds for various educational expenses.

According to the testimony, open enrollment laws in North Dakota enable parents to apply for enrollment in different districts, and recent legislation expanded options for virtual schooling, enhancing educational access for students in the state.

Department of Public Instruction

The committee received testimony from a representative of DPI indicating the department offers waivers to allow public schools to operate with the same autonomy as charter schools while maintaining a high level of accountability.

According to the testimony, some communities, such as communities with abundant oil, rely solely on local contributions for school funding. Therefore, enabling charter schools will create a cost to the state if the state allocates a per student amount for each student attending a charter school regardless of local contributions for public school students.

Americans for Prosperity North Dakota

The committee received testimony from a representative of Americans for Prosperity North Dakota regarding the school choice movement. According to the testimony, 16 states have implemented universal school choice models, 17 states offer ESAs, 26 states offer tax credits, 2 states offer individual tax credits, and 25 states have voucher programs. Several ESAs were enacted in various states in 2023. Notably, the testimony indicated North Dakota is the only state without a charter law or a school choice program, aside from its open enrollment policy.

National Alliance for Public Charter Schools

The committee received testimony from a representative of the National Alliance for Public Charter Schools advocating for charter schools as a tuition-free, inclusive, and accountable alternative in public education. Testimony emphasizing the ability of charter schools to innovate and meet diverse student needs. According to the testimony, despite representing only 10 percent of public high schools, charter high schools make up 23 percent of the top 100 schools nationwide, demonstrating significant learning gains in reading and mathematics for students. Testimony contended parental satisfaction is higher among charter school families compared to district school families, and charter schoolteachers report feeling more valued and involved in decisionmaking.

The committee was informed state funding for charter schools does not affect overall state funds because per student payments transfer with students. Charter schools typically are organized as 501(c)(3) entities with self-perpetuating boards, although some members may be elected by teachers and parents. Charter schools must secure facilities, which can be located in various spaces, including vacant buildings or church basements, and may involve private funding.

According to the testimony, North Dakota is one of only four states without charter school laws. Model laws relating to charter schools require strong authorizers, autonomy for schools, requirements for high student achievement, equitable funding, and accessibility to facilities. The National Alliance published its model charter school law in 2009. Since then, seven states have enacted new legislation aligned with the model law.

Excel*in*Ed

The committee received testimony from a representative of Excel*in*Ed regarding education choice options in the United States, emphasizing the belief that every child deserves access to a quality education. Testimony indicated education choice enables families to select the most suitable educational setting for their children, encompassing public schools, charter schools, homeschooling, and private schools. Surveys indicate parents prioritize various aspects of education, such as safety, individual attention, and academic quality, which positions parents as accountable decisionmakers in their child's education.

According to the testimony, there are three main types of private education choice--vouchers, which are state-funded checks for private school tuition; tax-credit scholarships, in which donations to nonprofits fund scholarships and provide tax credits to donors; and ESAs, which are flexible spending accounts that families can use for various educational services. Recent years have seen significant growth in ESAs, particularly following the COVID-19 pandemic, due to rising parental demand for customizable education options. Notably, ESA participation increased from 41,189 students in the 2021-22 school year to 450,000 in the 2023-24 school year.

Testimony indicated while home school students generally are categorized separately, most states allow home school students some participation in ESA programs. Model policy recommendations for ESAs include universal eligibility, equitable funding equivalent to state public school payments, and flexibility in approved educational expenditures, alongside robust accountability measures. North Carolina and Florida have introduced universal or nearly universal voucher programs, offering broad access to funding for families, reflecting a growing trend towards empowering parental choice in education.

American Experiment North Dakota

The committee received testimony from a representative of American Experiment North Dakota regarding ESAs. Testimony contended ESAs are the most customizable education choice program, offering flexibility for families. Testimony indicated ESAs provide long-term fiscal benefits to the state because ESAs are funded with lower amounts than the average per student payment for public school students. According to the testimony, in North Dakota, the average cost per student to the state exceeds $16,000, compared with a national average of $8,000 for an ESA student.

North Dakota Council of Educational Leaders

The committee received testimony from a representative of the North Dakota Council of Educational Leaders regarding the CDE. According to the testimony, survey results show 2,106 students enrolled in CDE for a course also offered by participating schools, leading to an estimated $482,000 to $545,000 in enrollment costs for schools, because the schools must cover the student's CDE course fee. Students noted various reasons for enrolling in CDE courses, including 391 enrolling to avoid a teacher, 325 enrolling due to mental health issues, 317 enrolling due to scheduling conflicts, 189 enrolling for an alternative setting, 105 enrolling due to physical health limitations, and 58 enrolling for reasons related to peer issues. The committee was informed parental approval is not required for students to change their schedules, including enrolling in CDE.

School Districts

The committee received testimony from a representative of Bismarck Public Schools regarding CDE. Testimony indicated some students are enrolling in CDE to avoid traditional classroom teacher expectations, bypassing the social and emotional development that comes from learning to meet expectations or handle related consequences. Testimony contended students should pay for CDE courses if they enroll to avoid teacher expectations or disciplinary action.

The committee received testimony from a representative of Litchville Public Schools regarding open enrollment. According to the testimony, a student requested to take a course offered at Litchville Public Schools through CDE to learn from a different teacher. However, due to the small size of the school, there was no available space for the student to attend virtual class at the time the traditional class was offered. Consequently, the student left the district because the student could not enroll in the desired class.

North Dakota Small Organized Schools

The committee received testimony from a representative of North Dakota Small Organized Schools regarding open enrollment. According to the testimony, when students attend CDE to avoid a challenging class with a teacher at the school, it places the school in a difficult position because the school is required to pay for CDE courses.

North Dakota Educational Opportunities Task Force

The committee received testimony from representatives of the North Dakota Educational Opportunities Task Force regarding stakeholder listening sessions. Testimony indicated the listening sessions revealed a strong preference from parents for educational options to facilitate personalized learning experiences. Testimony indicated parents expressed a desire for access to specialized programs and diverse curricula, such as science, technology, engineering, and mathematics, arts, and vocational training, viewing these choices as essential for preparing children for the future. Testimony also indicated barriers limiting access to school choice identified by parents, including cost, transportation, and geographic distance, particularly for rural families. Concerns about equitable admissions practices in private and charter schools also were raised, along with a demand for safer, higher quality educational environments and consistent standards across all schools.

The testimony indicated the stakeholder listening sessions also revealed the educators' perspective, which included an emphasis on the need for consistent accountability across all schools, with strict oversight of public funds to maintain high educational standards. According to the testimony, educators expressed worries that diverting public funds to private or charter schools could weaken public education, particularly in rural and low-income areas where resources already are limited. Educators indicated geographic isolation presents additional challenges to implementing school choice effectively. Educators also highlighted inclusivity as a concern, advocating for fair admissions policies to ensure all students, especially those with special needs and language barriers, have access to quality education.

The committee was informed the task force developed a proposed framework for a tiered student assistance program. The task force's proposal includes a three-tiered funding approach for public, private, and home schooled students. Under the framework, families would receive funds for an ESA, allowing them to purchase approved educational products from an online marketplace. Students must complete a state assessment to participate and eligibility initially would be based on family income with an eventual transition to universal eligibility. The committee was informed the task force also is exploring charter school legislation. Testimony indicated The Hunt institute would provide a report once the task force has completed its work.

The committee was informed the task force was facilitated by The Hunt Institute and included representation from public schools, private schools, tribal schools, military schools, the Governor's office, DPI, and members of the Legislative Assembly, including participants from various geographies and types of schools across the state to reflect a broad range of constituents.

Committee Considerations

The committee expressed concern regarding student access to school choice in rural communities. The committee also expressed concern regarding potential loss of funding and student enrollment in public schools if other schooling options become available.

Conclusion

The committee makes no recommendation regarding its study of school choice models.

REPLACEMENT OF STORM MAKE UP DAYS WITH VIRTUAL INSTRUCTION DAYS STUDY

Section 15 of Senate Bill No. 2284 (2023) directed a study of the feasibility, desirability, and impact of replacing storm days with virtual instruction days. The study required consideration of input from DPI, public school administrators and teachers, and other stakeholders. The study also required a review of relevant statutes, plans approved by school boards, and current practices related to storm days.

Background

Many states are re-examining their approaches to virtual learning in response to inclement weather, particularly following the COVID-19 pandemic, which demonstrated schools' capacity to deliver remote education. This shift has led some districts to integrate virtual learning into their policies while others have opted to maintain traditional snow days. Key considerations in replacing storm days with virtual learning days include the effectiveness of virtual instruction compared to in-person instruction, the preparedness of staff and students for remote education, the availability of reliable technology and Internet access, and the cultural significance of "snow days" in the school experience.

In Wisconsin, policies vary significantly among school districts. The Green Bay Area Public School District has embraced virtual learning days alongside traditional weather-related closures, while the Arcadia School District has reverted to conventional snow days for the 2023-24 school year. New York City Public Schools have eliminated snow days altogether, opting instead for a seamless transition to remote learning, although this policy remains discretionary for other regions in the state. Virginia attempted to introduce legislation that would have mandated virtual instruction during school closures, but the proposal ultimately was withdrawn.

Other states, such as South Carolina, allow for the use of up to 5 virtual days for short-term closures due to weather or utility interruptions, provided districts meet certain requirements. In New Jersey, virtual learning is prohibited for 1-day weather-related closures, but may be used during longer closures associated with emergencies. The District of Columbia maintains a strict policy against virtual instruction on snow days, requiring any lost instructional time be made up at the end of the school year. States that do not permit virtual instruction days for any purpose to count toward the required number of instructional days per school year include Iowa, Vermont, Massachusetts, and Connecticut.

As states continue to navigate the balance between traditional educational practices and the demands of modern technology, the landscape of virtual instruction during storm days remains dynamic and subject to ongoing evaluation.

State Law

Statutory provisions and administrative regulations regarding virtual learning and storm days are found in North Dakota Century Code Sections 15.1-06-04, 15.1-07-25.4, and 15.1-27-23 and North Dakota Administrative Code Chapters 67-30-01 and 67-30-02. The North Dakota Administrative Code defines "virtual instruction" as remote teaching and learning that can occur synchronously or asynchronously and "virtual schools" as educational institutions that operate without a physical facility. North Dakota Century Code Section 15.1-06-04 requires a school district to provide 962.5 hours of instruction for elementary school students and 1,050 hours of instruction for middle and high school students per school year. A school district must make up lost instructional time due to closures, which can be fulfilled through virtual instruction. Additionally, individual students may participate in virtual learning under extenuating circumstances, even if the school remains open to others.

North Dakota Century Code Section 15.1-06-04(6) provides a full day of virtual instruction must be equal to a full day of instruction at a physical school plant, which equals 5.5 hours for kindergarten and elementary students and 6 hours for high school students. A school district providing virtual instruction must develop an academic pacing guide to monitor student attendance and academic progress. An "academic pacing guide" is defined in North Dakota Administrative Code Section 67-30-02-01 as "a document created or adopted by the school district or nonpublic school which outlines the amount of course content covered during each portion of the school year." Pursuant to North Dakota Administrative Code Chapter 67-30-01, to receive state aid payments for virtual hours of instruction used to make up instructional time, a school board must adopt a local policy defining those procedures. Virtual instruction is limited to 9 calendar weeks, but an extension may be requested if necessary.

Testimony

Department of Public Instruction

The committee received testimony from representatives of DPI regarding traditional storm make up days and the option for virtual instruction days under Section 15.1-27-23, which enables districts to conduct virtual instruction on a case-by-case basis. According to the testimony, during the 2022-23 school year, 309 school buildings in 113 school districts used virtual instruction days. Cumulatively, 687 days of instruction were virtual instruction days due to weather or other circumstances. The average number of virtual instruction days used per school was 6.3 and the greatest number of virtual instruction days per school was 15. Testimony indicated DPI is mandated to compare the academic outcomes of students engaged in virtual instruction with those who are not engaged in virtual instruction. The committee was informed there are no state requirements for virtual instruction, methods or curriculum, although local school boards may establish policies. When schools encounter repeated late starts due to bad weather, the schools have discretion to adjust schedules to ensure equitable instruction per class period. Additionally, the reports on virtual instruction do not distinguish between synchronous and asynchronous formats, and attendance is tracked based on local board policies.

The testimony included insights into the state's virtual instruction feedback gathered from parents, students, and community members, which highlighted positive aspects of virtual instruction. Reported positive aspects included effective communication from schools, the flexibility of virtual learning during inclement weather, and organized lesson plans, particularly in art classes. The feedback indicated parents appreciated the safety of keeping children at home during adverse conditions. However, according to the testimony, a significant preference for face-to-face instruction emerged, particularly among families with younger children who require more guidance and support at home during virtual learning.

Conversely, stakeholders voiced concerns regarding the inconsistency in the quality of virtual instruction, noting younger students often struggled without direct teacher interaction. Some parents expressed frustration over varying lesson lengths and content quality, leading some to view virtual learning as being ineffective. Recommendations for improvement included enhancing communication, providing educator training for high-quality virtual lessons, increasing accountability for both teachers and students, and limiting the number of virtual instruction days in favor of traditional make up days. Overall, while virtual instruction offers flexibility, the feedback indicated a strong preference for in-person learning whenever possible.

North Dakota School Boards Association

The committee received testimony from a representative of the North Dakota School Boards Association regarding the leadership roles of school boards, which include setting a vision, creating structure, ensuring accountability, and advocating for education. Testimony indicated school boards are responsible for adopting and revising policies, with input from administrators and other personnel. The testimony emphasized the importance of multiple readings for new policies and regular reviews to ensure adherence and relevance. Testimony also emphasized the importance of clear communication and tracking of participation.

Testimony indicated feedback from school districts revealed many prioritize using traditional snow days before transitioning to virtual learning. Although there is broad support for virtual education among school leaders, there are concerns regarding the effectiveness of virtual instruction, particularly in elementary grades, and the challenges families face in accessing technology. Testimony indicated school boards are committed to refining their policies based on community feedback to enhance the virtual learning experience while balancing the need for in-person instruction.

School Districts

The committee received testimony from representatives of Mandan Public Schools regarding the district's implementation of 7 virtual days during the 2022-23 school year due to inclement weather. According to the testimony, a survey of 935 parents demonstrated 86.6 percent preferred virtual instruction over making up snow days, leading the district to favor continuing this practice.

Testimony indicated Mandan uses the Canvas platform for virtual instruction, which enables teachers to upload instructional videos students can watch repeatedly and allows monitoring of student engagement. Students can access Canvas without Internet access from any electronic device. The district funds the Canvas platform, and teachers can share instructional videos with one another. Testimony indicated students can connect with their teachers on virtual learning days, facilitating ongoing support. Specialists and interventionists provide one-on-one online services during virtual days. According to the testimony, a learning management system like Canvas offers more resources than traditional textbooks and 59 percent of students in higher education are now enrolled in online learning.

The committee was informed a typical virtual day for a high school chemistry class begins with an overview of the agenda on Canvas, transitions to student instruction, and concludes with an assessment completed on students' school-issued iPad, which is submitted via the platform. The lesson plan on virtual days closely aligns with the lesson plan for traditional classroom instruction. Testimony indicated administrators can monitor student engagement with the modules and although some students may be reluctant to participate actively, students have the flexibility to access the material at their pace and are encouraged to complete and submit their assignments. Canvas allows students to review instructional materials for reinforcement.

According to the testimony, using Canvas to instruct kindergarten students on virtual days requires teaching young students to navigate iPads and the platform at the beginning of the school year. iPads may be issued to students in anticipation of potential virtual learning days based on weather forecasts. Notably, during the COVID-19 pandemic, teachers developed reusable virtual learning content that included lessons and instructional videos, which readily may be accessed in the case of a virtual day. According to testimony, classroom and virtual instruction offer equivalent learning experiences by providing similar reading assignments, whether in-person or online.

The committee received testimony from a representative of Bismarck Public Schools regarding virtual instruction. Testimony indicated maintaining flexibility in using learning management systems like Canvas is important to the district. According to the testimony, learning management systems provide benefits like lesson repetition, transparency for parents regarding curriculum, and continuity for students who transition between learning environments.

North Dakota Council of Educational Leaders

The committee received testimony from a representative of the North Dakota Council of Educational Leaders regarding the evolution of virtual instruction policies on snow days. Testimony indicated school districts have adjusted their virtual instruction policies based on feedback from parents and community members who have expressed diverse needs depending on the individual district. According to the testimony, as districts gain more experience, implementation of virtual instruction is improving. Testimony contended granting school districts the trust and responsibility to create local policies is important.

Testimony also indicated the 2022-23 school year was an outlier with a higher number of school closures due to inclement weather. The committee was informed the North Dakota Council of Educational Leaders is collaborating with the Department of Transportation to clarify the definition of "No Travel Advised" in relation to school attendance to assist administrators in determining whether to close schools. Seventy-five of 89 reporting school districts have a policy in place to use make up days before resorting to virtual instruction days. School districts are gaining experience to enhance their learning management systems. The testimony indicated 98 percent of school leaders support the option for virtual instruction and there is a consensus among districts that a statewide learning management system would be advantageous.

Committee Considerations

The committee emphasized the importance of considering feedback from school districts and one committee member expressed a preference to defer to the general preference of parents for snow days, with the approval of virtual days when necessary, as shown in the parent survey responses provided by the North Dakota Council of Educational Leaders.

Conclusion

The committee makes no recommendation regarding its study of the replacement of storm make up days with virtual instruction days.

REPORTS

Superintendent of Public Instruction

School District Waiver Requests

The committee received a report from DPI regarding requests from a school or school district for a waiver of any rule governing the accreditation of schools under Sections 15.1-06-08 and 15.1-06-08.1. The report indicated there is one school operating on an initial high school unit instructional time waiver, one school operating on an initial extension high school unit instructional time waiver, and 10 schools operating on a 2-year high school unit instructional time waiver extension. Schools have applied for instructional time waivers for career and technical education and science courses.

Innovative Education Program

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 date results under Section 15.1-06-08.2. The report indicated seven school districts are participating in the Innovation Education Program.

School Safety and Security Spending

The committee received a report from DPI regarding the categories and amount spent by each school district on school safety and security measures during the previous school year under Section 15.1-07-36. The report indicated statewide school safety and security spending for 2022-23 school year was $23.4 million.

Professional Development and Improved Educational Outcomes Related to Direct Literacy Instruction

The committee received a report from DPI regarding the implementation and effectiveness of reading curriculum and professional development training requirements in improving educational outcomes and reading competency of students under Section 15.1-21-12.1. The report indicated DPI and REAs are collaborating to provide North Dakota Science of Reading, a low-cost and no-cost professional development and curriculum, and assessments for educators. The committee received a report from DPI regarding a summary of Science of Reading activities to demonstrate the implementation and effectiveness of the appropriation provided to the department for professional learning and educational outcome improvement under Section 18 of Senate Bill No. 2284 (2023). The report indicated 599 individuals were trained under Phase I and II, which included Science of Reading, Big Dippers, and Language Essentials for Teachers of Reading and Spelling (LETRS) training. A total of 3,006 individuals were trained under Phase II and III, which included the State Literacy Conference and Science of Reading training. The report noted 226 public elementary schools received funding for LETRS training and DPI is offering LETRS training for higher education faculty. The report also indicated 102 school districts have committed to using Amira Learning, which is an artificial intelligence reading tool for use on an electronic device for tutoring students to read aloud.

Dyslexia Screening and Intervention

The committee received a report from DPI regarding dyslexia screening and intervention under Section 15.1-32-26. The report indicated professional development for dyslexia screening and a universal dyslexia screener are available to school districts at no cost, and two individuals have completed the dyslexia credential available for educators specializing in dyslexia.

School District Employee Compensation

The committee received a report from DPI regarding a compilation of annual school district employee compensation reports under Section 15.1-02-13. The report indicated from the 2020-21 to 2022-23 school year, the average compensation for administrators increased 4.41 percent, or $6,688, and the average compensation for teachers increased 2.61 percent, or $2,234.

Financial Condition of School Districts

The committee received a report from DPI regarding the financial condition of school districts under Section 15.1-02-09. The report indicated the cost of education for all students in the 2023-24 school year was $1,688,400,249, and the average cost per student was $14,345.87.

Intervention Measures for Chronically Low-Performing Schools

The committee received a report from DPI regarding North Dakota Fostering Improved Results for School Transformation, which is the implementation of intervention measures for chronically low-performing schools under Section 15.1-02-23(5). The report indicated the program has not been implemented, but any school that would be receiving comprehensive support and improvement for a second consecutive 3-year cycle in August 2025 will enter a North Dakota Fostering Improved Results for School Transformation Partnership Agreement.

Learn Everywhere Program

The committee received a report from DPI regarding Learn Everywhere, a program that allows students enrolled in grades 6 through 12 to earn course credit through educational opportunities with a sponsoring entity under Section 15.1-07-35. The report indicated the enactment of House Bill No. 1521 (2023) made the program easier for schools to implement and DPI will be promoting the program to encourage more schools to participate.

Prekindergarten Through Grade 12 Education Strategic Vision

The committee received a report from DPI regarding an update on the strategic vision and the collaborative report of the strategic plans of each steering committee member entity receiving state education funds under Section 15.1-02-04. The report indicated the statewide prekindergarten through grade 12 education strategic vision was developed through input and participation provided by a steering committee consisting of representatives of 24 state-level education entities and stakeholder groups. The committee's vision is for all students to be graduating choice ready with the knowledge, skills, and disposition to be successful. The report indicated the strategic themes used to drive improvement on outcomes are quality early childhood experiences; support for safe and healthy behaviors; career awareness, exploration, and development; quality education personnel; and quality student-centered instruction.

Academic Performance Metrics of Students in Virtual Instruction

The committee received a report from DPI regarding a comparison of academic performance of students participating in virtual instruction with those not participating in virtual instruction using the statewide strategic vision framework goals. Due to the low group size of reporting school districts, each participating district gave its own report under Section 15.1-07-25.4. The reports indicated schools appreciate the virtual instruction model because it is the best delivery model for certain students. The reports also indicated schools are implementing plans to increase the number of virtual students who take the state assessment, which must be taken in person, to provide more data to analyze the effectiveness of virtual instruction.

Statewide Test Scores

The committee received a report from DPI regarding a compilation of test scores of a test aligned to the state content standards in reading, mathematics, and science under Section 15.1-21-10. The report indicated student proficiency is trending upward toward prepandemic scores. The 2023-24 assessment reflected an overall student proficiency of 45 percent in English language arts and 40 percent in mathematics across all grade levels. Comparatively, North Dakota students perform in the top 25 percent of all states consistently.

Education Standards and Practices Board

Satisfaction Survey Results

The committee received a 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 under Section15.1-13-36. The report indicated the public is extremely satisfied with the board's accessibility, customer service, and consistent message.

Kindergarten Through Grade Twelve Education Coordination Council

Activities of the Council

The committee received a report from the Kindergarten Through Grade Twelve Education Coordination Council regarding the activities of the council under Section 15.1-01-04(9). The council is comprised of 20 stakeholders from various backgrounds, including legislators, the Governor, the Superintendent of Public Instruction, school administration, teachers, and education associations. These stakeholders are required to assist with the implementation, dissemination, and communication of the statewide strategic vision and evaluate its progress; perform a review of the access and delivery of education in the state; identify opportunities for collaboration; identify gaps and duplications; evaluate initiatives and trends; and support local or regional initiatives and practices. The report indicated the focus of the council's efforts in 2024 was the future of school staffing, including recruitment and retention initiatives for teachers and other employees.

Governor's Office

Teacher Retention and Recruitment Task Force

The committee received a voluntary report from the Governor's office regarding an update on the Teacher Retention and Recruitment Task Force, which is tasked with studying how to improve teacher preparation programs, evaluating pathways to licensure, improving working conditions to promote retention, and identifying best practices in other states. The Hunt Institute provided technical expertise to the task force related to teacher retention and recruitment. The report indicated the task force will provide recommended legislation to the Governor and DPI.

Center for Distance Education

Enrollment Statistics

The committee received a voluntary report from the CDE regarding enrollment statistics for the center. The report indicated approximately 400 students are enrolled in over 2,600 courses.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee is a statutory committee created under North Dakota Century Code Section 54-35-02.4. The committee's statutory responsibilities include considering and reporting on legislative proposals over which the committee takes jurisdiction and which fiscally impact the retirement programs, and health and retiree health plans, of state employees or employees of any political subdivision. The committee also is responsible for reviewing legislative measures and proposals affecting public employees retirement programs and health and retiree health plans.

In addition to its duties under Section 54-35-02.4, the committee's other statutory responsibilities include the responsibility to:

- Approve terminology adopted by the Teachers' Fund for Retirement (TFFR) Board 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, 54-52.1-08.2, and 54-52.6-23.
- 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).
- Receive an annual report from the PERS Board regarding the contributions necessary, as determined by the actuarial study, to maintain the retirement fund's actuarial soundness, pursuant to Section 54-52-06.
- Receive an annual report from the PERS Board regarding the status of the defined contribution (DC) retirement plan under Chapter 54-52.6, pursuant to Section 54-52.6-22.
- Receive notice from the TFFR Board of necessary or desirable changes in statutes relating to the administration of the TFFR, pursuant to Section 15-39.1-05.2.
- Receive an annual report from the TFFR Board regarding the annual test of actuarial adequacy of the statutory contribution rate, pursuant to Section 15-39.1-10.11.
- Receive notice from the firefighters relief associations of the association's intent to provide a substitution monthly service pension, pursuant to Section 18-11-15.

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

- Periodic reports from Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to recruit or retain employees in hard-to-fill positions, pursuant to Section 54-06-31.
- A biennial report from the Office of Management and Budget (OMB) summarizing reports of state agencies providing service awards to employees in the classified service, pursuant to Section 54-06-32.
- 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.
- 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.

Committee members were Representatives Austen Schauer (Chairman), Josh Boschee, Clayton Fegley, Patrick Hatlestad, Jorin Johnson, Jim Kasper, and Corey Mock and Senators Brad Bekkedahl, Sean Cleary, Kyle Davison, Judy Estenson, Larry Luick, and Kristin Roers.

Senator Doug Larsen served on the committee until his death on October 1, 2023.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

BACKGROUND

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction, and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees.

Section 54-35-02.4 also requires the committee to 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 the proposal would allow future changes without legislative involvement.

Section 54-35-02.4 was amended in 2023 to revise the committee's duties, distinguishing between the interim and the legislative session. The 2023 amendments provide during the interim the committee shall review and make recommendations on proposed legislative measures that affect retirement or health benefits programs, and during the legislative session the committee is not active. However, during the legislative session the committee Chairman and Vice Chairman continue to meet and request actuarial reports on legislation introduced without a report and on amendments if the legislation or amendments affect retirement system or health benefits programs. An actuarial report requested by the Chairman or Vice Chairman must be provided to the standing committee to which the measure is referred.

Under Section 54-35-02.4, the committee may retain actuarial assistance to prepare an actuarial report on a legislative measure or proposal. The impacted program is required to pay for any actuarial reports required by the committee or the committee Chairman or Vice Chairman; therefore, much or all of the actuarial costs involved in the review of legislative measures and proposals is paid by the retirement, insurance, or retiree health insurance program affected by each proposal. In practice, if jurisdiction is taken over a legislative proposal or measure, the affected program obtains an actuarial report for the proposal from that program's consulting actuary.

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 committee reports historically have identified the sponsor of a proposal, summarized the proposal, summarized the actuarial analysis, and included the committee's recommendation.

Teachers' Fund for Retirement

Background

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 the TFFR Board. The State Investment Board is responsible for the investment of trust assets. The Retirement and Investment Office (RIO) is the administrative agency for TFFR, which is a qualified governmental defined benefit (DB) retirement plan.

All certified public school teachers 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.

Retirement Contributions

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.

Retirement Benefits

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 with 3 years of service, 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 post-retirement 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 DB retirement plan, the existing defined contribution (existing DC) retirement plan, the new 2025 defined contribution (new DC) retirement plan, the retiree health insurance credit (RHIC), and the 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 existing 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, which includes the PERS main system, the judges' retirement system, the public safety system with prior PERS main system service, the public safety system without prior PERS main system service, the Highway Patrol Troopers' 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, except for peace officers employed by the Bureau of Criminal Investigation and first enrolled after July 31, 2023, who must complete 10 eligible years of service, are eligible for a normal service retirement benefit 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.

The final average salary multipliers used to determine retirement plan benefits for members are as follows:

- 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.
- 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.
- The retirement benefit for a member of the judges' retirement system is 3.5 percent of final average salary multiplied by years of service for the first 10 years of service, 2.8 percent for each of the next 10 years of service, and 1.25 percent for service in excess of 20 years.
- The retirement benefit for a peace officer employed by the Bureau of Criminal Investigation is 3 percent of final average salary multiplied by years of service for the first 20 years of service and 1.75 percent for service in excess of 20 years.

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 a RHIC.
- **No RHIC** - Members of the PERS main and public safety systems first enrolled after December 31, 2019, do not receive a 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 or public safety systems who 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 Contributions

Except for the employer contribution rate for the public safety system plans, contribution rates are specified by statute. The main system DB retirement plan is funded from employer contributions, employee contributions, and investment earnings. A history of the rates of employer and employee contributions, calculated as a percentage of gross pay, is shown below.

1989 Through December 31, 2011		Effective January 1, 2012		Effective January 1, 2013		Effective January 1, 2014		Effective January 1, 2024	
Employer	Employee	Employer	Employee	Employer	Employee	Employer	Employee	Employer	Employee
4.12%	4.00%[1]	5.12%	5.00%[1]	6.12%	6.00%[1]	7.12%[2]	7.00%[1]	8.12%	7.00%[1]

[1]The state pays 4 percent of the employee share of retirement contributions.

[2]Senate Bill No. 2046 (2019) reallocated the 1.14 percent employer contribution for the RHIC to the main system DB 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, and 9.26 percent for employees hired after December 31, 2023.

House Bill No. 1040 (2023) increased the employer contribution rate by 1 percent effective January 1, 2024, resulting in total state and political subdivision employer contributions of 8.12 percent for employees hired before January 1, 2020, and 9.26 percent for employees hired after December 31, 2019, which includes the 1.14 percent that was reallocated from the RHIC beginning in the 2019-21 biennium. The employer contribution rate for state agencies will increase to the actuarially determined employer contribution (ADEC) rate beginning January 1, 2026, to begin paying the unfunded liability of the plan over a closed period of 31.5 years. The employer contribution rate for political subdivisions will remain at 8.12 percent.

Defined Contribution Retirement Plan

House Bill No. 1040 (2023) closes the main system DB retirement plan and provides employees hired after December 31, 2024, will be enrolled in the new DC retirement plan. The default employee contribution rate under the new DC retirement plan is 4 percent, but employees may elect to contribute an additional 3 percent. Employers are required to match the employee contribution up to 7 percent. If a state employee in the new DC retirement plan contributes less than 7 percent but participates in the PERS deferred compensation plan, the state employer is required to match contributions from the deferred compensation plan up to a total of 7 percent. The deferred compensation plan option is not available for political subdivision employees. For employees participating in the existing DC retirement plan before January 1, 2025, the employee contribution rate remains at 7 percent and the employer contribution rate remains at 7.12 percent.

The new DC retirement plan has an investment option that must include one or more annuity products as part of the investment menu. The existing DC retirement plan has an investment menu but does not provide for annuity products.

Section 17 of House Bill No. 1040 (2023) provides state employees with less than 5 years of experience, who are enrolled in the main system DB retirement plan, the option to transfer to the new DC retirement plan between January 1, 2025, and March 31, 2025. Employees who opt to transfer are eligible for an additional $3,333 state annual contribution each January in 2026, 2027, and 2028.

Retiree Health Insurance Credit Fund

The 1989 Legislative Assembly established a RHIC fund for 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 certain retired members of PERS and the Highway Patrol Troopers' retirement system. 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 for TFFR dated July 1, 2023, and July 1, 2024. The primary purposes of the valuation report are to report TFFR's actuarial assets, calculate TFFR's liabilities, determine the funding policy actuarially determined contribution and compare it 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 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, 2024, the actuarially determined contribution is 12.46 percent of payroll, compared to 12.5 percent on July 1, 2023. Therefore, the statutory employer contribution rate of 12.75 percent resulted in a contribution margin of .29 percent of payroll as of July 1, 2024.

As of July 1, 2024, the actuarial value of assets was $3.41 billion, representing 101.8 percent of the fair value of assets of $3.35 billion. The actuarial value of 101.8 percent falls within the 20 percent corridor, so no further adjustment to the actuarial value of assets was 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.

As of July 1, 2024, the consulting actuary determined the return on the fair value of assets was 7.9 percent. After gradual recognition of investment gains and losses under the actuarial smoothing method, the actuarial rate of return was 6.9 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 71.6 percent as of July 1, 2024, compared to 71.2 percent as of July 1, 2023. The net pension liability increased from $1.4 billion as of July 1, 2023, to $1.41 billion as of July 1, 2024. The fund's cashflow (contributions minus benefit payments, refunds, and expenses) as a percentage of the market value of assets was -2.1 percent as of July 1 of 2023 and 2024.

As of July 1, 2024, the fund had 11,945 active members and 9,693 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 $69,570. As of July 1, 2024, the average monthly benefit amount for retirees and beneficiaries was $2,311.

Public Employees Retirement System

The committee received annual actuarial valuation reports as of July 1, 2023, and July 1, 2024, 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 Patrol Troopers' 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

Section 31 of House Bill No. 1040 (2023) amended Section 57-51.1-07.5 to provide $65 million of the state share of oil and gas tax revenues will be deposited in the PERS fund for the main system DB retirement plan beginning in the 2023-25 biennium. Section 35 of the bill provides for a $135 million transfer from the strategic investment and improvements fund to the PERS fund for the purpose of reducing the unfunded liability of the main system DB retirement plan during the 2023-25 biennium.

During the 2023 legislative session, PERS estimated the cost to continue reducing the unfunded liability based on the estimated ADEC rate of 30.5 percent during the 2025-27 biennium is approximately $402 million, of which $154 million is from the general fund and $248 million is from other funds. This total includes $65 million of ongoing funding provided from oil and gas tax revenues and other funding necessary for 6 months of the 1 percent employer retirement contribution increase through December 31, 2025, after which the ADEC rate will be applied.

The statutory or approved employer and employee contribution rates for fiscal year 2025 are:

	Employee Rate	Employer Rate
PERS main system[1]	7.00%	8.52%
Judges' retirement system	8.00%	17.52%
Public safety system with prior PERS main system service	5.62%[2]	12.27%[3]
Public safety system without prior PERS main system service	5.50%	9.16%
Highway Patrol Troopers' retirement system[4]	14.80%	21.20%
RHIC	0%	1.14%
Job Service	7.00%	0%

[1]The main system employer rate of 8.52 percent is a blend of 8.12 percent for members first enrolled before January 1, 2020, and 9.26 percent for members first enrolled after December 31, 2019.

[2]The employee contribution rate for public safety with prior main system service is 5.50 percent, for Bureau of Criminal Investigation is 7.00 percent (increasing to 8.00 percent in 2025), and for state public safety employees is 6.00 percent.

[3]The employer contribution rate for public safety with prior main system service is 11.40 percent, for Bureau of Criminal Investigation is 22.26 percent, and for state public safety employees is 14.34 percent.

[4]Highway patrol employer and employee contribution rates are to increase by 0.5 percentage points annually beginning on January 1, 2022, with the last increase occurring on January 1, 2025.

The comparison of total employer and employee statutory or approved contribution rates and the total actuarial contribution rates for fiscal year 2025 are:

	Actuarial Contribution Rate	Statutory/Approved Contribution Rate	Statutory Rate Excess - Deficiency
PERS main system	21.07%	15.52%	(5.55%)
Judges' retirement system	19.81%	25.52%	5.71%
Public safety system with prior PERS main system service	18.25%	17.89%	(0.36%)
Public safety system without prior PERS main system service	14.31%	14.66%	(0.35%)
Highway Patrol Troopers' retirement system	51.79%	36.00%	(15.79%)
RHIC	1.34%	1.14%	(0.20%)

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

	Fiscal Year 2024	Fiscal Year 2025
PERS main system	21.86%	21.07%
Judges' retirement system	19.26%	19.81%
Public safety system with prior PERS main system service	17.90%	18.25%
Public safety system without prior PERS main system service	14.64%	14.31%
Highway Patrol Troopers' retirement system	55.37%	51.79%
RHIC	1.38%	1.34%

Demographics

The following demographic data was reported for active members as of July 1, 2024:

Category	Year Beginning July 1, 2024
PERS main system	
Number of active members	23,839
Average age	45.8
Average service credit	8.9
Total compensation	$1,311,798,089
Average compensation	$55,027
Judges' retirement system	
Number of active members	60
Average age	56.2
Average service credit	9.9
Total compensation	$9,990,447
Average compensation	$166,507
Public safety system with prior PERS main system service	
Number of active members	1,649
Average age	38
Average service credit	7.6
Total compensation	$117,265,263
Average compensation	$71,113
Public safety system without prior PERS main system service	
Number of active members	251
Average age	37.6
Average service credit	4.9
Total compensation	$15,868,015
Average compensation	$63,219
Combined PERS fund	
Number of active members	25,799
Average age	45.2
Average service credit	8.8
Total compensation	$1,454,921,813
Average compensation	$56,395

Category	Year Beginning July 1, 2024
Highway Patrol Troopers' retirement system	
Number of active members	167
Average age	37.6
Average service credit	10.4
Total compensation	$14,820,158
Average compensation	$88,743
Job Service	
Number of active members	1
Average age	68.7
Average service credit	49.3
Total compensation	$65,088
Average compensation	$65,088
RHIC	
Number of active members	16,283
Average age	48.5
Average service credit	13.0
Total compensation	$1,036,707,331
Average compensation	$63,668

Funding Ratio

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

	July 1, 2023		July 1, 2024	
	Unfunded Actuarial Liability	Funded Ratio	Unfunded Actuarial Liability	Funded Ratio
PERS main system	$1,875,724,792	66.3%	$1,887,233,572	67.7%
Judges' retirement system	($7,468,985)	112.5%	($7,590,318)	112.1%
Public safety system with prior PERS main system service	$58,752,407	68.6%	$90,830,855	67.9%
Public safety system without prior PERS main system service	$1,568,854	93.0%	$1,303,246	94.9%
Highway Patrol Troopers' retirement system	$46,285,129	68.4%	$49,119,040	68.6%
RHIC	$92,754,158	65.4%	$89,637,373	67.2%
Job Service	($16,346,454)	122.7%	($13,994,936)	119.9%

CONSIDERATION OF RETIREMENT AND HEALTH PLAN LEGISLATIVE PROPOSALS

The committee established April 1, 2024, as the deadline for submission by legislators, Legislative Management interim committees, and state agencies with bill introduction privileges, to submit legislative proposals that affect retirement system and health benefit programs. 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 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 Holdings, Inc., 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 in evaluating proposals that affect TFFR, the actuarial services of Gabriel, Roeder, Smith & Company Holdings, Inc., were used.

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 69th 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. 129

Sponsor: TFFR

Proposal: Revises eligibility requirements for TFFR benefits.

Actuarial analysis: The change is estimated to have no actuarial impact on TFFR.

Committee report: Favorable.

Bill Draft No. 143

Sponsor: Representative Schatz

Proposal: Provides for a state employee compensation adjustment and transfer to TFFR benefits for a cost-of-living adjustment.

Actuarial analysis:

- Assumes a $49.2 million cash infusion.
- The change is estimated to have no actuarial impact on TFFR because the money transferred in and paid out is estimated to be equivalent.

Committee report: No recommendation.

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. 40

Sponsor: Representative Porter

Proposal: Expands participation in the public safety retirement plan to include correctional officers employed by a governmental unit.

Actuarial analysis:

- The actuarial impact will depend on the number and age of new members who enter the public safety retirement plan, and the amount of liabilities and assets that would transfer from the main system DB retirement plan to the public safety retirement plan.
- The transfers result in an actuarial gain to the main system DB retirement plan of approximately $12.2 million and an actuarial loss to the public safety retirement plan of approximately $17.4 million.
- Membership of the public safety retirement plan is estimated to increase from 181 to 515 members, while membership of the main system DB retirement plan is estimated to decrease by 334 members.
- The estimated impact on the public safety retirement plan with main system DB retirement plan prior service is an increase of 0.12 percent of pay.

Committee report: Favorable.

Bill Draft No. 41

Sponsor: Representative Porter

Proposal: Revises the definition of correctional officer and expands eligibility for the public safety retirement plan to include dispatchers and emergency medical services personnel.

Actuarial analysis:

- The actuarial impact will depend on the number and age of new members who enter the public safety retirement plan, and the amount of liabilities and assets that would transfer from the main system DB retirement plan to the public safety retirement plan.

- Transfers result in an actuarial gain to the main system DB retirement plan of approximately $577,000 and an actuarial loss to the public safety retirement plan of approximately $891,000.
- Membership of the public safety retirement plan is estimated to increase from 181 to 203 members, while membership of the main system DB retirement plan is estimated to decrease by 22 members.
- The estimated impact on the public safety retirement plan is a decrease of 0.07 percent of pay.

Committee report: Unfavorable.

Bill Draft No. 45

Sponsor: Representative Porter

Proposal: Expands eligibility for the public safety retirement plan to include correctional officers employed by a governmental unit, dispatchers, and medical services personnel, and limits application to new hires.

Actuarial analysis: The actuarial impact will depend on the number and age of new members who enter the public safety retirement plan.

Committee report: No recommendation.

Bill Draft No. 68

Sponsor: Representative Karls

Proposal: Provides for health benefit plans to include any amount paid by an enrollee, or on behalf of an enrollee, when calculating an enrollee's overall contribution to an out-of-pocket maximum or cost-sharing requirement for a prescription drug.

Actuarial analysis: The change is estimated to have a financial impact of $8.7 million in the 2025-27 biennium or a 1.1 percent increase in premium.

Committee report: Favorable.

Bill Draft No. 69

Sponsor: Representative Brandenburg

Proposal: Provides for PERS health benefits coverage of fertility treatment.

Actuarial analysis: The change is estimated to have a financial impact of $385,000 in the 2025-27 biennium or a 0.05 percent increase in premium, based on current utilization.

Committee report: Favorable.

Bill Draft No. 70

Sponsor: Representative Brandenburg

Proposal: Provides for PERS health benefits coverage of fertility preservation services.

Actuarial analysis: The change is estimated to have a financial impact of $345,000 in the 2025-27 biennium or a 0.04 percent increase in premium, based upon current utilization.

Committee report: Favorable.

Bill Draft No. 75

Sponsor: Representative Karls

Proposal: Provides PERS health benefits coverage may not impose cost-sharing requirements for diagnostic or supplemental breast examination services.

Actuarial analysis: The change is estimated to have a financial impact of $4.1 million in the 2025-27 biennium or a 0.5 percent increase in premium, based upon current utilization.

Committee report: Favorable.

Bill Draft No. 115

Sponsor: State Forester

Proposal: Revises the PERS definition of firefighter.

Actuarial analysis:

- The transfer of members from the main system DB retirement plan to the public safety retirement plan results in an actuarial gain to the main system DB retirement plan of approximately $39,000 and an actuarial loss to the public safety retirement plan of approximately $71,000.
- Membership of the public safety retirement plan is estimated to increase from 181 to 185 members, while membership of the main system DB retirement plan is estimated to decrease by 4 members.

Committee report: Favorable.

Bill Draft No. 116

Sponsor: PERS

Proposal: Provides for PERS to determine the manner of payment of administrative expenses for the deferred compensation plan and for a continuing appropriation.

Actuarial analysis: The change is estimated to have no financial impact on PERS.

Committee report: Favorable.

Bill Draft No. 117

Sponsor: PERS

Proposal: Provides for a change in the computation of final average salary for the Highway Patrol Troopers' retirement system and PERS retirement benefits.

Actuarial analysis: The change is estimated to have no financial impact on PERS.

Committee report: Favorable.

Bill Draft No. 118

Sponsor: PERS

Proposal: Provides for health benefit plans to include benefits for insulin drug and medical supplies for insulin dosing and administration.

Actuarial analysis: The change is estimated to have a financial impact of $1 million in the 2025-27 biennium or a 0.12 percent increase in premium.

Committee report: Favorable.

Bill Draft No. 119

Sponsor: PERS

Proposal: Changes PERS eligibility requirements for disability retirement benefits.

Actuarial analysis: The change is estimated to have no financial impact on PERS. However, a small minority of members' benefits could be reduced, due to the disability benefit formula potentially producing a larger benefit.

Committee report: Favorable.

Bill Draft No. 120

Sponsor: PERS

Proposal: Provides for a transfer to the Highway Patrol Troopers' retirement system fund to increase the funded liability.

Actuarial analysis:

- Assumes a $34.3 million cash infusion on July 1, 2025.
- The change is estimated to have a positive impact on the system and actuarial valuation, resulting in a 90 percent funding ratio for the Highway Patrol Troopers' retirement plan as of January 1, 2026, and a 100 percent funding ratio by 2055.

Committee report: Favorable.

Bill Draft No. 121

Sponsor: PERS

Proposal: Provides for PERS administrative changes and technical corrections.

Actuarial analysis: The change is estimated to have no financial impact on PERS.

Committee report: Favorable.

Bill Draft No. 124

Sponsor: Representative Mock

Proposal: Provides step therapy protocol limitations for an associated condition of metastatic cancer.

Actuarial analysis: The change is estimated to have no financial impact on PERS.

Committee report: Favorable.

Bill Draft No. 134

Sponsor: Representative Porter

Proposal: Revises the definition of correctional officer.

Actuarial analysis: The change is estimated to have an immaterial impact on PERS.

Committee report: Favorable.

Bill Draft No. 138

Sponsor: Senator Barta

Proposal: Provides for step therapy protocol exceptions.

Actuarial analysis: The change is estimated to have no financial impact on PERS.

Committee report: Favorable.

Bill Draft No. 142

Sponsor: Senator Davison

Proposal: Provides PERS health benefits coverage for state employees and retirees must be compliant with the federal Patient Protection and Affordable Care Act.

Actuarial analysis: Moving the state employees and retirees to a nongrandfathered plan as a large employer group is estimated to cost the state and pre-Medicare groups approximately $26.3 million or 3.9 percent of the premium, which includes a 1 percent additional cost included for anticipated utilization increase once benefits are available.

Committee report: Favorable.

The committee took jurisdiction of two additional bill drafts the committee determined affect PERS. The Chairman and Vice Chairman of the committee will receive actuarial reports on these two 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. The following provides information from the 2021-23 biennium:

Agency	2021-23 Agency Authorized FTE Positions	July 1, 2021, to June 30, 2023 (Biennium Total)					
		Recruit		Referral		Retain	
		Number	Amount	Number	Amount	Number	Amount
Adjutant General	222.00	2	$3,000			20	$24,400
Aeronautics Commission	7.00					3	20,000
Department of Agriculture	79.00					5	84,000
Bank of North Dakota	173.00	8	29,583	1	$1,000	9	70,901
Department of Commerce	58.80	2	4,500			24	72,000

Agency	2021-23 Agency Authorized FTE Positions	July 1, 2021, to June 30, 2023 (Biennium Total)					
		Recruit		Referral		Retain	
		Number	Amount	Number	Amount	Number	Amount
Department of Corrections and Rehabilitation	907.79	153	141,007	82	146,667	403	1,142,450
Department of Environmental Quality	166.00					22	248,265
Department of Financial Institutions	31.00					3	7,281
Governor's office	17.00					3	4,500
Department of Health and Human Services	2,459.83	188	1,023,475	211	69,942	225	1,548,880
Highway Patrol	193.00	26	59,500				
Information Technology Department	479.00	3	11,000			3	16,000
Job Service	156.61	1	5,000				
Commission on Legal Counsel for Indigents	40.00					7	34,000
Department of Mineral Resources	108.00					192	871,301
Office of Management and Budget	108.00					20	92,722
Department of Public Instruction	86.25					22	104,000
Public Service Commission	43.00					1	7,200
Retirement and Investment Office	19.00	7	95,000			5	39,914
School for the Deaf	44.61	1	2,500				
State Auditor's office	61.00					48	181,000
State Tax Commissioner	118.00	1	2,000			1	3,000
Department of Veterans Affairs	8.00					1	8,500
Veterans' Home	114.79	33	73,283	1	1,500	96	342,382
Department of Water Resources	90.00	3	8,200			15	56,125
Workforce Safety and Insurance	260.14	9	19,753	1	500		
Total		433	$1,467,801	296	$219,609	1,100	$4,962,894
NOTE: Amounts paid are rounded to the full dollar value and agencies are listed only if they provided these types of bonuses during this period.							

The following provides information for the 1st year of the 2023-25 biennium:

Agency	2023-25 Agency Authorized FTE Positions	July 1, 2023, to June 30, 2024 (Fiscal Year Total)					
		Recruit		Referral		Retain	
		Number	Amount	Number	Amount	Number	Amount
Adjutant General	233.00	26	$19,114			5	($4,998)
Aeronautics Commission	7.00					1	5,000
Attorney General	266.00	1	5,000			3	29,000
Bank of North Dakota	187.00	1	1,000			10	66,125
Department of Commerce	65.80	2	4,500				
Department of Corrections and Rehabilitation	929.79	247	140,983	84	$205,000	15	(2,328)
Department of Financial Institutions	35.00	1	500				
Governor's office	19.00	1	$1,200				
Department of Health and Human Services	2,483.83	135	910,627	186	82,700	67	546,638
Highway Patrol	205.00	25	62,500	3	3,000		
Department of Mineral Resources	108.00					5	1,639
Information Technology Department	507.00	2	4,000				
Office of Management and Budget	110.00					1	(3,125)
Public Service Commission	45.00					3	3,889
Retirement and Investment Office	34.00					1	(3,600)
State Tax Commissioner	117.00	1	2,000				
Department of Trust Lands	33.00					1	5,000
Veterans' Home	114.79	21				2	1,750
Department of Water Resources	93.00	1	1,500			1	5,000
Workforce Safety and Insurance	260.14	4	4,802			2	5,040
Total		468	$1,184,732	273	$290,700	117	$655,029

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 2021-23 biennium, state employee service awards totaled $448,300; employer-paid costs of training or educational courses, including tuition and fees, totaled $2,907,670; and employer-paid professional organization membership and service club dues for individuals totaled $1,354,162. The following schedule is a summary of the information presented for the 2021-23 biennium:

Agency	2021-23 Authorized FTE Positions	State Employee Service Awards	Employer-Paid Costs of Training or Educational Courses, Including Tuition and Fees	Employer-Paid Professional Organization Membership and Service Club Dues for Individuals
101 - Governor's office	17		$2,530.00	$680.00
108 - Secretary of State	33	$2,552.00	1,005.00	16,236.00
110 - Office of Management and Budget	108	7,633.89	9,538.65	6,516.96
112 - Information Technology Department	479	27,057.70	327,541.96	108,340.75
117 - State Auditor's office	61	4,270.00	64,529.74	11,986.95
120 - State Treasurer	7	50.00	1,610.00	13,140.00
125 - Attorney General	253			33,358.90
127 - Tax Commissioner	118	8,490.50	65,845.70	5,708.50
140 - Office of Administrative Hearings	5	159.95		
180 - Judicial branch	362	20,556.33	152,894.09	338,257.99
188 - Commission on Legal Counsel for Indigents	40		10,364.67	14,241.76
190 - Retirement and Investment Office	25	1,175.50	37,969.46	21,430.00
192 - Public Employees Retirement System	35.5	2,724.50	23,138.23	28,680.00
195 - Ethics Commission	1	205.95	2,800.00	445.00
201 - Department of Public Instruction	86.25		8,014.31	35,839.05
226 - Department of Trust Lands	30	2,012.57	3,570.00	18,010.10
250 - State Library	26.75	1,309.75		5,000.00
253 - School for the Blind	27.25		6,953.00	1,000.00
270 - Department of Career and Technical Education	50.3	1,052.55	2,724.00	5,535.00
301 - Department of Health and Human Services	210.5	12,777.50	58,224.74	30,639.70
303 - Environmental Quality	166	10,860.50	89,636.06	5,318.00
313 - Veterans' Home	114.79	900.00	19,606.00	1,752.00
321 - Department of Veterans Affairs	8			600.00
325 - Department of Health and Human Services	2249.33	108,489.00	498,357.09	33,972.22
360 - Protection and Advocacy Project	28.5	2,692.61		
380 - Job Service North Dakota	156.61	9,399.00	5,821.00	399.00
401 - Insurance Department	38	2,000.00	16,764.22	9,310.00
405 - Industrial Commission	108.25	4,560.00	3,727.41	244.00
406 - Department of Labor and Human Rights	13	552.82		
408 - Public Service Commission	43	2,384.50	4,770.00	2,572.88
414 - Securities Department	10	375.00		6,384.50
485 - Workforce Safety and Insurance	260.14	21,578.32	198,056.52	87,976.25
504 - Highway Patrol	193		210,002.37	58,276.12
530 - Department of Corrections and Rehabilitation	907.79	49,559.92	390,841.15	164,880.38
540 - Adjutant General	222	19,044.11	57,691.46	33,149.90
601 - Department of Commerce	58.8	4,300.00	14,175.00	600.00
602 - Department of Agriculture	79	2,783.50		65,121.33
616 - State Seed Department		350.00		725.00
701 - State Historical Society	78.75	7,495.00	32,477.38	2,347.00
720 - Game and Fish Department	164	37,337.85	2,895.00	123,441.12
750 - Parks and Recreation Department	57.75	8,448.54	6,681.00	15,650.00
770 - Department of Water Resources	90	5,450.00	67,037.63	9,831.90
801 - Department of Transportation	982	57,711.00	509,877.05	36,563.95
Total		$448,300.36	$2,907,669.89	$1,354,162.21

Health Insurance Mandate Procedure

Under Section 54-03-28, the committee considered issues of timing, equity, and analysis 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 introduce legislation providing for a health insurance mandate and receiving the 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

Teachers' Fund for Retirement

The TFFR Board reported action by the committee was required under Section 15-39.1-35 to comply with the federal Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act of 2022. The committee received background information on the SECURE 2.0 Act, which raised the age at which required minimum distributions must be withdrawn from retirement accounts to 73. The committee authorized TFFR to amend Section 15-39.1-10 to implement the SECURE 2.0 Act. In compliance with Section 15-39.1-05.2, the TFFR Board notified the committee of its intention to introduce legislation to comply with the SECURE 2.0 Act.

Public Employees Retirement System

The PERS Board reported action by the committee was required under Section 54-52-23 to comply with the SECURE 2.0 Act. The committee authorized PERS to amend Section 54-52-28 to implement the SECURE 2.0 Act. The PERS Board notified the committee of its intention to introduce legislation to comply with the SECURE 2.0 Act.

Firefighters Relief Associations

The committee was not notified by a firefighters relief association pursuant to Section 18-11-15(5), which requires the committee to be notified by any firefighters relief association that implements an alternate schedule of monthly service pension benefits for members of the association.

REPORTS

Retirement and Investment Office

The committee received periodic reports from RIO, including:

- An overview of RIO;
- The status of 2023 legislation implementation relating to RIO;
- The status of investments of the State Investment Board investments for the legacy fund; and
- A summary of RIO's strategic plan and investment management initiative.

The committee was informed performance of the TFFR, PERS, and legacy funds as of June 30, 2023, were:

	TFFR	PERS	Legacy Fund
Total fund - Year-to-date	6.7%	7.1%	7.6%
Total fund - 1 year	7.5%	8.0%	8.2%
Total fund - 3 year	8.4%	8.6%	6.1%
Total fund - 5 year	6.8%	6.9%	5.5%

Public Employees Retirement System

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

- An overview of the PERS agency;
- The status of 2023 legislation implementation relating to PERS;
- An overview of the PERS retirement plans and group insurance plans, including funding solutions for the Highway Patrol Troopers' retirement system fund;
- An overview of the contracts PERS enters under Chapters 54-52, 54-52.1, and 54-52.6; and
- A summary of PERS' strategic plan for 2022 through 2024.

The committee also received testimony and periodic reports from representatives of PERS regarding the status of the closure of the main system DB retirement plan and the transition to the new DC retirement plan. Testimony received by the committee included progress of the administrative rulemaking process, communication with stakeholders, and technology updates associated with the transition. Testimony indicated PERS is on schedule to transition to the new DC retirement plan on January 1, 2025.

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 and the development of each facet of the energy industry from the obtaining of raw natural resources to the sale of the final product in this state, other states, and other countries. The study requires the committee to develop a comprehensive statewide energy policy that supports the long-term development of energy opportunities in the state and seeks solutions to challenges arising during the development of energy opportunities. The study also requires the committee to engage industry stakeholders to develop a regulatory environment that allows for responsible growth while resolving conflicts and developing synergy between energy and agriculture programs. 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 three studies:

- House Concurrent Resolution No. 3034 (2023) directed a study of sustainable energy policies to maximize the economic viability of existing energy sources, assess future demands on electricity in the state, and determine the feasibility of advanced nuclear energy development and transmission in the state.
- Senate Bill No. 2366 (2023) directed a study of the accessibility of natural gas in small communities. The study required a review of existing programs to assist small communities with gaining access to natural gas and accessibility assistance programs that may need to be extended.
- Section 16 of House Bill No. 1012 (2023) directed a study of the effect of electric vehicles (EVs) in the state. The study required consideration of the assessment of fees to offset reductions in motor fuel tax revenues; the impact of EVs on electric demand and the electrical grid; the installation of EV charging infrastructure by private and public entities, including potential funding sources; the impact to public services and public transportation providers; and the effect on employment opportunities and other economic impacts, including tourism, automobile dealers, the energy industry, and the critical minerals industry. The study required input from key stakeholders, including EV manufacturers, EV dealers, electric utilities, EV charging station manufacturers, and other transportation entities.

The Legislative Management assigned the committee the responsibility to receive 13 reports:

- A biennial report from the Energy Policy Commission on the commission's recommendations for the state's energy policy, pursuant to Section 17-07-01.
- A biennial report from the Clean Sustainable Energy Authority regarding the authority's activities and the financial impact on state revenue and the state's economy of the programs administered by the authority, pursuant to Section 54-63.1-04.
- A report from the Department of Transportation (DOT) regarding an update on the deployment and administration of EV charging stations, pursuant to Section 24-02-45.4.
- A report from DOT on the department's findings and recommendations on the department's study of the feasibility and impact of imposing an EV charging tax to offset lost revenue from gas tax sales, pursuant to Section 1 of House Bill No. 1081 (2023).
- At least one report from the State Energy Research Center regarding the center's study of prospective in-state resources of economically feasible accumulations of critical minerals, including rare earth elements and other high-value minerals or materials that may be suitable for extraction and enrichment, pursuant to Section 14 of House Bill No. 1014 (2023).
- At least one report from the State Energy Research Center regarding the status and results of its salt cavern underground energy storage and research project, pursuant to Section 15 of House Bill No. 1014 (2023).
- At least one report from the Energy and Environmental Research Center regarding the status of the center's study of future lignite electrical generation facilities, pursuant to Section 17 of House Bill No. 1014 (2023).
- Annual reports from the State Energy Research Center on all research activities and accomplishments, pursuant to Section 15-11-40.
- A biennial written report from the North Dakota Transmission Authority on its activities, pursuant to Section 17-05-13.
- A report from the Agriculture Commissioner regarding the implementation of, and services provided under, the postproduction royalty oversight program, pursuant to Section 4.1-01-26.

- A biennial report from the North Dakota Pipeline Authority on its activities, pursuant to Section 54-17.7-13.
- Annual reports 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, pursuant to Section 57-60-02.1.
- A biennial report from the High-Level Radioactive Waste Advisory Council on its findings, pursuant to Section 38-23-08.

Committee members were Senators David Hogue (Chairman), Brad Bekkedahl, Keith Boehm, Ryan Braunberger, Dale Patten, and Merrill Piepkorn and Representatives Dick Anderson, Mike Brandenburg, Alisa Mitskog, Corey Mock, Todd Porter, and Don Vigesaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

COMPREHENSIVE AND SUSTAINABLE ENERGY POLICY STUDY

The committee is responsible for studying a comprehensive statewide energy policy, pursuant to Section 54-35-18. In addition to its statutory responsibilities, House Concurrent Resolution No. 3034 (2023) directed a study of sustainable energy policies to maximize the economic viability of existing energy sources, assess future demands on electricity in the state, and determine the feasibility of advanced nuclear energy development and transmission in the state. Due to the similarities in the studies directed by Section 54-35-18 and House Concurrent Resolution No. 3034, the two studies were combined into a comprehensive study.

Background

Section 54-35-18 directs the committee to 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 raw natural resources to the sale of the final product in this state, other states, and other countries. The committee's duties under Section 54-35-18 were expanded by Senate Bill No. 2289 (2023), which requires the committee to develop a comprehensive statewide energy policy that supports the long-term development of energy opportunities in the state and seeks solutions to challenges arising during the development of energy opportunities. The study also may include the review of, and recommendations relating to, policies affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy.

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 Report

In 2009, the Energy Policy Commission was created by House Bill No. 1322, codified as 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 the commission's three subcommittees--public policy, research and development, and infrastructure. The commission did not provide any specific energy policy recommendations during the 2023-24 interim or updates to the commission's 2022 energy plan. The commission is continuing to review 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 continues to express 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.

Clean Sustainable Energy Report

The committee received 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. According to the report, the purpose of the Clean Sustainable Energy Authority is to support the research and development of large-scale projects and technologies that advance energy production and diversify the state's economy while reducing environmental impacts.

During the 2023 legislative session, the authority received $30 million in appropriations to repay a portion of the existing Bank of North Dakota line-of-credit and was authorized an additional $250 million line-of-credit from the Bank for long-term, low-interest loans. During the 2023 special legislative session, the authority was directed to issue a loan of up to $125 million for a fertilizer development project. The project and the entire $125 million loan was accepted by NextEra.

According to the report, as of November 2024, the uncommitted balance of the clean sustainable energy fund is $3.38 million. The authority has approved $64.5 million in grants and $545.5 million in loans for 20 active projects. The 20 projects include natural gas flaring projects, synfuels production, fertilizer production, lithium-ion battery production, hydrogen production, lignite combustion production enhancements, natural gas conversion, carbon capture, farm data sharing, carbon emission, lithium iron phosphate cathode materials, the expansion of the Dickinson renewable fuel facility, manufacturing biodegradable carbon-negative biopolymers, and projects to evaluate the potential of using geothermal power generation on oil and gas production sites.

Testimony

Rainbow Energy Center

The committee received testimony from a representative of Rainbow Energy Center relating to the future of Coal Creek Station and the successful operation of a coal plant in a low-carbon world. According to the testimony, Rainbow Energy Center is an independent power producer and the state's most efficient power plant with 700 employees and an estimated annual fiscal impact to the state of $1.5 billion. Testimony indicated the Nexus Line Transmission System is a high-voltage, direct current line owned by Rainbow Energy extending 436 miles between North Dakota and Minnesota with 99.5 percent availability. Testimony contended the system brings value to Coal Creek Station by delivering electricity from Coal Creek Station to Minnesota, serving 1.7 million people each day, and relieving transmission congestion in the state.

The committee was informed Rainbow Energy Center's vision includes optimizing operational efficiencies, maximizing power delivery, generating renewable energy, and expanding carbon capture technology. Testimony contended Rainbow Energy Center's goal is to run Coal Creek Station at full capacity.

The committee discussed the negative impacts of environmental and social governance policies and was informed Rainbow Energy Center has not experienced any negative impacts regarding environmental and social governance policies from banks or other entities outside the state.

Dakota Gasification Company

The committee toured the Great Plains Synfuels Plant and received testimony from representatives of the Dakota Gasification Company and Basin Electric Cooperative regarding the Great Plains Synfuels Plant and future projects. According to the testimony, the Dakota Gasification Company's primary goal is to operate the Great Plains Synfuels Plant at maximum capacity. The committee was informed the company added $100 million to its 10-year infrastructure improvement plan for fertilizer units and carbon dioxide projects to ensure the facility is operating continuously and at maximum capacity.

Pioneer Generation Station

The committee was informed construction on Pioneer Generation Station Phase IV in Williston is scheduled for 2024, which will add 590 megawatts (MW) of generation capacity to the Bakken region. Additional projects in the region are planned to finalize by 2030, adding an additional 1,400 MW of generation capacity.

North Dakota Transmission Authority

The committee received testimony from a representative of the North Dakota Transmission Authority regarding Transmission Authority studies on the impact of Environmental Protection Agency (EPA) regulations on the resource adequacy of the Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) grids.

The committee was informed reliance on a wind impacted reserve source for electricity is very dangerous due to variations of peak load times. Testimony indicated MISO and SPP do not have control over resource choices because some states have mandates affecting a utility's choice of resources and energy markets favor the lowest-cost resource, causing subsidized resources to be selected to operate first. According to the testimony, an additional concern is limited transmission capacity. The committee was informed the transmission capacity required to transport energy to the market, especially from dispersed renewable energy locations, is insufficient and capacity markets have been ineffective in encouraging additional capacity. Testimony contended a significant investment in transmission capacity in the state will be needed, together with investments in low- or negative-carbon technologies, to allow the state to continue as a leader in the energy industry.

ALLETE, Inc.

The committee received testimony from a representative of ALLETE, Inc., regarding energy infrastructure in the state. According to the testimony, the high-voltage direct current (HVDC) project by ALLETE, Inc., aims to upgrade the Square Butte transmission system, which spans 465 miles from Center, North Dakota, to Hermantown, Minnesota. Initially commissioned in 1975, this system's capacity will increase from 550 MW to 900 MW with the planned modernization of two converter stations using the latest voltage-source technology. This project, estimated to cost $1 billion, has received $50 million in United States Department of Energy grants and $25 million from Minnesota, with additional funding being sought from North Dakota. Completion is scheduled between 2028 and 2030, and the peak construction period will employ around 220 workers.

The committee was informed the North Plains Connector, a joint project between ALLETE, Inc., and North Plains Connector, is a new transmission corridor designed to connect three energy regions--MISO, SPP, and the Western Electricity Coordinating Council--through a 412-mile HVDC line. With a planned capacity of 3,000 MW, the line will enable bidirectional power flow and integrate energy systems in the Midwest and western United States, improving resilience and reliability. Approximately 90 percent of the right-of-way has been acquired, with the remaining 11 percent pending across private, state, and federal lands. Testimony indicated key milestones include completing land surveys in 2024 and targeting a final in-service date of 2031.

The committee discussed the critical demand for expanded alternating current and HVDC infrastructure in the Upper Midwest to support projected utility load growth. Testimony indicated this need aligns with MISO's Long Range Transmission Planning, which emphasizes the requirement for robust transmission systems to meet rising electricity demands. The committee was informed ALLETE, Inc., aims to address these challenges with a stakeholder-first approach, engaging extensively in environmental, community, and regulatory processes to support both the HVDC modernization and the North Plains Connector projects.

Midcontinent Independent System Operator

The committee received testimony from a representative of MISO regarding the impact the EPA and other external sources have on resource generation. According to the testimony, MISO manages electricity transmission for 45 million customers across 15 states in the United States and in Manitoba, Canada. Testimony indicated the responsibilities of MISO include ensuring grid reliability and managing the transition to renewable energy. The committee was informed MISO is facing significant changes due to increasing electrification, extreme weather, and decarbonization initiatives. Testimony indicated these factors have led to transformations in resource generation, including a rise in renewable sources like wind and solar. The committee was informed MISO's resource adequacy construct is evolving to ensure continued reliability under a changing risk profile driven by the resource fleet transition. Testimony indicated MISO anticipates significant resource additions, retirements, and load growth with a trend toward increasing renewables over the next several years.

The committee was informed MISO's transmission expansion in the state is part of a larger effort to support grid reliability and accommodate the increasing shift toward renewable energy sources. The committee was informed the Long Range Transmission Planning initiative, particularly Tranche 1, includes 18 projects across the MISO Midwest subregion, with a total estimated cost of $10.3 billion. In North Dakota, specific upgrades, such as the Jamestown-Ellendale project, are designed to enhance transmission capacity and reduce interconnection costs for new generation, facilitating the transition to cleaner energy sources like wind. Testimony contended these expansions are essential to address regional planning needs, integrate renewable energy, and maintain grid stability under increasing demand.

The committee was informed external factors like EPA regulations may have a significant impact on MISO’s resource generation. Testimony contended the EPA's proposed carbon standards for coal and gas units, as well as other regulations related to emissions and waste, could accelerate the retirement of coal plants or force the plants to adopt carbon capture technologies. The committee was informed approximately 25 gigawatts of coal capacity in the MISO region may need to adopt gas co-firing or carbon capture technology by 2030.

Southwest Power Pool

The committee received testimony from a representative of the SPP regarding the impact the EPA and other external pressures have on generation resources. The testimony indicated the SPP is one of North America's nine independent system operators and regional transmission organizations serving approximately 18 million people across a 552,885-square-mile territory. Testimony indicated the SPP is responsible for ensuring reliable power supply, managing transmission infrastructure, and operating competitive electricity markets. Its operations also include resource adequacy, transmission expansion, and market operations.

The committee was informed EPA regulations have had a notable impact on SPP's resource generation, particularly affecting coal and natural gas plants. According to the testimony, as part of the EPA's environmental regulations and emissions standards, there is a notable shift toward retiring older fossil fuel plants, with an emphasis on adopting cleaner energy alternatives like wind and solar.

According to the testimony, SPP's Transmission Expansion Plan focuses on improving grid reliability and accommodating future energy demands through stakeholder-driven, member-funded processes. The plan addresses both near- and long-term transmission needs, incorporating economic and reliability considerations. It includes interregional projects in collaboration with neighboring regions like MISO and customer-initiated projects to support new generation connections. Notable upgrades involve HVDC technology, which enhances long-distance transmission efficiency. According to the testimony, the SPP's Transmission Expansion Plan ensures the grid's capacity to handle increasing renewable energy integration and meet future energy needs.

The committee was informed SPP's Transmission Expansion Plan is necessary to address several critical challenges. These include the growing demand for electricity, the increasing integration of renewable energy sources like wind and solar, and the retirement of older, thermal generation facilities. Testimony contended as the energy landscape shifts toward more intermittent renewables, robust and expanded transmission infrastructure is essential for maintaining grid reliability and meeting future energy needs. The committee was informed the plan ensures new generation resources can be effectively connected to the grid, and the transmission system remains resilient amid changing energy demands and extreme weather conditions.

Electric Grid Resilience

The committee received testimony from representatives of Montana-Dakota Utility Resources Group Inc., the Industrial Commission, and the Public Service Commission regarding electricity congestion in the Bakken region and the effect of data centers on the electric grid and utility rates.

According to the testimony, the city of Williston is a high-load growth area lacking adequate transmission to support a localized data center. Testimony contended the Williston data center has caused significant congestion, limiting the generation capacity across the entire regional power grid. The committee was informed Montana-Dakota Utility Resources Group Inc., has filed a complaint with the Federal Energy Regulatory Commission after being charged transmission congestion fees from the SPP and MISO regional transmission organizations.

The committee was informed the Public Service Commission does not have the statutory authority to control the siting location of a data center or cryptocurrency facility. Under current projections, the Transmission Authority and the Industrial Commission concluded by year 2029 the MISO regional grid will not have sufficient power to meet the electrical demand of users.

The committee received testimony from a representative of the North Dakota Transmission Authority regarding transmission infrastructure. The committee was informed the 2023-24 Winter Reliability Assessment indicated a large portion of the North American bulk power system is at risk of insufficient electricity supply during peak winter conditions. Testimony indicated prolonged, geographically expansive cold snaps threaten the reliability of bulk power system generation, and the availability of natural gas used by many generators. Testimony contended system operators may face a sharp simultaneous increase in demand, resulting in a constrained supply, as electric heating systems consume more power in cold temperatures. Testimony indicated areas of natural gas transmission congestion include the Bakken and Southeast North Dakota. The committee was informed MISO has approved 18 new transmission projects, including JETx, a transmission line from Jamestown to Ellendale, which are needed in 2030 to ensure a reliable and resilient transmission system.

Environmental Protection Agency Regulations and North Dakota

The committee received testimony from the Governor and a representative of the Department of Environmental Quality and Department of Mineral Resources regarding the proposed federal rules and regulations of the EPA. The committee was informed the proposed rules and regulations could have a significant impact on industries crucial to the state, including agriculture, baseload energy, and oil and gas. Testimony indicated the state is monitoring over 30 proposed federal rules and regulations that pose a risk to these sectors. The testimony contended the state has a sovereign interest and responsibility in developing resources for its citizens and a commercial responsibility in providing energy to citizens throughout the Midwest.

The committee was informed the Department of Environmental Quality holds primary responsibility for numerous environmental programs within the state. Testimony indicated general concerns over the legality of the proposed rules and regulations aimed at shutting down the state's coal-fire power industry. The committee discussed the need for additional funding to enable the Attorney General to contest the federal rules and regulations impacting the state. Testimony contended there is an unprecedented pace of the new regulations attacking North Dakota industries, despite the state having some of the cleanest air in the country.

Carbon Dioxide Storage

The committee received testimony from a representative of the Department of Mineral Resources regarding carbon sequestration and the potential use of carbon dioxide in the state. According to the testimony, the department is reviewing a permit for a project that would enable the utilization of approximately 360 million tons of carbon storage, with anticipated capacity increases from 0.1 to 0.25 percent. The committee was informed North Dakota has an overall carbon storage capacity of 252 billion tons.

The testimony identified critical pipeline infrastructure needs, including a pipeline from Wyoming to supply southwestern North Dakota, another from the south to capture carbon dioxide emissions from ethanol, fertilizer, and other plants, and a third from Boundary Dam in the north to support storage within the state. The testimony emphasized the importance of establishing policies regarding extraterritorial jurisdiction to effectively manage carbon sequestration activities across these regions.

Advanced Nuclear Energy Development

The committee received testimony from a representative of the Department of Commerce regarding the future of nuclear energy and the current demand for baseload power in the state. According to the testimony, North Dakota exports less of its power each year due to regional demand. Testimony indicated the state is facing challenges in maintaining reliable baseload power because existing coal plants in the state are approaching or have surpassed their intended operational lifespan. Testimony contended electrification trends and the rapid growth in data centers and other high-energy industries across the Midwest are responsible for the increase in electrical demand in North Dakota.

To address challenges, the testimony indicated potential short- and long-term solutions. In the short-to-mid-term, natural gas combustion turbines are considered a viable option due to the state's abundant natural gas resources, despite supply chain and infrastructure backlogs. For the long-term, the department is considering utilizing existing infrastructure for nuclear energy as a stable, emissions-free solution. The committee was informed the department is actively engaging with national laboratories and joining a consortium with other states to evaluate nuclear options.

The committee received testimony from a representative of Gateway for Accelerated Innovation in Nuclear (GAIN) regarding the feasibility of advanced nuclear energy development and an overview of state engagement strategies to advance nuclear energy development. The committee was informed GAIN works directly with state policymakers, utilities, and industrial stakeholders to introduce advance nuclear technologies and connect states with technical and financial resources from the United States Department of Energy. The committee was informed, in 2024, 123 legislative measures regarding advanced nuclear energy feasibility studies and working groups were proposed nationwide.

The committee was informed advanced reactors, including small modular reactors and microreactors, are designed for flexibility, supporting diverse applications beyond electricity, such as hydrogen production, water desalination, and industrial heat. Testimony indicated GAIN is supporting coal-to-nuclear transition studies in Arizona, Kentucky, and Montana, and exploring the use of retired coal plant sites for nuclear energy projects. Testimony contended this strategic focus on advanced reactors highlights their potential as safe, low-waste solutions adaptable to the changing energy landscape and capable of supporting a resilient, sustainable power grid.

The committee received testimony from a representative of the United States Nuclear Regulatory Commission regarding advanced nuclear energy. The committee was informed, in December 2023, the United Arab Emirates announced its goal to shift away from fossil fuels to reach net-zero emissions by 2050. Twenty-four countries, including the United States, have committed to tripling nuclear energy use by 2050, supporting a global trend in nuclear development. Currently, 53 countries operate 223 research reactors, and over 200 nuclear reactors power naval ships and submarines. More than 420 nuclear reactors are operational across 33 countries, with the United States leading as the largest operator with 94 units. Testimony contended nuclear energy offers scalable and flexible commercial and regulatory advantages, supporting incremental growth in electricity demand and additional uses such as repowering fossil fuel sites, industrial heat production, water purification, desalination, and hydrogen production.

Bank of North Dakota

The committee received a report from the Bank of North Dakota on the Bank's findings and recommendations regarding its study on environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state, pursuant to Section 5 of House Bill No. 1429 (2023). The committee was informed the study included individuals from the Legislative Assembly, private industries, associations, and state agencies. The study consisted of eight working groups completing over 80 interviews to address areas of sustainability. According to the report, the state is charting a new course of action by demonstrating how transformation and innovation can thrive in a world focused on carbon management, while not neglecting its commitment to energy and agriculture.

Committee Considerations

The committee considered a bill draft to provide for a Legislative Management study relating to the development of advanced nuclear energy. The study includes evaluations of site locations, electric connectivity, land use considerations, and economic impacts, with participation from higher education and energy industry participants. The bill draft provides an appropriation of $500,000 for the purpose of contracting for consulting services. Committee members agreed the study to determine the feasibility of advanced nuclear energy development and transmission was larger than anticipated and should be expanded to provide a potential solution to issues relating to increased load growth in North Dakota. Committee members agreed the proposed study must consider social and community interests regarding the location of a nuclear facility, and acknowledged a community's acceptance of a facility is a key factor in the siting and permitting process.

Recommendations

The committee recommends House Bill No. 1025 directing a Legislative Management study on advanced nuclear energy.

NATURAL GAS ACCESSIBILITY IN SMALL COMMUNITIES STUDY

Senate Bill No. 2366 (2023) directed a study of the accessibility of natural gas in small communities, including a review of existing programs to assist small communities with gaining access to natural gas and accessibility assistance programs that may need to be extended.

Background

During the 2019-20 interim, the Energy Development and Transmission Committee received information regarding natural gas developments, capture, usage, and services as a part of its study of a comprehensive energy policy for the state and the development of each facet of the energy industry. The committee was informed the North Bakken Expansion Project would provide 200 million cubic feet of natural gas transportation capacity per day. In addition, the project would provide approximately 67 miles of new pipeline construction, compression, and ancillary facilities to transport natural gas from core Bakken production areas in western North Dakota to an interconnection point with Northern Border Pipeline. The project was expected to be completed in 2021, cost $220 million, be designed using 20-inch diameter pipeline, and provide residue gas service from north of Lake Sakakawea to Northern Border Pipeline in McKenzie County. Natural gas produced from the Bakken and Three Forks Formations is very high in natural gas liquids such as ethane, propane, and butane. It was expected natural gas liquid production would exceed pipeline capacity again in 2021, and until further system expansions take place or a new market option is developed.

During the 2021-22 interim, the Energy Development and Transmission Committee studied natural gas and propane infrastructure development in the state. The committee received information regarding the cost ranges for various types of natural gas and propane infrastructure. 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.

The committee was informed the state is the 11th largest gas-producing state. Ninety-one communities, comprised of approximately 150,000 customers, have access to natural gas service in North Dakota. Three hundred sixty-six communities, comprised of approximately 46,000 homes, do not have access to natural gas service. The three driving forces for new gas pipelines are supply push, demand pull, and system reliability.

Testimony

The committee received testimony from a representative of the North Dakota Pipeline Authority regarding the accessibility of natural gas in small communities and transmission needs in the state. The committee was informed the state's natural gas infrastructure is expanding to meet increasing production and transmission needs. Testimony indicated the state's current network, including the Northern Border and WBI Energy pipelines, is being upgraded through projects like the WBI Energy Grasslands South and Bakken XPress, which will add significant takeaway capacity. However, challenges remain, particularly in expanding infrastructure to eastern North Dakota, where low demand and high project costs make development difficult. Testimony contended, despite these hurdles, increased production and ongoing pipeline projects offer potential for economic growth, with opportunities to improve local consumption and better connect the state's natural gas supply to broader markets.

The committee received testimony from representatives of the cities of New Town and Parshall regarding the accessibility of natural gas in small communities and transmission needs in the state. The committee was informed small communities support increased access to natural gas, and ease of access to natural gas increases economic development opportunities, which, in turn, attract more businesses and people to a community. Testimony contended the state should redirect distribution projects to smaller communities for the benefit of North Dakotans.

The committee received testimony from a representative of Montana-Dakota Utilities (MDU) regarding natural gas services in the state and costs and other barriers to delivering natural gas to small communities. According to the testimony, MDU provides electricity and natural gas to 1,180,770 customers across 459 communities. Testimony indicated the benefits of natural gas include reliability, resilience, abundant supply, and lower energy costs. The committee was informed of the barriers to providing natural gas to smaller cities including the distance between the pipeline and the communities, interconnection costs, conversion rates, population density, and customer connection costs. Testimony indicated MDU has tentative plans to expand natural gas service to Kindred, Colfax, and Walcott beginning in fall 2024, and continuing into 2025. The committee was informed House Bill No. 1170 (2023) provides for a 15-year property tax exemption on transmission and distribution to serve a community without natural gas, lowering the contribution costs for the projects.

The committee received testimony from a representative of Dakota Natural Gas regarding the accessibility of natural gas in small communities. According to the testimony, Dakota Natural Gas specifically focuses on providing natural gas to smaller communities. The committee was informed North Dakota's temporary tax exemptions and market zone rates are a step in the right direction; however, they do not solve the problem of unserved communities. Testimony indicated the major barriers to transmission are distance and expense, both of which require unique options to overcome. Testimony contended creative solutions may include bundling users in grant applications, streamlining grants directly to interstate pipelines to minimize income tax impacts, and having the state take an active role in working with interstate pipeline to create access hubs serving multiple small communities.

The committee received testimony from a representative of the Department of Health and Human Services relating to the low-income home energy assistance program (LIHEAP). The committee was informed LIHEAP helps eligible households with the costs of home heating and weatherization. The program assists with partial payments for natural gas, electricity, propane, fuel oil, coal, wood, and other fuel sources. It also offers emergency assistance to prevent shutoffs or ensure fuel deliveries, along with furnace cleaning, repair, and replacement services. Households eligible for LIHEAP include those whose rent payments include the cost of heat if the household is not receiving housing assistance or residing in subsidized housing, those who have difficulty paying fuel bills due to other rising costs and are in danger of losing their heating source, and those who have received a shut-off notice, have had heat disconnected, or have run out of fuel.

The committee was informed LIHEAP supports 14,200 households in North Dakota. Testimony indicated LIHEAP partners with the Department of Commerce and the Community Action Partnership to provide weatherization services like insulation and weather stripping. The program operates from October to May for heating assistance, while other services, such as emergency aid, are available year around.

Committee Consideration

Committee members acknowledged several positive steps the state has taken to promote and expand natural gas and propane infrastructure development to unserved and underserved communities in the state. Committee members recognized federal funding is absent regarding transmission and accessibility of natural gas in small communities and also recognized block grants could be used to help assist local communities.

Conclusion

The committee makes no recommendation regarding its study of the accessibility of natural gas in small communities.

ELECTRIC VEHICLE STUDY

House Bill No. 1012 (2023) directed a study of the effect of EVs in the state. The study required consideration of the assessment of fees to offset reductions in motor fuel tax revenues; the impact of EVs on electric demand and the electrical grid; the installation of EV charging infrastructure by private and public entities, including potential funding sources; the impact to public services and public transportation providers; and the effect on employment opportunities and other economic impacts, including tourism, automobile dealers, the energy industry, and the critical minerals industry. The study required input from key stakeholders, including EV manufacturers, EV dealers, electric utilities, EV charging station manufacturers, and other transportation entities.

Background

The EV market in the United States has grown rapidly, from an estimated 320,000 EV units in 2019, to an estimated 800,000 EVs sold in 2022. By 2030, industry analysts predict EVs will comprise 40 to 50 percent of new car sales. As of June 2022, the United States Department of Energy estimates 640 EVs are registered in North Dakota, the fewest in any state. In comparison, more than 750,000 traditional fuel vehicles are registered in the state.

Federal and state policies have supported growth in the EV industry by encouraging the use of EVs and the development of charging infrastructure. The Inflation Reduction Act of 2022 extends to 2032, the Internal Revenue

Service clean vehicle tax credit of up to $7,500 for new EV or fuel cell EV purchases. The Act also provides incentives for electrifying heavy-duty vehicles and funding for charging infrastructure.

As of July 2021, 47 states and the District of Columbia offer incentives to support deployment of EVs and related infrastructure, either through state legislation or private utility incentives within the state. Common EV incentives offered by states include tax credits for purchasing EVs, inspection or emissions test exemptions, parking incentives, utility rate reductions, and high-occupancy vehicle lane exemptions. Electric vehicle incentives have not been adopted in North Dakota, Kansas, or Kentucky.

Historically, repairs and improvements to highways have been funded by federal and state taxes collected on fuel sales. In North Dakota, a substantial portion of the state's road and bridge construction and maintenance costs are paid with motor fuel tax revenues. Decreased motor fuel tax collections resulting from increased fuel efficiency and the use of EVs is leading some state policymakers to consider other ways to pay for transportation infrastructure.

Testimony

The committee received testimony from a representative of the Alliance for Automotive Innovation regarding the assessment of EV fees to offset reductions in motor fuel tax revenues. The committee was informed the EV market is expanding, with 114 different models now available in the United States, including cars, utility vehicles, pickup trucks, and vans. Testimony indicated, in 2023, EVs made up 9.5 percent of new light-duty vehicle sales, averaging an annual increase of 2.5 percent. In contrast, North Dakota's EV sales averaged only 1.28 percent.

The committee was informed public charging infrastructure for EVs remains inadequate across the United States. Testimony indicated the installation of public EV chargers has not kept pace with the current and projected sales of EVs. Although the number of publicly available chargers increased by 27 percent in 2023, EV sales increased by 51 percent during the same period.

The committee discussed several options to offset the reduction in motor fuel tax revenues. These options included implementing an EV fee, assessing vehicle miles traveled taxes, and applying taxes on electricity based on kilowatt-hours (kWh). Testimony indicated EV fees act as a regressive tax, because the tax does not relate to fuel usage or public benefit. Testimony indicated EV fees often create financial hardships for consumers because the taxes usually are collected in a lump sum, fail to account for nonresident roadway usage, and add to the initial cost of purchasing an EV. However, testimony contended EV fees offer low administrative costs for states, a short ramp-up time to generate revenue, stable revenue expectations, and do not require GPS tracking.

The committee was informed a vehicle miles traveled tax could provide a new approach to accurately capture public roadway usage. Testimony indicated this tax is progressive, increases with greater road or fuel usage, and does not require additional upfront money for vehicle purchases. However, the tax fails to account for nonresident roadway usage, necessitates GPS tracking, and generally is unpopular among vehicle owners.

The committee was informed a kWh tax could benefit the state because the tax is progressive, captures nonresidential use of in-state EV supply equipment, and aligns with the current gas tax by taxing the volume of fuel consumed. However, testimony indicated a kWh tax still presents challenges, such as the costs associated with segmenting electricity in residential settings and potential difficulties in establishing appropriate rates to meet revenue expectations.

North Dakota Department of Transportation Report

The committee received a report from DOT regarding an update on the deployment and administration of EV charging stations, pursuant to Section 24-02-45.4. According to the report, on September 12, 2023, the department issued a request for proposals to engage a consultant for the National Electric Vehicle Infrastructure (NEVI) Program, selecting HDR Engineering, Inc. An initial meeting was held on December 7, 2023, and DOT has maintained weekly meetings with HDR Engineering, Inc., to oversee program implementation. Additionally, on September 29, 2023, the Federal Highway Administration approved the updated EV Plan, which enabled the release of fiscal year 2024 NEVI Program funds for obligation.

The report indicated DOT hosted a networking event on May 16, 2024, to connect potential EV charging station hosts and various service providers, including manufacturers and electrical contractors. On June 11, 2024, the department released a Notice of Funding Opportunity (NOFO) aimed at deploying funds for privately owned EV fast chargers along North Dakota’s alternative fuel corridors, specifically targeting 10 rural sites. Applications for phase one, rural NOFO, are due by August 9, 2024, with award announcements expected approximately 90 days later, aiming for the installation of charging stations in 2025.

A second phase, urban NOFO, is anticipated to be released by the end of 2024, focusing on eight urban locations along the alternative fuel corridors, with awards expected in late spring 2025. The notice of funding opportunities are part of a broader initiative to distribute approximately $25.9 million in federal NEVI Program funds to establish 18 EV fast charging stations no more than 50 miles apart, within 1 mile of existing exits. The federal program will cover up to 80 percent of project costs, including operations and maintenance, while ensuring ownership of the charging stations remains private.

Department of Transportation Electric Vehicle Charging Tax Report

The committee received a report from DOT regarding the department's study, including the assessment of lost revenue due to out-of-state drivers not paying a gas tax, an evaluation of the economic impact of lost revenue and implementation of an electronic charging tax equivalent to the lost gas tax revenue, and an assessment of the costs and implementation of such a tax, pursuant to Section 1 of House Bill No. 1081 (2023).

The report indicated there is no substantive harm to North Dakota for not acting on an EV tax. Instead, the report recommends North Dakota monitor the rates of EV adoption in neighboring states and provinces and recommends North Dakota wait for the adoption of EV infrastructure before adopting a first-of-its-kind tax on out-of-state EVs. Additionally, the report recommends continued participation in the Road Use Charging America multistate coalition.

Committee Considerations

The committee discussed the use of a reasonable EV fee that would include a registration fee with a tax for EV charging stations on public roadways. The committee discussed the importance of out-of-state travelers paying their fair share of roadway use, and agreed a residential charging tax would be a hardship on homeowners. Committee members recognized North Dakota's EV statistics are well below the national average while acknowledging the potential impact EVs may have on the state's motor fuel tax revenues in the future.

Conclusion

The committee makes no recommendation regarding its study of the effect of EVs in the state.

STATE ENERGY RESEARCH CENTER CRITICAL MINERALS REPORT

The committee received a report from a representative of the State Energy Research Center regarding the center's study of prospective in-state resources of economically feasible accumulations of critical minerals, pursuant to Section 14 of House Bill No. 1014 (2023). According to the report, critical minerals play a vital role in the economy and national security. More than 80 percent of United States critical minerals are imported from China, Estonia, Malysia, and Japan. The report indicated the Williston Basin possesses natural risk-mitigation attributes, including transportation and the availability of water and energy, and could be used as a business hub for accumulation of critical minerals. The report indicated the coal in the region contains concentrations of critical minerals; however, the technology used to extract the critical minerals is costly and not feasible with current technologies.

STATE ENERGY RESEARCH CENTER SALT CAVERN UNDERGROUND ENERGY STORAGE REPORT

The committee received a report from a representative of the State Energy Research Center regarding the status and results of its cavern underground energy storage and research project, pursuant to Section 15 of House Bill No. 1014 (2023). According to the report, the center received $9.5 million during the 2021-23 biennium to evaluate the feasibility of creating caverns for energy storage in the bedded salts of the state. The project was completed in June 2023, resulting in the collection and analysis of salt from two of the state's primary salt zones. Results of the core testing and modeling suggested caverns suitable for long-term hydrocarbon gas or liquid storage can be developed; however, the total cost to fully develop a salt cavern for storage likely will exceed $100 million.

STATE ENERGY RESEARCH CENTER FUTURE LIGNITE ELECTRICAL GENERATION FACILITY REPORT

The committee received a report from a representative of the State Energy Research Center regarding the center's study of future lignite electrical generation facilities, pursuant to Section 17 of House Bill No. 1014 (2023). According to the report, the center study will include several key tasks, including management and reporting, key stakeholder engagement, a review of current and emerging technology, a review of regulations and policy, and a review of strategy, ownership, and financing. The report indicated the next step for the future of the lignite-fired generation facility is expanding stakeholders and assisting future demands, economic impacts, value-added products, and financing.

STATE ENERGY RESEARCH CENTER ACTIVITIES AND ACCOMPLISHMENTS REPORT

The committee received a report from a representative of the State Energy Research Center regarding the research activities and accomplishments of the center, pursuant to Section 15-11-40. According to the report, the center has funded nearly 60 projects and strategic initiatives across all North Dakota energy platforms, including gas, oil, biomass, and coal. The center's exploration projects lead to larger research and development projects, largely funded by the federal government. The center has submitted 11 United States patent applications with 21 additional continuation, divisional, or foreign applications. The center received a $1 million and $2 million federal award to advance the compressor technology in project Polar Bear. The report indicated first demonstration model is in the field with six additional demonstration units ready by the end of 2024.

NORTH DAKOTA TRANSMISSION AUTHORITY REPORT

The committee received a report from the North Dakota Transmission Authority, pursuant to Section 17-05-13. According to the report, The North Dakota Transmission Authority was engaged in several studies to substantiate concerns the state has with EPA proposed rules that would harm or eliminate fossil fuel generation. According to the report, the studies showed both the Mercury and Air Toxics Standards rule and finalized 111d Greenhouse Gas Rule would result in premature retirement of lignite power generation facilities, reducing the reliability of the electric grid and increasing costs to the ratepayer.

The report indicated North Dakota has several 345-kilovolt-transmission projects moving toward construction from east central North Dakota to western North Dakota. One of North Dakota's HVDC lines is being modernized and momentum is building on the proposed HVDC line from Colstrip, Montana to Center, North Dakota.

The report indicated the unprecedented growth forecast for the region and country due to the domestic manufacturing movement, data center development, and industry electrification underscores the need to keep all dispatchable generation in place for years to come. The committee was informed the regional transmission organizations, industry, North American Electric Reliability Organization, and Midwest Reliability Organization are determined and aligned in purpose to retain these valuable legacy generation facilities to maintain the generation resource adequacy and capacity for a resilient power grid.

AGRICULTURE COMMISSIONER POSTPRODUCTION ROYALTY OVERSIGHT REPORT

The committee received a report from the Agriculture Commissioner regarding the implementation of services provided under the postproduction royalty oversight program, pursuant to Section 4.1-01-26. According to the report, the department is under contract with two companies for ombudsman services to provide technical education, support, and outreach on royalty payment-related matters. The report indicated information regarding case eligibility is provided to mineral owners on the department's website with contact information for the appropriate staff. Mineral owners may submit a request for assistance by completing an online form. Requests are reviewed for legal and regulatory activity in partnership with the Department of Mineral Resources and assigned to program contractors. The report indicated the program received a total of 105 cases from July 1, 2023, to May 5, 2024.

NORTH DAKOTA PIPELINE AUTHORITY REPORT

The committee received a report from the North Dakota Pipeline Authority regarding an update on its activities. During the 2023-24 fiscal year, North Dakota's petroleum industry benefited from stable West Texas Intermediate oil prices, averaging $80 per barrel, which supported about 40 drilling rigs. With an emphasis on capital efficiency, the petroleum industry increased its use of three-mile lateral drilling in the Bakken and Three Forks Formations. Roughly 25 percent of wells used the three-mile laterals by the second half of 2024. The report indicated the three-mile development patterns significantly boost productive lateral footage while maintaining a modest drilling fleet in the region. The industry is working to perfect four-mile lateral drilling to further improve rig efficiency. The average oil production remained at just over 1.2 million barrels per day and despite the production decline during the final months of the 2023-24 fiscal year, the long-term outlook of North Dakota's petroleum industry remains strong.

Over the past year, the North Dakota Pipeline Authority has engaged efforts to translate production and development data into oil and natural gas transportation solutions. According to the report, through collaborative efforts to forecast crude oil and natural gas future production levels, the North Dakota Pipeline Authority is helping pipeline companies access the timeline and scope of future infrastructure needs and providing the confidence necessary for planning future project expansion.

The pipeline authority has facilitated discussions between governmental agencies and companies interested in expanding North Dakota's midstream infrastructure and provided information to citizens and news media on issues related to pipelines.

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.

HIGH-LEVEL RADIOACTIVE WASTE ADVISORY COUNCIL REPORT

The committee received a report from the High-Level Radioactive Waste Advisory Council pursuant to Section 32-23-08. According to the report, the council met twice in the past year to review potential high-level radioactive waste facilities, analyze regulatory standards, and provide guidance on waste management to the Industrial Commission and Legislative Assembly. The two meetings featured speakers from the United States Nuclear Regulatory Commission, the United States Department of Energy, and the EPA. The featured speakers provided information regarding the roles and responsibilities related to high-level radioactive waste and spent nuclear fuel, the EPA's statutory authority for high-level waste and spent fuel repositories, the current EPA standards, the process for establishing protection standards, and anticipated legislation regarding high-level radioactive waste.

According to the report, Yucca Mountain, the federal repository and only potential high-level radioactive waste disposal site under federal law, was placed on hold. The report indicated spent fuel rods are safely stored adjacent to operating or abandoned nuclear power plants and it is not viewed as an immediate safety concern by the federal government. The report indicated state experts emphasized the ongoing need for safe, centralized storage solutions.

According to the report, the council explored future possibilities in state resource management, including carbon capture, potential mining of rare earth elements, and advanced tracking of water and weather data for emergency responses. Additionally, the council reviewed federal and state energy goals, focusing on carbon reduction and new technology to repurpose coal-powered facilities.

GOVERNMENT FINANCE COMMITTEE

The Government Finance Committee was assigned the following responsibilities for the 2023-24 interim:

- Section 3 of House Bill No. 1008 (2023) directed a study of the appropriation procedures for the Department of Financial Institutions (DFI).
- Section 8 of House Bill No. 1541 (2023 special session) directed a study of the administration of the state bonding fund and the state fire and tornado fund.
- Section 10 of House Bill No. 1541 (2023 special session) directed a study of the state's guardianship programs.
- North Dakota Century Code Section 54-35-27 directs a study of state agency fees, including reports from the Office of Management and Budget (OMB).
- A study of state revenues and state revenue forecasts, pursuant to Legislative Management directive.
- A study of the need to modernize the fleet of state-owned aircraft, pursuant to Legislative Management directive.
- A review and monitoring of the state budget, pursuant to Legislative Management directive.

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

- A report from the Department of Transportation (DOT) regarding the department's plan to complete the US Highway 85 four-lane project (House Bill No. 1012 (2023) § 17).
- A report from the Department of Commerce regarding the status of each grant program identified in Section 2 of House Bill No. 1018 (2023) (House Bill No. 1018 (2023) § 30).
- A report from the Department of Career and Technical Education (CTE) regarding the amount of funding to defray inflationary costs for projects under the statewide area career center initiative grant program (House Bill No. 1021 (2023) § 10 and House Bill No. 1543 (2023 special session) § 1).
- Reports from CTE and the Agriculture Commissioner regarding grants awarded for uncrewed aircraft systems, autonomous vehicles, or other autonomous technology (House Bill No. 1519 (2023) § 1 and 2).
- A biennial report from the Retirement and Investment Office regarding the amount of legacy fund earnings above the percent of market value that would have been transferred to the legacy earnings fund had Senate Bill No. 2330 (2023) not been passed by the 68th Legislative Assembly (House Bill No. 1541 (2023 special session) § 7).
- A report from the Department of Health and Human Services (DHHS) regarding the use of funding for the full-time equivalent (FTE) position block grant program (Senate Bill No. 2012 (2023) § 7).
- A report from the Department of Emergency Services regarding grants for emergency snow removal (Senate Bill No. 2183 (2023) § 1 and Senate Bill No. 2394 (2023) § 2).
- A report from OMB regarding the results from its cash management study (Senate Bill No. 2393 (2023 special session) § 11).
- A report from OMB regarding executive branch employees who received a cumulative salary increase of 15 percent or more between March 31, 2021, and June 30, 2023, (Section 54-44-04).
- Semiannual reports from the Department of Commerce regarding the uncrewed aircraft systems test site program and the beyond visual line of sight uncrewed aircraft system program (Sections 54-60-28 and 54-60-29.1).
- A report from each county or city that receives a distribution from the large facility development fund (Section 57-39.2-26.4).

Committee members were Senators Dean Rummel (Chairman), Jeff Barta, Todd Beard, Kristin Roers, Donald Schaible, Ronald Sorvaag, and Michael A. Wobbema and Representatives Bert Anderson, Craig Headland, Jeff A. Hoverson, Keith Kempenich, Lisa Meier, Mike Nathe, Emily O'Brien, Brandy Pyle, Paul J. Thomas, Steve Vetter, and Don Vigesaa.

Representative Larry Bellew was a member of the Government Finance Committee until he resigned from the Legislative Assembly on December 31, 2023.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

DEPARTMENT OF FINANCIAL INSTITUTIONS APPROPRIATION STUDY

Overview

The committee studied the appropriation procedures for DFI during the 2023-24 interim. The study included an analysis of the feasibility and desirability of alternative appropriation methods, management structures employed, oversight and reporting to the executive and legislative branches, staff classification structures with indexing to federal or market compensation, and staffing structures that allow for adjustments to market conditions.

The Department of Financial Institutions is a self-funded regulatory agency responsible for the oversight of state banks, trust companies, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, credit unions, and other financial corporations doing business under the laws of North Dakota. The department conducts examinations to determine the soundness of financial institutions and monitor compliance with applicable rules and regulations. The department is authorized to charge fees and assessments to the entities it regulates. These fee and assessment collections are deposited in a special fund and appropriated by the Legislative Assembly each session to pay for the department's operations costs.

Committee Considerations

The Department of Financial Institutions provided information on the agency's operations and budget and the budget process used by similar regulatory agencies in other states. The budget for DFI during the 2023-25 biennium includes an appropriation of $10,081,379 from special funds and 35 FTE positions. Representatives of the department highlighted the advantage of providing budgetary flexibility to adjust the management structure and modify staff compensation using indexes or market levels. Representatives of the department also suggested an alternative appropriation process may provide a quicker response to industry needs using continuing appropriation authority rather than waiting to receive authorization for budgetary changes in the next legislative session. Although many states appropriate funding for their regulatory agencies, Oklahoma and Texas do not require legislative authorization to spend funds, but require the agencies to provide reports on their operations and expenditures. Oklahoma's State Banking Department is similar in size to DFI and has used an alternative appropriation process using a continuing appropriation since 2003.

A representative of the North Dakota Bankers Association testified in support of changing the appropriation procedures for DFI to allow the department to adjust staffing levels as industry needs change without legislative authorization.

The committee received information from OMB indicating the agency has no accounting or administrative concerns related to changing the appropriation procedures for DFI because DFI is funded through fee collections set by regulatory boards.

The committee considered a bill draft to provide a continuing appropriation to DFI. The bill draft provides the department's biennial budget would no longer be considered or approved by the Legislative Assembly. However, the bill draft continues the process in which the director's salary is set by the Governor and the staff salaries are determined by the director as a part of the budget.

Recommendation

The committee recommends Senate Bill No. 2028 which provides a continuing appropriation to DFI, requires the State Banking Board and State Credit Union Board to approve the budget for the department, and requires DFI to report to the Appropriations Committees during each legislative session.

STATE BONDING FUND AND STATE FIRE AND TORNADO FUND ADMINISTRATION STUDY

Overview

The committee studied the feasibility and desirability of changing the administration of the state bonding fund and the state fire and tornado fund from the Insurance Commissioner to OMB. The state bonding fund, as codified in Chapter 26.1-21, was created in 1915 to provide bond coverage of public employees. The state fire and tornado fund, as codified in Chapter 26.1-22, was created in 1919 to insure political subdivisions and state agencies against losses to public buildings and permanent fixtures. Both funds are invested by the State Investment Board, and the Insurance Commissioner contracts with the North Dakota Insurance Reserve Fund (NDIRF) for the administration of the funds pursuant to continuing appropriation authority. The Insurance Commissioner administered the funds until 2019 when the Legislative Assembly provided continuing appropriations for the funds and authorized the Insurance Commissioner to contract for administration of the funds.

Committee Considerations

Representatives of the Insurance Department provided information regarding the administration of the funds and similar self-insurance programs in other states. Florida, Kentucky, and North Carolina administer similar funds under their risk management offices. The Legislative Assembly removed 3 FTE positions from the Insurance Department during the 2019 legislative session when the department started contracting for the administration of the funds. The testimony indicated the department supports changing the administration of the funds from the department to OMB due to a conflict of interest with regulating NDIRF and contracting for administrative services from NDIRF.

The committee received information from OMB opposing the change due to concerns about administering the funds if the contracted services from NDIRF were discontinued. The committee also received information from NDIRF regarding the identification of undervalued properties after taking over administration of the fund and an alternative scenario in which NDIRF would issue insurance policies to political subdivisions apart from the funds.

Recommendation

The committee recommends House Bill Nos. 1026 and 1027 relating to changing the administration of the state bonding fund and the state fire and tornado fund from the Insurance Commissioner to OMB. The bill drafts change the administration of the funds, remove obsolete references, provide updates for consistency and clarity, and require a 2-year contract for administrative services with NDIRF or another entity.

STATE GUARDIANSHIP PROGRAMS STUDY

Overview

The committee studied the state's guardianship programs, including consideration of the existing structure of the programs under OMB, the judicial branch, and DHHS and the feasibility of consolidating the programs under one agency. Guardianships may be appointed by testamentary or a court order to make specific decisions for individuals who lack the capacity to make or communicate decisions necessary to manage personal affairs. Guardianships include general guardians who are responsible for decisions in all aspects of the individual's life, limited guardians who have authority to make decisions only in specific areas of the individual's life, such as financial or residential decisions, and testamentary guardians who are identified in a written will, commonly to care for a minor upon the death of both parents. Guardians may be individuals or private agencies that provide guardianship services.

The Office of Management and Budget distributes grants to private agencies and individuals for public guardianships of individuals who are not served by the developmental disabilities program under DHHS. The judicial branch administers a guardianship monitoring program to train and monitor all guardians and provides funding for guardian ad litems who serve minors. The Department of Health and Human Services administers a guardianship establishment program to assist qualified adults, provides adult protective services to investigate reports of neglect and abuse, and distributes grant funding for public guardianships of individuals with developmental disabilities.

Committee Considerations

The committee received information from OMB, the judicial branch, and DHHS regarding the guardianship programs administered by state agencies. The Legislative Assembly appropriated $7.1 million from the general fund to OMB for the 2023-25 biennium for distribution to the North Dakota Association of Counties for payments to private agencies and individuals. The judicial branch received an appropriation of $624,000 from the general fund for the 2023-25 biennium related to guardianship monitoring services. The 2023-25 biennium budget for DHHS includes $6.7 million from the general fund ($6.4 million) and federal funds ($0.3 million) for guardianship programs, including payments for corporate guardianships for individuals with developmental disabilities and guardians serving children. Funding appropriated by the Legislative Assembly for guardianship programs for the 2023-25 biennium totaled $14.4 million.

Representatives of the judicial branch, Taskforce on Guardianship Monitoring, and guardianship service providers testified in support of consolidation of guardianship programs. The committee also received information from guardianship service providers regarding challenges due to a shortage of guardians and an increased need for guardianship services.

Guardians receiving distributions from the North Dakota Association of Counties are paid $17 per day for each individual served while guardians serving individuals with developmental disabilities are paid approximately $12 per day for each individual served. Funding for additional services to support individuals with developmental disabilities is available from other programs administered by DHHS.

The committee considered a bill draft to consolidate guardianship programs under an office in the judicial branch. The various stakeholders testified in support of consolidating guardianship services under a single office.

Recommendation

The committee recommends Senate Bill No. 2029 to create an office of guardianship and conservatorship under the judicial branch to consolidate the state's guardianship programs. The bill draft authorizes the office to develop policies and procedures for guardians and conservators and repeals the Task Force on Guardianship Monitoring. The bill draft provides an appropriation of $18.3 million from the general fund to the judicial branch to consolidate the funding for guardianship and conservatorship services under the office of guardianship and conservatorship, including $1.6 million for establishment costs for indigents, $1.3 million for establishment costs for individuals who are developmentally disabled, $8.6 million for public guardian and conservator fees for indigents, and $6.8 million for guardianship contracts for individuals who are developmentally disabled.

STATE AGENCY FEES STUDY

Overview

Section 54-35-27 provides for the study of state agency fees. During the 2021-22 interim, state agencies with 40 or fewer fees were required to submit a report to OMB regarding details on each of the agency's fees, and OMB was required to consolidate the reports for submission to the Legislative Management. State agencies with more than 40 fees were required to submit a report to OMB during the 2023-24 interim, and OMB was required to submit a consolidated report to the Legislative Management. 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 by July 1st of every even-numbered year regarding any new fees, changes to existing fees, or the removal of any fees.

Committee Considerations

Based on the fee reports submitted by state agencies with 40 or fewer fees during the 2021-23 biennium, the committee received information from the State Treasurer, Tax Department, judicial branch, Department of Trust Lands, Department of Environmental Quality, Department of Mineral Resources, Securities Department, Housing Finance Agency, Department of Corrections and Rehabilitation, and Department of Agriculture. Some agencies were hesitant to suggest changes to fees established by the Legislative Assembly, but some agencies recommended consolidating fees, repealing obsolete fees, or increasing fee amounts to address inflationary increases related to the administration of collecting the fees or providing services.

In September 2024, the Office of Management and Budget presented a report on state agencies with more than 40 fees, which included 8 state agencies with a combined total of more than 1,100 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 but suggested the Legislative Council provide the fee reports to the Appropriations Committees during the legislative session to allow the committees to review the fees for potential changes.

STATE REVENUES AND STATE REVENUE FORECASTS STUDY

Overview

The Legislative Assembly is responsible for approving the state budget, including the revenue forecast. To assist with revenue forecasting, the Legislative Management contracted with S&P Global for economic advisory services and directed the Government Finance Committee to study state revenues. 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 Office of Management and Budget also prepares revenue forecasts for consideration in developing the executive budget recommendation and state budget and contracts with Moody's Analytics for economic advisory services. The Office of Management and Budget coordinates the development of its revenue forecast with the Tax Department.

Committee Considerations

S&P Global provided information to the committee regarding the national economy and the energy and agriculture industries in North Dakota. S&P Global also provided information regarding forecasting results for general fund revenues, West Texas Intermediate oil prices, and production levels, including a revised forecast for the 2023-25 biennium and a preliminary forecast for the 2025-27 biennium, as shown in the schedules below.

	2023-25 Biennium Revised Forecast			2025-27 Biennium Preliminary Forecast		
General Fund - Deposits	**Baseline Forecast**	**Pessimistic Forecast**	**Optimistic Forecast**	**Baseline Forecast**	**Pessimistic Forecast**	**Optimistic Forecast**
Sales and use tax	$2,309,659,149	$2,160,558,457	$2,408,924,242	$2,362,313,884	$1,948,773,479	$2,683,358,173
Motor vehicle excise tax	175,464,322	158,813,986	194,491,179	183,457,294	151,265,440	226,898,160
Individual income tax	905,968,067	841,918,266	945,834,403	975,306,703	826,982,492	1,044,128,025
Corporate income tax	534,040,968	437,220,993	515,795,484	479,566,866	384,699,221	522,012,978
Total major tax types	**$3,925,132,506**	**$3,598,511,702**	**$4,065,045,308**	**$4,000,644,747**	**$3,311,720,632**	**$4,476,397,336**

Oil Statistics	2023-25 Biennium Revised Forecast			2025-27 Biennium Preliminary Forecast		
	Baseline Forecast	Pessimistic Forecast	Optimistic Forecast	Baseline Forecast	Pessimistic Forecast	Optimistic Forecast
Average West Texas Intermediate price (per barrel)	Decreasing: $80-75	Decreasing: $80-60	Increasing: $80-85	Increasing: $75-80	Increasing: $60-70	Increasing: $85-95
Average daily production (barrels)	Averaging: 1.2 million	Decreasing: 1.2-1.1 million	Increasing: 1.2-1.3 million	Averaging: 1.3 million	Decreasing: 1.1-0.9 million	Increasing: 1.3-1.5 million

Based on the October 2023 special legislative session revenue forecast, the major sources of general fund tax and fee revenues for the 2023-25 biennium total $3,635 million, including $2,207 million from sales and use tax collections, $172 million from motor vehicle excise tax collections, $871 million from individual income tax collections, and $385 million from corporate income tax collections. Compared to the October 2023 special legislative session forecast, S&P Global's baseline 2023-25 biennium revised forecast reflects an increase of $290 million, or 8 percent. Compared to the baseline 2023-25 biennium revised forecast, S&P Global's baseline 2025-27 biennium preliminary forecast reflects an increase of $76 million, or 2 percent.

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 during the 2025 legislative session.

STATE-OWNED AIRCRAFT MODERNIZATION STUDY

Overview

The Chairman of the Legislative Management directed the committee to study state-owned aircraft, including the need to modernize the current fleet of aircraft, the adequacy of the aircraft to provide official government travel, and the feasibility and desirability of establishing an aircraft pool. The current fleet of state-owned aircraft includes two Beechcraft King Air B200s for passenger transport and one Cessna 208 for engineering photography operated by DOT, an American Champion Scout for wildlife surveys and a Cessna 182 for enforcement operated by the Game and Fish Department, a Cessna 206 for airport inspections used by the Aeronautics Commission, and a Cessna 206 for law enforcement and search and rescue operations conducted by the Highway Patrol. In addition, the University of North Dakota maintains a fleet of 71 aircraft for flight training purposes.

Committee Considerations

The committee received information from OMB regarding state contracts for air transportation services which indicated the state contract was used only by the Public Service Commission to conduct mine flyovers while the contract was effective from 2017 to 2022. A representative of the Attorney General's office provided information regarding the aircraft under the control of that office, a Beechcraft Baron, which was sold due to high maintenance costs and a significant mechanical failure during a flight in January 2023. A representative of DOT provided information regarding the air transportation services provided by the department and reported on options to replace the department's two Beechcraft King Air B200s. Replacement options include the Beechcraft King Air B350 and jet aircraft such as the Cessna Citation CJ4, Cessna Citation XLS+, or Pilatus PC-24.

The Legislative Council staff reported the results of a survey regarding state agencies' anticipated need for air transportation services. The results included an estimated 180 trips per biennium for in-state air transportation services averaging three passengers per trip with over 85 percent of the anticipated trips related to air transportation services for the Governor's office and the Attorney General's office. State agencies anticipated out-of-state air transportation services would result in seven trips per biennium with an average of four passengers per trip. Some state agencies suggested the state consider modernizing the state aircraft fleet with different types of aircraft to access more airports in the state and to improve the efficiency of out-of-state travel.

The committee traveled to the Bismarck Municipal Airport to view state-owned aircraft.

Recommendation

The committee makes no recommendation regarding the study of modernizing the fleet of state-owned aircraft.

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, 2023, ending fund balance of the general fund was $1.49 billion, which was $290 million more than the 2023 legislative forecast primarily due to additional tax and fee revenue collections and unspent 2021-23 biennium general fund appropriations (turnback). As of September 2024, the estimated June 30, 2025, general fund balance was $712.9 million based on actual collections through August 31, 2024, and forecasted revenue collections for the remainder of the biennium. The May 31, 2024, unobligated balance of the strategic investment and improvements fund was $809.5 million. Of the $1 billion of federal state fiscal recovery funds received in May 2021, approximately $660 million was spent through August 2024 with $340 million remaining to be spent before December 31, 2026.

The committee received information from the Department of Mineral Resources regarding the status of oil and gas development activities in the state. Oil wells outside the core area are being drilled with a 3-mile horizontal lateral segment providing increases in efficiencies and economics compared to oil wells with a 2-mile horizontal lateral segment.

The Tax Department provided information regarding the estimated and actual tax relief provided under House Bill No. 1158 (2023). Approximately 135,000 households applied for the primary residence credit providing property tax relief of up to $67.5 million compared to an estimate of $103 million. Under the expansion of the homestead tax credit, approximately 7,000 additional households applied for the credit resulting in $12.6 million of additional property tax relief. Individual income tax collections for fiscal year 2024 were approximately $132 million less than the collections for fiscal year 2023 primarily reflecting the income tax bracket and rate changes approved by the Legislative Assembly.

The Legislative Council provided budget updates to the committee, including the 68th Legislative Assembly State Budget Actions report and supplement report for the 2023-25 biennium, the Compliance with Legislative Intent report for the 2023-25 biennium, the Analysis of State Trust Funds report for the 2021-23 and 2023-25 bienniums, the North Dakota Finance Facts pocket brochures for 2023 and 2024, a budget and fiscal trends presentation, a state budget flowchart, an oil and gas tax revenue allocation flowchart, and property tax information.

United States Highway 85 Four-Lane Project Report

The committee received a report from DOT regarding the department's plan to complete the US Highway 85 four-lane project. The department recommended the Legislative Assembly consider issuing bonds to finance the $560 million of project costs to complete the remaining 62 miles of the project by 2030. Other funding options identified by DOT include loans from the Bank of North Dakota, appropriations from available resources, federal discretionary grants, and federal formula awards. During the 2023-25 biennium, DOT received a federal discretionary grant to upgrade a 13-mile segment along US Highway 85 from two lanes to four lanes. As a result, DOT may access a contingent loan of up to $50 million from the Bank of North Dakota pursuant to Section 4 of House Bill No. 1012 (2023) to provide state matching funds for the project.

Department of Commerce Grant Programs Report

The Department of Commerce reported $31 million of the $80 million appropriated for selected grant programs was spent through July 31, 2024, as shown in the schedule below.

Grant Program	Appropriations	Grant Awards	Expenditures
Beyond visual line of sight uncrewed aircraft system	$26,000,000	$26,000,000	$26,000,000
Tourism destination development initiative	25,000,000	25,000,000	655,242
Workforce investment grant program	12,500,000	10,742,575	3,200,600
Enhanced use lease grant	10,000,000	10,000,000	0
Technical skills training grants	2,000,000	0	0
Rural workforce grant program	2,000,000	1,484,159	295,989
New Americans workforce training grant programs	2,000,000	201,332	0
Motion picture production and recruitment grant	600,000	600,000	600,000
Creamery assistance grant	250,000	250,000	250,000
Total	**$80,350,000**	**$74,278,066**	**$31,001,831**

Department of Career and Technical Education Area Career Center Report

The Department of Career and Technical Education reported $122.5 million was awarded to 13 area career center projects, including $34.3 million for inflationary increases, as shown in the schedule below.

Area Career Center Project	Original Award	Increase	Total
North Valley Area Career and Technical Education Center	$4,752,290	$1,843,718	$6,596,008
Grand Forks Career Impact Academy	10,000,000	3,879,642	13,879,642
Cass County Career and Technical Education Center	10,000,000	3,879,642	13,879,642
Southeast Region Career and Technical Education Center	2,979,975	1,156,124	4,136,099
Sheyenne Valley Area Career and Technical Education Center	3,131,986	1,215,098	4,347,084
James Valley Area Career and Technical Education Center	798,700	309,867	1,108,567
Lake Area Career and Technical Education Center	1,241,074	481,492	1,722,566
Bismarck Public Schools Career Academy	5,372,203	2,084,222	7,456,425
Heart River Career and Technical Education Center	10,000,000	3,879,642	13,879,642
Minot Area Workforce Academy	10,000,000	3,879,642	13,879,642
Southwest Area Career and Technical Education Academy	10,000,000	3,879,642	13,879,642
Williston Basin Career and Technical Education Center	10,000,000	3,879,642	13,879,642
Bakken Area Skills Center	10,000,000	3,879,642	13,879,642
Total	**$88,276,228**	**$34,248,015**	**$122,524,243**

Autonomous Technology Grant Reports

The committee received reports from CTE and the Department of Agriculture regarding autonomous technology grants awarded. The Department of Career and Technical Education awarded $475,000 to TrainND Northwest for the development of training courses. The Department of Agriculture awarded $274,710 to the Northern Plains Uncrewed Aircraft Systems Test Site for a collaborative project to detect Palmer amaranth plants, a noxious weed.

Legacy Fund Earnings Report

The Retirement and Investment Office reported approximately $487 million was transferred from the legacy fund to the legacy earnings fund on June 30, 2023, which was $27 million more than the $460 million that would have been transferred if the definition of legacy fund earnings had not been changed.

Department of Health and Human Services Salary Block Grant Report

The committee received a report from DHHS regarding the department's vacant positions, vacant position savings, and use of funding for the FTE position block grant. The department had 336 vacant FTE positions in June 2024 and converted 102.75 temporary positions to FTE positions under the block grant.

Emergency Snow Removal Grants Report

The Department of Emergency Services reported $18.14 million was distributed for snow removal grants, including $5.66 million for early season grants and $12.48 million for full season grants.

Cash Management Study Report

The Office of Management and Budget contracted with RVK, Inc., to conduct a study to improve the cash management practices of the state. RVK, Inc., recommended developing a comprehensive cash management system, consolidating reserve funds, and investing through a custodian bank to improve investment returns and transparency.

The committee received comments from OMB, the Bank of North Dakota, North Dakota Bankers Association, Independent Community Banks of North Dakota, Security First Bank of North Dakota, and Peoples State Bank of Velva regarding suggestions to continue studying the state's cash management practices and the Bank's role in economic development and cash management.

Salary Increase Report

The committee received a report from OMB regarding executive branch employees who received a cumulative salary increase of 15 percent or more between March 31, 2021, and June 30, 2023, pursuant to Section 54-44-04, which identified 1,822 executive branch employees who received a cumulative salary increase of 15 percent or more.

Unmanned Aircraft Systems Status Reports

Pursuant to Sections 54-60-28 and 54-60-29.1, the Department of Commerce reported on the status of the unmanned aircraft systems test site and the beyond visual line of sight unmanned aircraft system program. The Northern Plains Unmanned Aircraft Test Site began operations in 2014, and the Legislative Assembly has provided $113 million of funding since the 2013-15 biennium for the development of unmanned aircraft system programs and beyond visual line of sight uncrewed aircraft systems, including $38 million for the 2023-25 biennium.

Large Facility Development Fund Report

Section 57-39.2-26.4 requires a report from each county or city that receives a distribution from the large facility development fund. However, no funding was distributed from the fund, and no entities were required to provide a report.

GOVERNMENT SERVICES COMMITTEE

The Government Services Committee was assigned five studies:

- Section 22 of Senate Bill No. 2003 (2023) directed a study regarding the services and needs of the State Crime Laboratory.
- Section 4 of House Bill No. 1288 (2023) directed a study regarding infrastructure development by private operators as provided for under North Dakota Century Code Chapter 48-02.1, agency construction management procurement procedures under Section 48-01.2-19, and construction management at-risk delivery methods under Section 48-01.2-20.
- The Legislative Management directed a study regarding the feasibility and desirability of creating a statutory committee to assist in the design and oversight of the remodel or construction of state-owned buildings.
- House Concurrent Resolution No. 3030 (2023) directed a study regarding homelessness and barriers to housing.
- Senate Concurrent Resolution No. 4004 (2023) directed a study regarding accessible transportation for older adults and individuals with disabilities in the state.

The Legislative Management also assigned the committee the responsibility to:

- Receive a report from the Office of Management and Budget (OMB) by October 15 of each even-numbered year, regarding the reports received by OMB from each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, of 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, pursuant to Section 54-27-27.1.
- Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority pursuant to Section 54-40-01.
- Receive a report from the Veterans' Home by January 1, 2024, regarding the status of implementing recommendations included in the Veterans' Home strategic plan, pursuant to Section 6 of House Bill No. 1007 (2023).

Committee members were Representatives Ben Koppelman (Chairman), Cole Christensen, Rose Christensen, Liz Conmy, Karla Rose Hanson, Karen Karls, Lisa Meier, Jeremy Olson, Shannon Roers Jones, and Steve Vetter and Senators Randy A. Burckhard, Michael Dwyer, Diane Larson, Tim Mathern, and Jim P. Roers.

Representative Cole Christensen was a member of the committee until his resignation from the Legislative Assembly on February 23, 2024, and was replaced on the committee by Representative Rose Christensen effective March 6, 2024.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

STUDY OF THE STATE CRIME LABORATORY

Section 22 of Senate Bill No. 2003 (2023) directed a study of the State Crime Laboratory, including:

- State Crime Laboratory staffing and equipment needs.
- The need for forensic scientists with training in firearms and fingerprint analysis.
- The feasibility and desirability of remodeling current State Crime Laboratory facilities, acquiring other vacant laboratory facilities in the state, and operating additional State Crime Laboratory facilities in the state.
- Services the State Crime Laboratory should have the capability of providing to support law enforcement entities in the state.
- Whether the State Crime Laboratory should be administratively separate from the Bureau of Criminal Investigation.

Statutory Provisions

The State Crime Laboratory is established as a division of the Attorney General's office in Section 54-12-24. Section 54-12-24(3) provides:

Upon the request of the state forensic examiner, any state's attorney, sheriff, chief of police, coroner, or other local, state, or federal law enforcement official, the attorney general may make available to the requesting official the state crime laboratory's facilities and personnel to assist in the investigation or detection of crimes and the apprehension or prosecution of criminals.

State Crime Laboratory

The State Crime Laboratory is a state-owned, 19,508-square-foot facility located on East Main Avenue in Bismarck. The 2005 Legislative Assembly appropriated $3.65 million from bond proceeds for a 13,000-square-foot expansion to the existing State Crime Laboratory, which was colocated with the Public Health Laboratory. The Attorney General's office reported after spending nearly $400,000 for design and engineering services, the resulting bids exceeded the funds available and the project was delayed until the 2007 Legislative Assembly could address the issue of additional funding. The 2007 Legislative Assembly allowed the Attorney General to continue existing bond proceeds and appropriated an additional $1.44 million from the general fund and $200,000 from special funds for continuation of the project and redesign of a 19,000-square-foot structure in close proximity to the existing laboratory. The building was completed in October 2008.

Representatives of the Attorney General's office reported the State Crime Laboratory is an internationally accredited laboratory serving all law enforcement agencies from across the state, including police departments, sheriffs' offices, state law enforcement agencies, and federal agencies, including the Federal Bureau of Investigation, Bureau of Indian Affairs, and tribal law enforcement agencies. According to the testimony the number of cases submitted to the laboratory has been steadily increasing each year, resulting in a growing backlog of evidence.

The Attorney General, as part of the Attorney General's budget submission to the 2023 Legislative Assembly, requested $4,250,000 to construct an addition to the State Crime Laboratory. The testimony to the Appropriations Committees of the 2023 Legislative Assembly stated additional laboratory space is needed for current and additional forensic scientists and additional workspace is necessary for writing and processing reports. The 2023 Legislative Assembly appropriated $1,890,677, including $1,136,000 from the general fund and $754,677 from federal funds, for State Crime Laboratory capital assets, including funding for firearms and fingerprint software and testing equipment upgrades, the replacement of intoxilyzers, and $250,000 for capital improvements. In addition, the appropriation was increased by $222,000 from the general fund for State Crime Laboratory building and equipment maintenance contract costs.

The 2023 Legislative Assembly appropriated $1.7 million from the general fund, including approximately $1.1 million for salaries and wages and $626,466 for operating expenses for 6 new State Crime Laboratory full-time equivalent (FTE) positions. The new FTE positions include 2 firearms testing positions, 2 fingerprint testing positions, and 2 forensic scientist positions. The committee was informed 29 headcount employees work at the laboratory, compared to 17 FTEs at the time the State Crime Laboratory was constructed. Committee members expressed support for the current administrative structure of the State Crime Laboratory and for the expansion of capabilities of the State Crime Laboratory to include ballistic and fingerprint testing.

The Attorney General contracted with architects for the planning and design of a State Crime Laboratory capital project. The architects informed the committee:

- Over 52,000 square feet would be needed for current and future staffing levels at the State Crime Laboratory.
- Locations were reviewed for a new or expanded State Crime Laboratory and included four concepts, including a new facility on the current State Health Laboratory site, a new facility on the northwest corner of the Capitol grounds, an expansion of the current State Health Laboratory, and an expansion of the current State Crime Laboratory.
- The estimated cost of the project ranges from $42.2 million to $48.8 million.

The architects noted the State Crime Laboratory is not compatible with a public-facing site and a location on the Capitol grounds may not be desirable for a new facility.

Committee Consideration

The committee makes no recommendation regarding its study of the State Crime Laboratory.

STUDY OF INFRASTRUCTURE DEVELOPMENT AND CONSTRUCTION MANAGEMENT PROCUREMENT

Section 4 of House Bill No. 1288 (2023) provides for a Legislative Management study regarding infrastructure development by private operators as provided for under Chapter 48-02.1, agency construction management procurement procedures under Section 48-01.2-19, and construction management at-risk (CMAR) delivery methods under Section 48-01.2-20. The study required input from contractor groups and other stakeholders to determine how public-private partnerships are being used and whether the use of these partnerships has been successful.

Statutory Provisions and Definitions

Chapter 48-01.2 addresses public improvement bids and contracts. The chapter generally applies to the construction, repair, or alteration of a public improvement undertaken by the state or a political subdivision. Section 48-01.2-01(4) defines "construction" as the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. Section 48-01.2-01(21) defines a "public improvement" as "any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body."

Section 48-01.2-02 requires a governing body, if the project is estimated to cost more than $200,000, to procure plans, drawings, and specifications for the work from an architect or engineer.

Section 48-01.2-04(1) requires a governing body to advertise for bids by publishing an advertisement for 3 consecutive weeks if the public improvement is estimated to cost more than $200,000. Section 48-01.2-07 requires the governing body to open all bids at the time stated in the notice and award the contract to the lowest responsible bidder. Section 48-01.2-01(19) defines "lowest responsible bidder" as "the lowest best bidder for the project considering past experience, financial condition, past work with the governing body, and other pertinent attributes that may be identified in the advertisement for bids."

Section 48-01.2-01(7) defines "construction manager" as "a contractor licensed under Chapter 43-07 or an individual employed by a licensed contractor which has the expertise and resources to assist a governing body with the management of the design, contracting, and construction aspects of a public improvement." Section 48-01.2-18 provides that a governing body may use the agency construction management or CMAR delivery methods for construction of a public improvement.

Architect and Engineering Services

Section 54-44.7-02 requires all North Dakota state agencies to negotiate contracts for architect and engineering services on the basis of demonstrated competence and qualification for the particular type of services required. Section 54-44.7-03(4) provides following receipt of information from all interested persons and firms, the agency selection committee shall hold interviews with at least three persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. Section 54-44.7-03(5) directs the agency selection committee to evaluate each of the persons or firms interviewed on the basis of the following criteria:

1. Past performance.
2. The ability of professional personnel.
3. Willingness to meet time and budget requirements.
4. Location, with higher priority given to firms headquartered in North Dakota.
5. Recent, current, and projected workloads of the persons or firms.
6. Related experience on similar projects.
7. Recent and current work for the agency.

The committee was informed fees and expenses are negotiated between the state agency and the architect or engineer after the architect or engineer has been selected; however, the state agency is not obligated to enter a contract with the selected architect or engineer if the fees and expenses are not fair and reasonable. Committee members expressed concern regarding the lack of consideration of potential fees and expenses in the selection of an architect or engineer.

Construction Management At-Risk

Section 48-01.2-01(6) defines CMAR as "a public improvement delivery method through which a construction manager provides advice to the governing body during the planning and design phase of a public improvement, negotiates a contract with the governing body for the general construction bid package of the public improvement, and contracts with subcontractors and suppliers for the actual construction of the public improvement." Section 48-01.2-20(1) establishes the CMAR selection committee as follows:

1. A governing body electing to utilize a construction management at-risk delivery process for a proposed public improvement shall create a selection committee composed of:
    a. An administrative individual from the governing body.
    b. A registered architect.
    c. A registered engineer.
    d. A licensed contractor.

Section 48-01.2-20(5)(6) provide for the evaluation of CMAR submissions as follows:

5. The selection committee shall determine the appropriate evaluation criteria for each request for qualifications, including:
    a. The person's experience on any similar project;
    b. The person's existing workload and available capacity;
    c. The person's key personnel experience on any similar project;
    d. The person's safety record;
    e. The person's familiarity with the location of the public improvement;
    f. The person's fees and expenses;
    g. The person's compliance with state and federal law; and
    h. Any reasonable information the selection committee deems necessary.
6. The selection committee shall evaluate each submission based on the qualification criteria under subsection 5 and shall include the numeric scoring of each criteria item on a weighted basis, with no item being weighted at more than twenty percent and no less than five percent. The weighting of the qualification criteria must be done in a manner to ensure no subjective bias and encourage the maximum participation of a qualified construction managers at-risk.

Section 48-01.2-22 provides for the selection of subcontractors to complete the general construction portions of the improvement as follows:

1. An agency construction manager selected for a public improvement shall publicly advertise and publicly open bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall publicly advertise and publicly open bids from subcontractors for the work items the construction manager at-risk chooses not to perform. The construction manager at-risk then shall evaluate the bids and determine which is the most responsible. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.

The committee received testimony from representatives of the Associated General Contractors of North Dakota, Bismarck Public Schools, Construction Engineers of Grand Forks, the City of Bismarck, the North Dakota Association of Counties, the North Dakota Chapter of the American Institute of Architects, the American Council of Engineering Companies of North Dakota, the University of North Dakota, and North Dakota State University regarding the CMAR procurement process. Testimony received by the committee generally was supportive of the CMAR procurement process.

Committee members expressed concern regarding:

- Potential conflicts of interest arising from the architect and engineer contracted for a project also being on the CMAR selection committee.
- The lack of required prioritization for the weighting of fees and expenses in the evaluation of CMAR submissions. Members suggested fees be weighted at 50 percent to ensure efficient use of state resources. Other members suggested 50 percent was too high and may impact the quality of the construction.

- The ability of the CMAR to perform general construction work items without following a bid process. Members suggested this may lead to a more costly project and it is a "loophole" around the bidding process that exists for most projects.
- The potential for the fees and expenses submitted to exclude certain costs, increasing the difficulty of comparing various submissions for CMAR services.

Public-Private Partnerships

Chapter 48-02.1, enacted by the 1993 Legislative Assembly, provides a method for the development of infrastructure by private operators. The committee received testimony indicating this chapter is interpreted to allow for the construction of facilities on state property without specific approval from the Legislative Assembly. A public-private partnership generally is defined as a collaboration between a government agency and a private-sector company that can be used to finance, build, and operate projects. Typically, a public-private partnership involves initial private capital financing for government projects or services, followed by the receipt of revenues from taxpayers or users for profit over the course of the public-private partnership contract. Section 48-02.1-02 allows private operators to construct, improve, rehabilitate, own, lease, manage, and operate fee-based facilities.

Section 48-02.1-03 allows a public authority to "solicit or accept proposals from private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction. After a hearing, the public authority may accept a proposal that it determines to be in the public interest. A public authority may negotiate and enter into a development agreement with any private operator."

Section 48-02.1-04 provides for the content of development agreements. A development agreement for a fee-based facility may provide for private ownership of the facility without reversion of title; for operating the facility under lease or management contract; and for any form of ownership or operation considered advisable by the public authority. Section 48-02.1-06 limits the term of a lease for public facilities constructed under a public-private partnership to no more than 50 years.

The committee received testimony from representatives of the University of North Dakota regarding public-private partnership projects completed at the university. Testimony indicated the university used public-private partnerships for the construction of a steam plant and student housing facilities on the campus. Representatives of the university expressed support for the public-private partnership process and its potential to reduce the need for significant appropriations by spreading the costs of investment over the lifetime of the asset.

Committee Considerations and Recommendation

The committee recommends House Bill No. 1028 to eliminate potential conflicts of interest and to ensure project cost efficiency. The bill:

- Prohibits any architect or engineer contracted for a project from serving on the CMAR selection committee for that project.
- Requires CMAR fees and expenses to be identified on a standard bid form issued by the governing body for the project, with the approval of OMB.
- Requires CMAR fees and expenses to be weighted no less than 20 percent in the evaluation of CMAR submissions.
- Requires the CMAR to bid for general construction work items the CMAR wishes to perform and to award the work to the lowest responsible bidder.
- Requires an architect or engineer to identify fees and expenses on a standard information submission form for the agency selection committee's evaluation.

The committee originally considered a version of this bill that included a weighted selection process for architect and engineering services; however, this language was removed.

STUDY OF THE FEASIBILITY AND DESIRABILITY OF CREATING A STATUTORY BUILDING COMMITTEE

The Government Services Committee, at its October 4, 2023, meeting, approved a motion to request authority from the Legislative Management Chairman to expand its study of construction and infrastructure procurement to include a review of potential changes to OMB and legislative oversight of construction projects. The Legislative Management assigned the committee a study of the feasibility and desirability of creating a statutory committee to assist in the design and oversight of the remodel or construction of state-owned buildings.

Capitol Grounds and Facilities

The 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 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 to be prioritized and forecasted for a 10-year period.

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 48-10-03 requires the Capitol Grounds Planning Commission to develop and modify long-term plans for the development of the Capitol grounds and requires the commission to approve or disapprove the basic style and exterior construction of any building, facility, monument, memorial, or work of art constructed on the Capitol grounds. No construction or placement of an item on the Capitol grounds may be undertaken without the approval of the commission, unless the construction or placement is authorized by the Legislative Assembly. 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 Capitol Grounds Planning 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 be called in and must meet whenever major interior changes, including new construction, remodeling, or renovation of any kind, are proposed or considered 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 committee was informed the Capitol Grounds Planning Commission does not oversee state construction away from the Capitol grounds. The committee received information from representatives of the Department of Corrections and Rehabilitation and the Department of Health and Human Services regarding the steering committees established to oversee the construction of the Heart River Correctional Center and the State Health Laboratory. The committee was informed both steering committees include members of the Legislative Assembly and the State Health Laboratory project also has received oversight from the commission due to the selection of a site on the Capitol grounds for the project.

Committee Considerations and Recommendation

Committee members expressed support for new staff at OMB to supervise building projects. Committee members had concerns regarding the lack of legislative oversight of building projects, especially during the planning stages. Committee members also expressed concern regarding consistency and efficiency in the design and construction of state buildings. In consideration of establishing a new committee to oversee the projects, certain committee members expressed concern regarding the number of boards and committees in the state and the potential for legislative micromanagement.

The committee recommends House Bill No. 1029 to:

- Clarify the authority of the Capitol Grounds Planning Commission over interior areas of facilities on the Capitol grounds. The bill draft provides the commission the authority to approve or disapprove the physical and aesthetic features of the public interior areas of any building on the Capitol grounds and directs the commission to advise OMB and the Legislative Council on the nonpublic interior areas.

- Establish a statutory facility construction committee to study and review construction projects impacting facilities, including owned and leased facilities, from which the state operates, excluding facilities operated by entities under the control of the State Board of Higher Education. The bill draft did not originally require minority party representation on the committee; however, the draft was revised to include a minimum of one minority party member from each chamber.

STUDY OF HOMELESSNESS AND BARRIERS TO HOUSING

House Concurrent Resolution No. 3030 (2023) provides for a Legislative Management study regarding homelessness and barriers to housing, including:

- The effectiveness of the Rent Help program;
- The provision of housing financial support;
- Legal assistance programs available to tenants;
- State, local, or federal educational programs for tenants and landlords regarding rights and responsibilities;
- Month-to-month eviction rates by human service zone area;
- Definitions of homelessness or homeless rates used by government entities;
- Barriers to accessing housing;
- The manner in which homeless children receive services;
- Historical rates of homelessness; and
- How a community-based approach to homelessness may reduce rates of homelessness.

Housing Incentive Fund

Senate Bill No. 2210 (2011), created Section 54-17-40, establishing the housing incentive fund as a special revolving fund at the Bank of North Dakota. The Housing Finance Agency may direct disbursements from the fund pursuant to a continuing appropriation from the fund. The Housing Finance Agency is to create an annual allocation plan for the distribution of the fund, which must give priority to provide housing for individuals and families of low or moderate income. For purposes of this priority, eligible income limits are determined as a percentage of median family income as published in the most recent federal register notice. Under this priority, the annual allocation plan must give preference to projects that benefit households with the lowest income and to projects that have rent restrictions at or below fair market rents as determined by the federal Department of Housing and Urban Development. At least 10 percent of the money in the fund must be used to assist developing communities to address an unmet housing need or alleviate a housing shortage. Assistance from the fund may be used for:

- New construction, rehabilitation, preservation, or acquisition of a multifamily housing project;
- New construction, rehabilitation, preservation, or acquisition of a single-family housing project in a developing community or a community land trust project;
- Gap assistance, matching funds, and accessibility improvements;
- Assistance that does not exceed the amount necessary to qualify for a loan using underwriting standards acceptable for secondary market financing or to make the project feasible; and
- Rental assistance, emergency assistance, barrier mitigation, or services designated to prevent or end homelessness.

The 2023 Legislative Assembly provided for a transfer of $13.75 million from the general fund to the housing incentive fund for the 2023-25 biennium, an increase of $4.25 million from the $9.5 million transferred from the general fund to the housing incentive fund during the 2021-23 biennium.

Emergency Solutions Grant

The committee was informed the Emergency Solutions Grant is a federal program administered by the state Housing Finance Agency designed to provide financial assistance to facilities and programs within the state to identify sheltered and unsheltered homeless persons, as well as those at risk of homelessness, and provide the services necessary to help those persons quickly regain stability in permanent housing after experiencing a housing crisis or homelessness. Grant funds are awarded directly to emergency and homeless shelters and agencies throughout the state to provide for activities such as operational expenses and essential services, homelessness prevention, and rapid rehousing. Approximately $486,494 of federal funding and $384,000 of state matching funds were available for the grant program for fiscal year 2024. The funding was allocated for street outreach and shelter operation activities, homeless prevention, rapid rehousing activities, and participation in the Homeless Management Information System.

Homeless Grant

The North Dakota Homeless Grant is a state program administered by the Housing Finance Agency designed to provide financial assistance to facilities and programs within North Dakota to identify sheltered and unsheltered homeless persons, as well as those at risk of homelessness, and to provide the services necessary to help those persons quickly regain stability in permanent housing after experiencing a housing crisis or homelessness. The program primarily follows the Emergency Solutions Grants Program definitions and guidelines. Grant funds are awarded directly to emergency and homeless shelters and agencies throughout the state to provide funds for activities such as operational expenses and essential services, homelessness prevention, and rapid rehousing. State funding totaling $2.5 million from the general fund was appropriated for the 2023-25 biennium for this grant program.

North Dakota Rent Help

Rent Help housing stabilization is a program administered by the Department of Health and Human Services with a goal of helping households experiencing homelessness find long-term stable housing. The program was established in September 2021 using federal funds. The program can assist with the payment of up to 12 months of past due, current, and future rent and utility payments for households with a verifiable rental arrangement. The Department of Health and Human Services reported it had provided assistance to over 52,000 people living in over 26,000 households in the state through June 2024, including $110 million of rent assistance and $11.2 million of utility assistance.

Housing Choice Vouchers

Housing choice vouchers, formerly known as Section 8, help with rent payment in the form of housing assistance payments paid directly to a private landlord. The program assists very low-income families, elderly, and individuals with disabilities to afford housing in the public housing market. The housing choice voucher program is funded by the Department of Housing and Urban Development and administered by local public housing agencies.

Testimony, Committee Considerations, and Recommendation

The committee received testimony and information from representatives of a number of state agencies, the United States Department of Agriculture Rural Development, religious organizations, local housing authorities, law enforcement, and other interested groups regarding homelessness and barriers to housing in the state. Testimony included details regarding federal programs to address homelessness, including rental assistance, housing preservation grants, and home loan guarantees offered by the United States Department of Agriculture Rural Development. The committee was informed of the challenges faced by individuals experiencing homelessness, including Native Americans, children, unaccompanied youth, young adults, individuals on supervised release, and veterans and their lack of access to employment, health care services, and official records. Testimony received by the committee noted other states have used emancipation laws to assist homeless youth in accessing health care services, education, and their official records. The committee was informed of the need for several thousand more affordable housing units across the state. The committee also received information regarding actions taken by the city of Milwaukee, Wisconsin, to address homelessness, including a housing first approach to offer access to permanent housing as quickly as possible for individuals experiencing homelessness, followed by the provision of support services and connections to community-based resources to maintain housing stability and prevent a return to homelessness.

The Department of Labor and Human Rights reported it had opened 338 housing discrimination cases between 2013 and 2023, resulting in 159 settlements totaling $133,797. The American Civil Liberties Union of North Dakota reported a tenant with legal representation is much less likely to receive an eviction judgment and the collateral consequences of an eviction record. The committee was informed the American Civil Liberties Union of South Carolina reported that for every $1 invested by the state in legal counsel for tenants facing eviction, the state saved $3 in social safety net program costs.

Committee members expressed support for increasing state funding to address homelessness after receiving testimony suggesting $10 million was needed for the homeless grant program to support homeless shelters during the 2025-27 biennium. Committee members also expressed support for allocating additional funding for affordable housing after receiving testimony suggesting $200 million was needed in the housing incentive fund to allow for planning, development, and capacity building over the next 4 years. Committee members suggested K-12 schools could be tasked with better identifying children experiencing homelessness and connecting them to services. Committee members also suggested the study of homelessness be continued during the next interim, with input from a consultant to be retained by the Housing Finance Agency, to thoroughly review the data and funding available to address homelessness, including an analysis of the use of available funds to identify gaps and potential solutions.

The committee considered but did not recommend a bill draft relating to establishing a legal process for the emancipation of a minor in the state. Committee members expressed concern regarding the emancipation process and whether emancipation would help the minor. Other members suggested it was necessary to help homeless youth access services and official records, including birth certificates.

The committee recommends Senate Bill No. 2030 to:

- Appropriate $10 million of ongoing funding from the general fund to the Housing Finance Agency for the North Dakota Homeless Grant program to provide a total of $12.5 million for the program for the 2025-27 biennium to support homeless shelters and other programs.
- Appropriate $50,000 of one-time funding from the general fund to the Housing Finance Agency to contract with a consultant to assist with a 2025-26 interim committee study of homelessness in the state.
- Appropriate $1 million of ongoing funding from the general fund to the Department of Public Instruction to provide grants for homelessness liaison services to the 10 school districts with the greatest student enrollment to better connect homeless youth with services.
- Transfer $200 million from the general fund to the housing incentive fund to be used over the 2025-27 and 2027-29 bienniums to increase affordable housing in the state.
- Provide for a Legislative Management study of homelessness in the state during the 2025-26 interim.

The committee originally considered a version of this bill that included $300,000 for legal representation for individuals facing eviction; however, this funding was removed. Committee members expressed concern regarding the provision of state funding for an individual in a civil proceeding against another individual.

STUDY OF ACCESSIBLE TRANSPORTATION

Senate Concurrent Resolution No. 4004 (2023) directed a Legislative Management study regarding accessible transportation for older adults and individuals with disabilities. As part of the study, the committee was to consider:

- Statewide challenges to system services and barriers to expanding the state's accessible transportation infrastructure;
- The fiscal impact of providing accessible transportation;
- Effective long-term modification of funding formulas to support accessible transportation; and
- Modifications to anticipate the responsibilities of public entities under the federal Americans with Disabilities Act.

Public Transportation

Chapter 39-04.2 defines public transportation as the vehicular transportation of persons from place to place within the state, but does not include the provision of transportation facilities otherwise provided by public funds, such as roads, streets, highways, bridges, lighting equipment, or signs. Chapter 39-04.2 also establishes a public transportation fund to be administered by the Department of Transportation (DOT), from which DOT has continuing appropriation authority. Pursuant to Section 54-27-19, the fund receives 1.5 percent of revenue deposited in the highway tax distribution fund, which receives revenue from motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes. Pursuant to Section 54-27-19.3, the fund also receives 1.5 percent of revenue deposited in the legacy earnings highway distribution fund. Money in the fund must be disbursed under guidelines issued by DOT and the funds must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped, and may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation, and for other expenditures authorized by the DOT Director. The Legislative Assembly estimated the public transportation fund would receive $9 million of revenue during the 2023-25 biennium, including $7.5 million from the highway tax distribution fund and $1.5 million from the legacy earnings highway distribution fund.

Transit Grants

The DOT administers federal transit grant funds to rural, nonurbanized areas with populations less than 50,000 and state-aid funding for the entire state and ensures that transit projects meet federal and state regulations and requirements. State aid for public transit funding is determined biennially by the Legislative Assembly and distributed by a formula in Section 39-04.2-04. This program makes available about $8 million each year to the urban and rural transit providers in the state. Portions of this grant may be used for operating expenses and capital improvements such as the purchase of new transit buses. Transit agencies are required to apply for these funds on an annual basis.

The committee received testimony from representatives of DOT indicating there are 31 transit providers operating in the state, providing services in all 53 counties. The committee was informed transit ridership decreased from 2.5 million rides to 2 million rides from 2019 to 2023.

Small Urban and Rural Center on Mobility

The Small Urban and Rural Center on Mobility is part of the Upper Great Plains Transportation Institute. The president and administration of North Dakota State University are responsible for the administration of the Upper Great Plains Transportation Institute. The Small Urban and Rural Center on Mobility exists to increase the mobility of small urban and rural residents through innovative research, education, and outreach. The Upper Great Plains Transportation Institute provides transportation research, education, and outreach to the state of North Dakota as well as regionally, nationally, and internationally.

The committee received testimony from representatives of the Upper Great Plains Transportation Institute indicating survey results identified 24 percent of rural transit riders are at least 80 years old and nearly 50 percent have a disability. The committee was informed transit services in most regions of the state are not available 7 days per week and certain areas of the state have no transit services available. The testimony indicated select transit agencies in other states have implemented microtransit services to provide an accessible, on-demand mode of transportation that uses a smartphone application or phone number to request and schedule a ride within designated service areas.

Other Testimony and Committee Considerations

The committee received testimony from representatives of Community Options, the Arc of North Dakota, Designer Genes of ND, Inc., regarding public transportation. Testimony indicated support for extended transit hours, streamlined scheduling of transit services, increased funding for paratransit and door-to-door transportation, and a review of transit funding to ensure sustainability. Individuals suggested a smartphone application could assist in streamlining scheduling.

Committee members expressed concern the addition of a smartphone application to schedule rides may lead to competition with private providers of transportation services. Committee members also questioned the efficiency of the use of large buses, that may have excess capacity, by transit providers.

The committee makes no recommendation regarding its study of accessible transportation.

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 committee received a report from OMB in September 2024 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 2023-25 biennium, 6 agencies expect a decrease in federal funds of 5 percent or more in the 2025-27 biennium. The committee was informed the Secretary of State and Department of Corrections and Rehabilitation 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 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 Services Committee was assigned this responsibility for the 2023-24 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. Since then, including during the 2023-24 interim, no proposed agreements have been submitted for approval to form a bistate authority with the state of South Dakota.

VETERANS' HOME STRATEGIC PLAN IMPLEMENTATION

Section 6 of House Bill No. 1007 provides for the Veterans' Home to report to the Legislative Management by January 1, 2024, regarding the status of implementing recommendations included in the Veterans' Home strategic plan as provided for in Section 1 of Chapter 7 of the 2019 Session Laws.

The committee received testimony from representatives of the Veterans' Home on December 19, 2023, indicating the strategic plan was not yet complete.

HEALTH CARE COMMITTEE

The Health Care Committee was assigned three studies:

- Section 53 of Senate Bill No. 2012 (2023) directed a study of the benefits of basing provider reimbursement rates for the Medicaid program in accordance with a provider's performance under established and accepted value-based care metrics.
- Section 1 of House Bill No. 1476 (2023) directed a study of the impact of entities that receive Medicaid and Medicaid Expansion funding using contract nursing agencies.
- Section 1 of Senate Bill No. 2389 (2023) directed a study of prior authorization (PA) in health benefit plans. The study required consideration of the extent to which PA is used by health insurance companies in this state, including the types of services and procedures for which PA is required; the impact of PA on patient care, including the effects on patient health outcomes, patient satisfaction, health care costs, and patient access to care; the impact of PA on health care providers and insurers, including the administrative burden, time, and cost associated with obtaining PA, and the appropriate utilization of health care services; state and federal laws and regulations that may impact PA; and input from stakeholders, including patients, providers, and commercial insurance plans.

The Legislative Management assigned the committee the responsibility to receive six reports and complete one directive:

- A biennial report from the State Fire Marshal on the State Fire Marshal's findings and recommendations 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 Health and Human Services (DHHS), Indian Affairs Commission, and the Public Employees Retirement System on their collaboration to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes, pursuant to Section 23-01-40.
- A biennial report from DHHS regarding progress made toward the recommendations provided in Section 23-43-04, regarding stroke centers and stroke care, and any recommendations 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.
- Annual reports from the North Dakota Legislative Health Care Task Force on its activities and any recommendations to improve health care in the state, pursuant to Section 50-06-45.
- A report from DHHS regarding the study of basic care funding rates, as directed by Section 10 of Senate Bill No. 2012 (2023).
- 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 Senators Kyle Davison (Chairman), Sean Cleary, Tim Mathern, and Kristin Roers and Representatives Gretchen Dobervich, Clayton Fegley, LaurieBeth Hager, Dawson Holle, Carrie McLeod, Jon O. Nelson, Emily O'Brien, Karen M. Rohr, Mary Schneider, Greg Stemen, Michelle Strinden, and Robin Weisz.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

MEDICAID PROVIDER REIMBURSEMENT ARRANGEMENTS STUDY

Section 53 of Senate Bill No. 2012 (2023) directed a study of the benefits of basing provider reimbursement rates for the Medicaid program in accordance with a provider's performance under established and accepted value-based care metrics.

Background

Value-based payment (VBP) is an incentive-based health care reimbursement structure that prioritizes outcomes rather than services delivered. Traditionally, the health care system has operated under a fee-for-service (FFS) model, in which health care providers and hospitals are paid for each service they provide. Value-based care ties the amount health care providers earn for their services to the results they deliver for patients, rather than rewarding providers based on the volume of services provided. The goal of value-based care is to lower costs, improve the quality of care, and incentivize patient-centered practices.

The Centers for Medicare and Medicaid Services (CMS), spurred by the federal Patient Protection and Affordable Care Act, has taken a leading role in implementing VBP models and has implemented more than 50 unique models among the 50 states, largely designed for Medicare. Value-based payment models designed by CMS impact more than 41 million beneficiaries and are aimed at addressing disparities and providing regulatory authority to establish rates and manage hospital budgets. The Centers for Medicare and Medicaid Services has directed all Medicaid health care facilities to move toward value-based reimbursement systems for all health insurers by 2030. Many commercial payers and state Medicaid agencies have followed CMS's blueprints when implementing their own value-based models.

The pay-for-performance (PFP) model has emerged as a common VBP subtype through which providers are rewarded or penalized according to predetermined quality targets. The PFP model aligns payment with value and quality of care by tying reimbursement to metric-driven outcomes, proven best practices, and patient satisfaction. The PFP model commonly is implemented in tandem with an FFS model in which payers make baseline payments for services and then use an incentive and penalty approach to increase or decrease a provider's income.

Value-Based Care in North Dakota

Comprehensive Primary Care Plus

North Dakota is 1 of 18 states that participated in Comprehensive Primary Care Plus (CPC+), a 5-year multipayer model through CMS which began in January 2017. Comprehensive Primary Care Plus was an advanced primary care medical home model that rewarded value and quality by offering an innovative payment structure to support delivery of comprehensive primary care. Participating providers followed one of two track models. Track 1 was the pathway for practices to build their capabilities to deliver comprehensive primary care. Track 2 was for more established primary care facilities to increase their comprehensiveness of care. The key payment elements of the CPC+ model included a care management fee, performance-based incentive payment, and payment under a Medicare physician fee schedule.

Primary Care First

Beginning in 2021, many providers moved to an alternative 5-year model offering an innovative pay structure based on the underlying principles of CPC+. The Primary Care First (PCF) model prioritizes the clinician-patient relationship, enhances care for patients with complex chronic needs, and focuses financial incentives on improved health outcomes for Medicare enrollees. The model tests whether delivery of advanced primary care can reduce the total cost of care, accommodating practices at multiple stages of readiness to assume accountability for patient outcomes. The PCF model focuses on advanced primary care practices ready to assume financial risk and receive performance-based payments. The PCF model aims to be transparent, simple, and hold practitioners accountable by providing model payments to practices through a simple payment structure.

The payment structure includes a flat payment that encourages patient-centered care and compensates practices for in-person treatment; a population-based payment to provide more flexibility in the provision of patient care along with a flat primary care visit fee; and a performance-based adjustment providing an upside of up to 50 percent of model payments as well as a small downside incentive to reduce costs and improve quality, assessed and paid to practices on a quarterly basis.

Medicaid

Testimony provided by DHHS during the 2023 legislative session indicated the department was working toward implementing value-based care in the state's traditional Medicaid programming. The department seeks to move from an FFS model to a pay-for-reporting model by 2026, and thereafter to a PFP model. The proposed prospective payment system would base certain inpatient and outpatient hospital payments on quality measures. Targets would be set for hospitals based upon a hospital's peers, and up to 4 percent of Medicaid revenue for the specified subset of services would be returned to the state if the measures are not met. If certain performance metrics are satisfied, providers would have the opportunity to earn funds back.

Testimony

The committee received testimony from representatives of DHHS, the National Conference of State Legislatures, health care providers, health insurance carriers, and other interested stakeholders.

Testimony provided by DHHS indicated the department traditionally has used an FFS model for Medicaid in which the state pays providers directly for each covered service received by a Medicaid recipient. Testimony indicated nursing facility reimbursement rates are set annually based on cost reports submitted by facilities, and each facility has individualized rates.

Testimony indicated DHHS's value-based care strategies include accountability; improved patient outcomes; stable and predictable revenue for providers; enhanced health care delivery with greater focus on wellness, prevention, and care coordination; and achieving results to shift the cost curve and lower long-term costs. The committee was informed value-based care is being implemented in prospective payment system hospitals, nursing facilities, and through the Medicaid Expansion managed care contract.

Prospective Payment System Hospitals

Testimony indicated DHHS began implementing the value-based care program for prospective payment system hospitals in July 2023. The health system value-based care puts a portion of hospital payments at risk for performance on a set of quality measures. If a hospital system fails to meet certain targets, up to 4 percent of Medicaid revenue for a subset of services and population returns to the state. The department estimated $4.2 million in payments were at risk for the 2023-25 biennium, which represents 1.1 percent of the inpatient and outpatient hospital budget. A hospital system is given the opportunity to earn back funds based on the hospital system's performance on measures as compared to the performance of the hospital system's peers.

To support systems in being successful, DHHS provides regular access to data analytics that highlight gaps in care and performance on measures. In addition, DHHS limits the number of providers with at-risk payments by limiting hospital risk to prospective payment system hospitals. Providers are at risk only for members assigned to them; providers are not at risk for unassigned members or members who belong to another system.

Testimony from DHHS indicated the initial quality measure set includes primary care access and preventative care, maternal health services, behavioral health services, care of acute and chronic conditions, and oral health services. The expanded measure set includes the same services as the initial measure set and adds colorectal cancer screening, services aimed at controlling high blood pressure, provider options for alcohol and other drug abuse or dependence services, and prenatal, postpartum, and contraceptive care.

Testimony from DHHS indicated pay for reporting on the initial measure set was implemented in July 2023, with pay for reporting on the expanded measure set to begin in 2025. Testimony indicated PFP on the initial measure set will begin in 2025, with PFP on the expanded measure set to begin in 2026. Providers are not at risk for losing payments during the pay-for-reporting period (through 2024); providers become at risk for losing payments only during the PFP period (beginning in 2025). If the system satisfies the pay-for-reporting requirements, the system retains 100 percent of the at-risk funds.

Testimony from DHHS indicated value-based care program successes for this biennium included CMS approval of the state plan amendment providing federal authority for the program and refinements of the initial and expanded measures to align to industry standards. Additionally, primary access process improvements included expanding clinic office hours, combining sports physicals with well child checks, scheduling a next appointment at the end of a visit, planning screenings and immunizations in advance, providing outreach and reminders via letters and messages, and encouraging patients to sign up for electronic health communication systems. Testimony indicated challenges included data validation and collection.

Testimony from a provider indicated 62 percent of rural hospitals in the state belong to an accountable care organization. These rural providers view value-based care as a model to deliver better health outcomes for patients and a feasible financial mechanism to continue providing care. Testimony from a provider indicated value-based care focuses on improving overall patient health, connecting patients with the appropriate care at the right time, and providing access to integrated care through the entire patient journey. Provider testimony indicated value-based care requires investment in practice transformation and quality improvement, and having the appropriate structure to support the service is critical.

Nursing Facilities

Testimony from a representative of DHHS indicated nursing facility value-based care is an incentive program for nursing facilities that have been operating for at least 10 months. The program provides annual payments based on quality measure performance and no payments are at risk. The committee was informed $12 million was appropriated for this program for the 2023-25 biennium, which represents 2 percent of the total nursing facility budget. Testimony indicated the first incentive payment for nursing facilities was issued in June 2024.

The committee was informed annual payments are based on quality measure performance, split into four tiers:

1. 100 percent of the incentive payment;
2. 85 percent of the incentive payment;
3. 60 percent of the incentive payment; and
4. Not eligible for an incentive payment.

There are no restrictions on when or the manner in which incentive dollars may be used. Nursing facilities use an annual cost report to communicate use of incentive funds.

The committee was informed nursing facility quality measures are split into two groups--patient care and facility process measures. The patient care measures include measures for long-stay urinary tract infections, antipsychotic use, and pressure ulcers. The facility process measures include measures for long-stay hospitalizations and the American Health Care Association and National Center for Assisted Living National Quality Award framework

Testimony from a representative of DHHS indicated some initial data sets showed positive outcomes and others provided room for improvement. From 2021-23, the percentage of long-stay residents with a pressure ulcer steadily decreased and remained below the national average. In addition, for each year from 2019-23, the number of hospitalizations per 1,000 long-stay resident days was lower than the national average. However, for each year from 2019-23, the percentage of long-stay residents with urinary tract infections and the percentage of long-stay residents who received antipsychotic medication was higher than the national average.

Testimony indicated nursing facilities have shown marked improvement since the incentive program was implemented, and overall quality indicator scores are improving because of the focus on quality of care.

Managed Care Organization

The committee was informed DHHS uses a Managed Care Organization (MCO) for Medicaid Expansion in which the state pays a monthly fee called a premium or capitation payment to the MCO. The monthly fee is paid to the MCO regardless of member use of services. Testimony indicated Medicaid's managed care contract for Medicaid Expansion members requires the vendor to create a strategic plan, implement alternative methodologies, and increase the number of providers participating and members attributed over time. All Medicaid Expansion members are assigned to a primary care facility, with more than 90 percent of primary care providers participating in BlueAlliance Care+. The goals of BlueAlliance Care+ are to improve quality, reduce unnecessary utilization, and manage costs. The providers are eligible to receive performance-based payments based on certain measures, including primary care visits, post-discharge follow up, and potentially preventable emergency room visits, admissions, and readmissions.

Committee Considerations

The committee recognized the value of an incentive-based Medicaid reimbursement structure that prioritizes better outcomes for patients and better-quality care. The committee determined there is value in continuing these programs, and the related program funding, during the 2025 legislative session.

Conclusion

The committee makes no recommendation regarding its study of Medicaid provider reimbursement arrangements.

CONTRACT NURSING STUDY

Section 1 of House Bill No. 1476 (2023) directed a study of the impact of entities that receive Medicaid and Medicaid Expansion funding using contract nursing agencies.

Background

Contract nursing agencies provide temporary, immediate assistance to hospitals and other health care facilities seeking short-term, nurse staffing solutions. Contract nurses, also known as travel nurses, often are employed by an independent staffing agency and may need to travel across state or international borders to fulfill a contract. Contract nurses typically earn higher wages than traditional full-time nurses, which places a greater financial burden on hospitals and other health care providers that rely heavily on these services.

The health care industry has been impacted by a decades-long shortage of health care professionals, with the shortage in nurses being the most pronounced. Nurses are a critical component of the health care system and are a majority of the industry's workforce. Factors contributing to the nursing shortage include an aging population, a lack of educators, and turnover rates from 8.8 to 37 percent, depending on geographic location and specialty. Rural communities are disproportionately impacted by the shortage of nurses due to older populations, fewer resources, and low staff retention. The COVID-19 pandemic further exacerbated nursing shortages, requiring health care facilities to contract with nursing agencies to keep facilities staffed during periods of increased demand.

Many states have proposed and enacted legislation to regulate contract nurses and nursing staff agencies. Although some states regulated contract nursing before the COVID-19 pandemic, state regulation efforts increased overall in response to the pandemic. Few states have directly tied reform efforts to Medicaid; most state legislation has been broad in nature.

Contract Nursing in North Dakota

Hospitals and long-term care facilities depend on contract nurses to provide essential health care services. According to the North Dakota Long Term Care Association, contract nursing expenditures for long-term care facilities in North Dakota have increased steadily, costing $19.9 million in 2019, $24.2 million in 2020, $28.8 million in 2021, and $63.8 million in 2022. Of the 77 long-term care facilities in the state, 91 percent, or 70 facilities, utilize contract nursing services. North Dakota does not have any statutory provisions that pertain to contract nursing.

Testimony

The committee received testimony from representatives of the North Dakota Long Term Care Association, North Dakota Hospital Association, health care providers, nursing services agencies, and other interested stakeholders.

Testimony indicated the biggest challenge facing hospitals is the workforce, and the lack of nurses is acute in urban and rural areas. Since 2019, hospital contract nursing costs have increased by 321 percent. In 2019, hospitals paid $59.3 million to contract nursing agencies and, in 2022, that amount increased to $249.8 million. If hospitals did not utilize contract nursing, there would be more than 1,400 open nursing positions across the state.

Testimony from a representative of the North Dakota Long Term Care Association indicated many long-term care facilities rely on contract nursing to maintain the staffing requirements imposed by federal regulation. The committee was informed the Long Term Care Association formed a committee to study contract nursing, which includes members from the North Dakota Hospital Association, North Dakota Nurses Association, Interim HealthCare, nursing services agencies, and other interested stakeholders. The committee discussed the challenges impacting resident safety and the difficulties in evaluating staff. The committee considered the need for minimum standards for contract agencies to ensure quality and safety, including the potential benefits of licensing requirements for contract agencies.

Committee Considerations

The committee considered a bill draft relating to establishing a regulatory framework for nursing services agencies. The bill draft provides nursing services agencies may not operate without a license issued by DHHS, provides for an annual licensure fee, and establishes standards of operation which include recordkeeping and reporting requirements. The bill draft authorizes DHHS to revoke or suspend the license of a nursing services agency for failing to follow the standards of operation and includes a penalty provision.

The committee recognized the value of establishing a regulatory framework relating to nursing services agencies. Committee members expressed differing opinions relating to whether the reporting requirements should be expanded to require nursing services agencies to submit financial reports providing information about costs and potentially setting a limit on costs.

Recommendation

The committee recommends Senate Bill No. 2031 relating to establishing a regulatory framework for nursing services agencies.

PRIOR AUTHORIZATION STUDY

Section 1 of Senate Bill No. 2389 (2023) directed a study of PA in health benefit plans. The study required consideration of the extent to which PA is used by health insurance companies in this state, including the types of services and procedures for which PA is required; the impact of PA on patient care, including the effects on patient health outcomes, patient satisfaction, health care costs, and patient access to care; the impact of PA on health care providers and insurers, including the administrative burden, time, and cost associated with obtaining PA, and the appropriate utilization of health care services; state and federal laws and regulations that may impact PA; and input from stakeholders, including patients, providers, and commercial insurance plans. The study allowed for consideration of issues related to response times, retroactive denial, data reporting, clinical criteria and medical necessity, transparency, fraud and abuse, reviewer qualifications, exceptions, and an appeal process.

Background

As introduced, Senate Bill No. 2389 would have created new requirements, restrictions, and timelines to standardize the PA process, including mandating the disclosure of PA requirements and restrictions; required a licensed physician to make adverse determinations; prohibited the use of PA for emergency services and the institution of timelines for urgent and nonurgent circumstances; standardized the timeline of PA appeals; and required typical PAs to be valid for 6 months, PAs for chronic conditions to be valid for 12 months, and prohibited the ability to revoke, limit, or condition an authorization within 45 days following the date of receipt. The bill was amended by the Senate to provide for a study.

The American Medical Association (AMA) describes the PA process as a cost-control mechanism that requires health care providers to seek advanced approval from health insurers before the delivery of a service, device, supply, or medication to ensure cost coverage. As health expenditures increased throughout the 1960s, programs to review insurance claims for appropriateness also increased. By the mid-1970s, most hospitals and the federal government were applying mandated utilization review programs for health expenditures. Utilization review conducted before the delivery of a health care service is known as PA. Purchasers of health care, including private payers and the government, have become more aggressive in detecting and eliminating the use of nonessential health goods and services through further expansion of PA. Health care providers submit PA requests in response to patient needs and await approval or denial before the service or good is administered to the patient. Providers must be aware of a patient's individual insurance plan and the plan's intricacies to know what is required with each PA request. A request for PA can be approved, approved or denied in part, or denied. If a request for PA is denied, a provider may appeal the denial through another administrative process, which varies by state and payer.

The goal of PA is to ensure the prescribed service, device, supply, or medication is medically necessary, clinically appropriate, and evidence based. Prior authorization also aims to shift utilization toward lower-cost alternatives, namely when there are no additional safety or efficacy benefits associated with the higher-priced alternative. Requiring PA ensures prescribed treatments align with specific Food and Drug Administration-approved indications in which the benefits to the patient outweigh the potential risks.

While PA is intended to contain costs and ensure appropriate utilization, both patients and physicians have identified significant barriers associated with the PA process. Concerns include care delays, treatment abandonment, serious adverse events, including loss of life, increased administrative burden, and high processing costs. The American Medical Association identifies the PA process as the most common barrier to accessing medically necessary patient care, with 93 percent of physicians experiencing delays and 91 percent reporting a negative effect on patients' clinical outcomes.

Many states, including North Dakota, do not have clear timeline requirements that need to be met by the utilization review committee when responding to PA requests. This lack of standardization often leads to delays in care which increase burdens on the health care system because patients then may require additional or more intensive treatment methods. The PA process is burdensome not only to providers but also to patients. Patients may choose to forgo or discontinue pertinent care in response to PA requirements. Data from the AMA shows 82 percent of physicians indicated patients abandon treatment due to authorization struggles with health insurers.

Providers also indicate frustration with unclear reasoning when a PA is denied by health insurers, resulting in greater administrative burden. Providers and health insurers often use different sources of clinical information in their decisionmaking process, which leads to discrepancies. Many states do not require the utilization review entity to disclose the basis for its decisionmaking. North Dakota is among several states that lack a standardized appeal process with timelines and transparency.

Prior Authorization in North Dakota

North Dakota has several statutory provisions relating to PA usage and practice. Section 23-01-38 requires PA requests for drugs to be accessible on the prescribing provider's electronic software system and to be accepted electronically by the applicable utilization review committee, payer, insurance company, or pharmacy benefit manager. Chapter 26.1-26.4 outlines requirements for health care service utilization review, requiring agents to follow minimum standards set by the federal government, and prohibiting utilization review denial of and PA usage for emergency services. Section 26.1-36-03.1 requires insurers to disclose a general description of any utilization review policies and procedures, including a description of any required PA requirements and appeal procedures. Also included within the Century Code are provisions:

- Prohibiting a dental benefit plan from retroactively denying coverage for services that previously have received PA, unless certain conditions are met (Chapter 26.1-36.9);
- Requiring providers to obtain PA from preferred provider organization health plans prior to obtaining air ambulance services (Section 26.1-47-10); and
- Creating a PA drug program for individuals on medical assistance which meets federal requirements (Chapter 50-24.6).

Testimony

The committee received testimony from representatives of the AMA, health care providers, insurers, and other interested stakeholders. Testimony from the AMA indicated 80 percent of physicians report the number of medical services for which PA is required by insurers has increased over the last 5 years, and 89 percent of physicians report PA interferes with the continuity of patient care.

Health Care Providers

Testimony from health care providers indicated when properly used, PA can control costs to ensure patients receive medically necessary care. Testimony indicated harmful impacts of PA include delays in treatment, negative patient experiences, potential for treatment abandonment, barriers to innovative care models, and additional administrative burdens on providers. The committee received suggestions regarding the manner in which the PA process could be improved, including through legislation addressing time limits to standardize the time an insurance company must determine whether a request for PA is approved, with a mechanism to generate an automatic approval if a provider does not receive an answer within the allotted time frame.

Testimony from physicians indicated insurance providers and physicians rarely communicate directly regarding PA requests. Testimony indicated physicians feel medical directors at certain insurance companies do not spend adequate time reviewing a patient's claim, and vetted physicians within an insurance provider's network should be trusted to make the correct decisions. Testimony indicated PAs should be reviewed by qualified specialists within the field of the proposed treatment.

Testimony indicated CMS recently published a final rule related to PA. The committee was informed the rule includes three key elements--interoperability, PA reform, and reporting requirements. The rule only impacts health insurance plans governed by CMS. The interoperability component of the rule provides for the creation of a standardized application programming interface, which includes information about PA decisions, integrated into the patient's application of choice. The rule requires impacted payers to implement and maintain a provider access application programming interface to share patient data with in-network providers, identify whether an item or service requires PA, and support the creation and exchange of PA requests from providers and responses from payers. The rule also requires prior authorization requirements to include standardized time frames, with a response deadline of within 7 calendar days for routine care requests and within 72 hours for urgent or expedited requests. The rule requires payers to provide specific information about why a PA request was denied, regardless of how the request was submitted. The rule requires payers to report on PA processes on their public website on an annual basis, including the percentage of requests approved, denied, and approved after appeal, and the average amount of time between submission of the request and the decision. Payers also must report annually regarding metrics relating to patient use of the application programming interface.

Insurers

Testimony received from insurers indicated PA serves as an important safety check to confirm with the provider the care recommendation is safe, medically evidenced, and not duplicative. When reviewing PA requests, a representative of one insurer testified it takes into consideration safety, best care, and cost, and encourages communication between a member's doctor and the member's insurance company.

Testimony indicated one insurer has a utilization management team that reviews highly utilized authorizations for pharmacy and medical requests quarterly and makes changes to the PAs with a higher trend of approval and a lower risk for fraud and abuse.

Testimony from insurers indicated areas of opportunity for improving the PA process include providers only submitting requests on services that require PA, the submission of requests electronically, and the inclusion of all necessary supporting documentation with the initial request.

Committee Considerations

The committee discussed encouraging the use of modern technology and electronic records in the PA process. The committee recognized there have been improvements in the process between health care providers and insurers, but discussion regarding PA reform must continue.

Conclusion

The committee makes no recommendation regarding its study of PA in health benefit plans.

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 E2187-04. The report indicated the effectiveness of the fire safer cigarette program is difficult to decipher. Although the number of reported fires caused by cigarettes has increased in recent years, so has the overall number of fires reported. Since 2018, fire reporting by fire departments has increased from 50 to 80 percent of departments. Ensuring cigarettes are tested and remain a low-probability ignition source remains a positive approach to fire prevention.

DIABETES REPORT

The committee received a report, pursuant to Section 23-01-40, from DHHS, the Indian Affairs Commission, and the Public Employees Retirement System on their collaboration to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes. The report indicated obesity is a primary risk factor for type 2 diabetes, increasing the risk for disease by at least six times as compared to individuals who are not obese. Rates of obesity and type 2 diabetes have increased linearly in recent decades, with the rate of diabetes increasing primarily among obese individuals. The report also indicated the most vulnerable and underserved populations suffer from the highest rates of diabetes and have the poorest health outcomes. Adults over the age of 65 remain the population with the highest rate of diabetes; however, adults between the ages of 45 and 55 have the fastest growing rate of diabetes. The report indicated prevention of diabetes is best achieved through a cross-sector, community-based approach which includes access to nutritious food options, wellness programming for youth, and mental and behavioral health services for persons with or at risk of diabetes.

STROKE REPORT

The committee received a report from DHHS regarding progress made toward the recommendations provided in Section 23-43-04, relating to stroke centers and stroke care. The report indicated DHHS 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 as required by Section 23-51-08. The committee was informed there were six maternal deaths in 2022 and five in 2023; however, the 2023 cases still are being reviewed. The report indicated the leading underlying causes of pregnancy-related death include mental health conditions, excessive bleeding, cardiac conditions, infection, thrombotic embolism, cardiomyopathy, and hypertensive disorders during pregnancy. The report indicated challenges include the increasing number of deaths due to mental health issues.

HEALTH CARE TASK FORCE REPORT

The committee received a report from the North Dakota Legislative Health Care Task Force as required by Section 50-06-45. The report indicated the task force was tasked with meeting to discuss issues affecting health care delivery and spending in the state, researching and analyzing data, conducting stakeholder interviews, and creating subcommittees to deeply explore priority issues. The task force reported, in 2020, North Dakota had the 14th highest per-person spending on health care in the nation. The report also indicated growth in health care spending is outpacing growth in other economic indicators of well-being, including median income and inflation.

Actions recommended pursuant to the report included collecting data biennially to allow for ongoing understanding and monitoring of health care expenditures and utilization, and using a Medicaid Expansion fact sheet to provide consistent baseline data and understanding of the program. Establishing a statewide quality collaborative focused on identifying core measures to be used across payers to allow for ongoing understanding of health care quality and outcomes, and alignment of measures for VBP models, also was recommended in the report. Lastly, the report recommended developing initiatives aimed at improving access to and utilization of well visits and cancer screenings.

BASIC CARE REPORT

The committee received a report from DHHS regarding the study of basic care, as directed by Section 10 of Senate Bill No. 2012 (2023). Recommendations under the report to strengthen and modernize the basic care program included creating a single licensure type to cover both assisted living and basic care facilities; strengthening existing policy and developing additional policy to reflect current requirements within the program, incorporate best practices, and align with state and federal requirements; updating regulations to use publicly available indexes for cost trending to align more consistently with observed trends in provider costs; implementing a fair rental value methodology to reimburse basic care provider property costs; and implementing tiered add-on payments for residents with increased activities of daily living service need and aligning reimbursement methodologies.

HEALTH INSURANCE MANDATE COST-BENEFIT ANALYSIS RECOMMENDATION

Section 54-03-28 requires a cost-benefit analysis on a legislative measure providing for a health insurance mandate and 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 committee was informed the Insurance Commissioner received proposals from Incline Actuarial Group, Lewis & Ellis Actuaries and Consultants, and NovaRest Actuarial Consulting to provide the cost-benefit analysis. The Insurance Commissioner recommended, based on the proposals received, the Legislative Management contract with NovaRest Actuarial Consulting to perform the cost-benefit analyses of legislative measures to be considered by the 69th Legislative Assembly.

Recommendation

The committee recommends the Legislative Council contract with NovaRest Actuarial Consulting for the cost-benefit analyses of legislative measures to be considered by the 69th Legislative Assembly mandating health insurance coverage pursuant to Section 54-03-28.

HEALTH SERVICES COMMITTEE

The Health Services Committee was assigned the following studies:

- Senate Bill No. 2158 (2023) directed a study to determine the steps necessary for the dissolution of the Comprehensive Health Association of North Dakota (CHAND).
- Section 3 of Senate Bill No. 2085 (2023) directed a comprehensive study of the delivery of emergency medical services in the state.
- House Concurrent Resolution No. 3021 (2023) directed a study regarding whether the services provided in the state relating to the care and treatment of individuals with brain injury are adequate.

The Legislative Management delegated to the committee the responsibility to receive a report pursuant to North Dakota Century Code Section 19-03.1-23.5 from the Department of Health and Human Services (DHHS) by November 1 of each year summarizing the number of deaths that occurred in the state caused by or related to fentanyl consumption during the preceding calendar year, including the county in which the deaths occurred and the age and gender of the deceased individuals.

Committee members were Senators Kristin Roers (Chairman), Michelle Axtman, Jeff Barta, and Judy Lee and Representatives Gretchen Dobervich, Kathy Frelich, Dwight Kiefert, Carrie McLeod, Alisa Mitskog, Emily O'Brien, Todd Porter, and Robin Weisz.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

STUDY OF THE COMPREHENSIVE HEALTH ASSOCIATION OF NORTH DAKOTA

In conducting the study to determine the steps necessary for the dissolution of CHAND, the committee was directed to consult with the Insurance Commissioner, DHHS, board of CHAND, and Public Employees Retirement System (PERS). In addition the study required was to include an analysis of the enrollees, transitioning of the current enrollees' plans to potential federal Affordable Care Act (ACA) plans, Medicaid programs, and PERS plans, and any other options determined by the study, and to review the process to discontinue any new enrollment into CHAND immediately and transition all major medical plans in effect as soon as plan year 2024.

Previous Studies

The 2011-12 Health Care Reform Review Committee studied the impact of the ACA on CHAND pursuant to Senate Concurrent Resolution No. 4005 (2011). The committee reviewed whether the CHAND program still was needed or could be discontinued. The Insurance Commissioner recommended no action be taken until lawsuits involving the ACA had been decided and more information could be obtained regarding how the ACA affected CHAND.

The 2013-14 Health Care Reform Review Committee received updates regarding the impact of the ACA on CHAND. The committee learned several states discontinued high-risk health insurance pools due to the ACA effectively eliminating any new enrollment in CHAND. However, committee discussion indicated it may be necessary to continue the CHAND program until the ACA became more established and additional information regarding the effect of the ACA on CHAND was known.

History

During the 1979-80 interim, the Legislative Management's interim Health Care Committee studied options for a remedy for providing accident and sickness insurance to uninsurable people in North Dakota. The committee recommended House Bill No. 1058 (1981) which was approved by the Legislative Assembly creating an intercarrier health insurance pool (now CHAND as codified in North Dakota Century Code Chapter 26.1-08). The CHAND program's participating membership consists of those insurers doing business in North Dakota with an annual premium volume of accident and sickness insurance contracts amounting to at least $100,000 for the previous calendar year. Each member pays an assessment based on their accident and health premium volume.

Board of Directors

The CHAND Board of Directors consist of:

1. The Insurance Commissioner;
2. The State Health Officer;

3. The Director of the Office of Management and Budget;
4. One senator appointed by the Senate Majority Leader;
5. One representative appointed by the Speaker of the House of Representatives; and
6. One individual from each of the three participating member insurance companies of the association with the highest annual premium volumes of health insurance coverage as provided by the Insurance Commissioner, verified by the lead carrier, and approved by the board.

Program

The CHAND program offers health insurance to North Dakota residents who are unable to find adequate health insurance coverage in the private market due to medical conditions or who have lost their employer-sponsored group health insurance. An insurance carrier licensed to do business in North Dakota must inform individuals denied health insurance coverage by their company about CHAND.

Subject to benefit plan limitations and exclusions, CHAND covers major medical and prescription drug expenses. An individual is eligible to receive up to $1 million in benefits from CHAND during that individual's lifetime. An individual who has received $1 million in CHAND benefits from enrollment in any combination of benefit plans is not eligible to obtain new coverage through CHAND.

Under CHAND, premiums have funded approximately one-half to two-thirds of the program with most of the balance covered by assessments to companies that write at least $100,000 in annual premiums on behalf of residents of the state. The premium amount charged to individuals under CHAND may not exceed 135 percent of average premiums charged in the state for similar coverage.

Blue Cross Blue Shield of North Dakota is the insurance company the CHAND Board of Directors has selected to be the lead carrier to administer the CHAND benefit plans.

Enrollment History

The following schedule details the number of individuals enrolled in CHAND.

Year	Enrollment
2012	1,401
2013	1,383
2014	813
2015	617
2016	461
2017	359
2018	354
2019	335
2020	283
2021	242
2022	202

Eligibility and Coverage Options

Under Section 26.1-08-12(5), the four ways an applicant can qualify for CHAND are:

1. Traditional applicant (waiting period);
2. Health Insurance Portability and Accountability Act of 1996 (HIPAA) applicant (no waiting period);
3. Federal Trade Adjustment Assistance Reform Act of 2002 (TAARA) applicant (no waiting period); and
4. Age 65 and older applicant or disabled supplement applicant (waiting period).

An eligible traditional, HIPAA, or TAARA applicant has the option of choosing from the following coverage options:

	Deductible Amount Per Benefit Period	Coinsurance Maximum Per Benefit Period	Out-of-Pocket Maximum Per Benefit Period
Option 1	$1,000	$2,000	$3,000
Option 2	$500	$2,500	$3,000

These applicants are subject to a CHAND lifetime maximum of $1 million. An eligible supplement applicant has the option of choosing basic supplement coverage or standard supplement coverage.

Benefits

The Comprehensive Health Association of North Dakota program provides benefit allowances for the following items:

- Inpatient and outpatient hospital services;
- Physical, occupational, and speech therapy;
- Inpatient, outpatient, and surgical services;
- Home and office visits;
- Wellness services - well child care, immunizations, mammography, pap smear, fecal occult blood testing, and prostate cancer screening;
- Lab, x-ray, MRI, allergy testing;
- Radiation therapy, chemotherapy, and dialysis;
- Inpatient, outpatient, prenatal, and postnatal care maternity services;
- Inpatient, ambulatory behavioral health care (partial hospitalization), residential treatment, and outpatient services;
- Emergency services;
- Ambulance services;
- Skilled nursing facility services;
- Home health care services;
- Hospice services;
- Outpatient prescription drugs;
- Medical supplies and equipment;
- Hearing aids for subscriber under age 18;
- Bariatric surgery;
- Tobacco cessation services; and
- Optional chiropractic services endorsement.

Premium Rates

The following are the monthly premium rates for the traditional, HIPPA, and TAARA coverage options as of September 2024:

Subscriber Age	$500 Deductible without Chiropractic Benefits	$500 Deductible with Chiropractic Benefits	$1,000 Deductible without Chiropractic Benefits	$1,000 Deductible with Chiropractic Benefits
Under 18	$465.33	$469.33	$440.98	$443.98
18-29	$644.75	$652.75	$611.50	$617.50
30-39	$836.01	$844.01	$792.43	$798.43
40-44	$945.67	$953.67	$896.17	$902.17
45-49	$1,045.54	$1,053.54	$990.65	$996.65
50-54	$1,160.42	$1,168.42	$1,099.33	$1,105.33
55-59	$1,400.63	$1,408.63	$1,326.57	$1,332.57
60-64	$1,745.29	$1,753.29	$1,652.61	$1,658.61
Age 65 and over	$2,035.11	$2,043.11	$1,926.78	$1,932.78

The following are the monthly premium rates as of January 1, 2024, for supplemental coverage for individuals age 65 and older or individuals with disabilities who are eligible for Medicare.

Age	Basic Supplement	Standard Supplement
65-69	$149.00	$300.90
70-74	$175.80	$354.20
75-79	$194.30	$394.40
80-84	$198.80	$403.80
85 and older	$208.60	$421.30
Under 65 (disabled)	$215.10	$434.30

Testimony Received and Committee Considerations

The committee received the following testimony from the Insurance Department regarding CHAND:

- CHAND was created to provide health insurance coverage to individuals who were denied coverage through private health insurance.
- The ACA precludes health insurers from denying coverage due to pre-existing conditions.
- An October 2022 review of the CHAND program by the Insurance Department recommended the program be dissolved and enrollees be transitioned to private health plans.

The committee received the following information from PERS regarding options to transition CHAND enrollees to state employee health insurance plans:

- The current Dakota Retiree Plan is fully funded through premiums and adding high-risk individuals to the plan could cause significant increases in premium amounts.
- Adding nongovernmental employees to a government plan could result in the plan losing government plan status.

A representative of Blue Cross Blue Shield of North Dakota suggested assessments for the CHAND program be charged based on actual claims rather than projected claims until the program is discontinued.

Committee Discussion

Committee members discussed options to either discontinue CHAND or to continue the program and use state funding for program costs. Committee members noted enrollment in CHAND will likely continue to decrease and program costs will become unstable. The Insurance Department reported all current CHAND enrollees are able to be transitioned to a comparable benefit plan or Medicaid supplement policy. Committee members supported the option to discontinue CHAND if enrollees could be successfully transitioned into comparable benefit plans and supplemental policies. No opposition was noted for discontinuing CHAND.

Committee Recommendations

The committee recommends Senate Bill No. 2032 to cease enrollment in the CHAND program effective May 1, 2025, and to terminate all existing CHAND benefit plans effective December 31, 2025. The bill requires current CHAND enrollees to be transitioned to a comparable benefit plan or Medicare supplement policy.

STUDY OF THE DELIVERY OF EMERGENCY MEDICAL SERVICES

The committee was directed to undertake a comprehensive study of the delivery of emergency medical services (EMS) in the state, including consideration of funding, taxation, access critical areas, demographics, volunteer training, volunteer retention, systems approach to rural areas, employment options, including access to a public safety pension, and educational reimbursements. In addition the study required was also to include consideration of distressed ambulance services, which are ambulance services that have indicated an intention to close or change their license level, or an ambulance service that fails to meet performance standards as established by the DHHS.

Previous Studies

The 2007-08 interim Public Safety Committee studied the state's EMS system, including the funding, demographics, and impact on rural areas.

The 2011-12 interim Health Services Committee received information regarding the EMS improvement grant to study rural EMS issues awarded to SafeTech Solutions, LLP, from the Emergency Medical Services Advisory Council.

The 2013-14 interim Health Services Committee studied the feasibility and desirability of community paramedics providing additional clinical and public health services, particularly in rural areas of the state, including the ability to receive third-party reimbursement for the cost of these services and the effect of these services on the operations and sustainability of the EMS system.

The 2017-18 interim Government Administration Committee studied EMS funding in the state. The committee reviewed the amount of funding provided for EMS programs. The committee also reviewed the criteria used by the State Department of Health to distribute grants to ambulance services. The committee did not make any recommendations.

Background

Chapter 23-27 provides DHHS is the licensing authority for EMS operations and may designate their service areas.

Definition

Section 23-27-02 defines EMS as "the prehospital medical stabilization or transportation, including interfacility transportation, of an individual who is sick, injured, wounded, or otherwise incapacitated or helpless, or in a real or perceived acute medical condition, by a person that holds oneself out to the public as being in that service or that regularly provides that service. The term includes:

a. Assessing, stabilizing, and treating life-threatening and non-life-threatening medical conditions; or

b. Transporting a patient who is in a real or perceived acute medical condition to a hospital emergency room or other appropriate medical destination."

Licensing

Section 23-27-03 provides the fee for a license to operate an EMS operation, or a substation ambulance services operation may not exceed $25 annually. The fee, currently set at $25, is to defray the costs of administration of the licensing program. All operation license fees must be paid to DHHS, deposited with the State Treasurer, and credited to the state general fund. Emergency medical service personnel are not subject to the operation license fee.

Emergency Medical Services Training and Certification

Section 23-27-04.2 requires DHHS to assist in the training of EMS personnel of certain EMS operations and financially assist certain EMS operations in obtaining equipment. In addition, Section 23-27-04.3 requires DHHS to adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for EMS personnel, including community EMS personnel, instructors, and training institutions.

Section 23-27-04.6 provides for the licensure of quick response units and provides 24-hour availability is not required for licensure of a quick response unit.

Integrated Emergency Medical Services Plan

The 2011 Legislative Assembly, in House Bill No. 1044, created Chapter 23-46 related to EMS. Section 23-46-03 requires DHHS to establish and update biennially a plan for integrated EMS in the state. The plan must identify ambulance operations areas, EMS funding areas that require state financial assistance to operate a minimally reasonable level of EMS, and a minimum reasonable cost for an EMS operation.

Section 23-46-02 requires DHHS to establish an EMS advisory council to provide recommendations regarding:

- The plan for integrated EMS in the state;
- Development of EMS funding areas;
- The development of EMS funding areas application process and budget criteria; and
- Other issues relating to EMS.

Membership of the EMS advisory council must include:

- At least three members appointed by an EMS organization;
- One member appointed by the Commissioner of DHHS to represent basic life support;
- One member appointed by the Commissioner of DHHS to represent advanced life support; and
- Any additional members appointed by the Commissioner of DHHS to provide for a maximum of 14 members on the council.

Funding for EMS

State Appropriations

The 2023 Legislative Assembly appropriated a total of $14,721,000 for EMS purposes during the 2023-25 biennium. Of this amount, $6,596,000 is from the general fund, $1,125,000 is from the insurance tax distribution fund, and $7,000,000 is from the community health trust fund. Of this amount, $846,000 is for training grants and $13,875,000 is for rural EMS grants and assistance.

The following schedule details state appropriations for EMS since the 2015-17 biennium:

Biennium	General Fund	Insurance Tax Distribution Fund	Community Health Trust Fund	Total
2015-17	$7,190,000	$1,250,000		$8,440,000
2017-19	$6,596,000	$1,125,000		$7,721,000
2019-21	$6,596,000	$1,125,000		$7,721,000
2021-23	$6,596,000	$1,125,000		$7,721,000
2023-25	$6,596,000	$1,125,000	$7,000,000	$14,721,000

Section 23-46-04 requires EMS organizations requesting state assistance to submit fiscal information to DHHS for use in financial assistance allocations. The Department of Health and Human Services is to determine annual allocations for each medical services funding area based on the department's determination of the minimum annual funding necessary to operate in the funding area.

Rural Ambulance District Levy

Chapter 11-28.3 provides a rural territory may elect to form and maintain a rural ambulance service district upon approval of a majority of electors of the district. The chapter authorizes a levy of up to 15 mills as part of the creation of the district.

County Tax Levy

Section 57-15-50 authorizes a county to levy a tax for EMS subject to majority approval of the electors in the county. A tax levied under this section may not exceed 15 mills.

Testimony Received and Committee Considerations

The committee received the following information from DHHS regarding EMS in the state:

- The current EMS services in the state include 96 basic life support ground ambulance services, 15 advanced life support ground ambulance services, 5 industrial ambulance services, 106 quick response units, and 5 air medical service providers.
- The average ambulance response time in the state is 8 minutes and 36 seconds, with quicker response times in metropolitan areas and slower response times in rural areas.
- Challenges facing ambulance services include workforce shortages and financial sustainability.
- DHHS began a law enforcement behavioral health trial program in March 2022. As of December 31, 2023, the program was serving six state agencies and 27 individuals have received services through the program.
- The following schedule compares licensed EMS personnel in the state in August 2023, August 2022, and April 2020:

	August 2023	August 2022	April 2020
Paramedics	688	648	661
Advanced emergency medical technicians	109	95	97
Emergency medical technicians	1,703	1,818	2,003
Emergency medical responders	1,547	1,743	2,073

The committee received the following information from the North Dakota EMS Association regarding rural EMS services:

- A survey of ambulance services identified major challenges for EMS include staffing shortages, the inability to recruit new members, and training expenses.
- The main sources of revenue for rural ambulance services include service reimbursement, local property taxes, and rural EMS assistance grants.
- The median cost per ambulance call is $1,893.
- Based on the current funding model only 45 percent of ambulance services can generate enough revenue to hire a partially paid crew.
- Rural ambulance services have increased compensation to improve retention.
- Staffing costs account for an average of 57 percent of total expenses of an ambulance operation.
- Approximately 70 percent of rural ambulance operations have at least one full-time person on staff.
- Allowing EMS personnel to participate in the state public safety retirement plan may improve personnel retention.
- Approximately two ambulance services close each biennium.
- The main indicator that an ambulance service is in distress is the failure to respond to requests for service.

The committee received the following information from representatives of the North Dakota University System regarding EMS training programs:

- The duration of an EMS education program is determined by several factors, including national and state standards and the ability for a student to complete lab, clinical, and ride time.

- EMS education program instruction time requirements range from 40 to 48 hours for emergency medical responders, and up to 1,500 to 1,800 hours for paramedics.
- Bismarck State College offers emergency medical technician and paramedic technology programs. The number of annual graduates from each program has ranged from 8 to 24 since 2018.
- Four community colleges in the state participate in the Dakota Nursing Program. Education is provided at the campuses and at satellite locations across the state. The four colleges collaborate on curriculum and graduation requirements.
- North Dakota University System 2-year institutions offer various credit and noncredit emergency medical responder, emergency medical technician, and paramedic programs.
- Coordinating programs among institutions would provide a greater variety of expertise, coordinated curriculum, and reduced administrative burden.

The committee received testimony from the North Dakota Association of Counties regarding public safety answering points:

- EMS in the state are dispatched through 21 primary public safety answering points (PSAPs), 1 secondary PSAP, and 1 military PSAP.
- Some answering points gather data regarding dispatches, including response times and failure to respond to service.
- Answering points are reviewing options to transfer certain calls to the 988 response system.
- There is no requirement for PSAPs to report ambulance response times or failure to respond for service to DHHS.
- Liability protection is needed for 988 and 211 hotline operators, 911 dispatchers, and mobile crisis responders.
- Other states have enacted legislation to provide liability protection for operators, dispatchers, and responders.

The committee reviewed options to allow EMS personnel to participate in the state public safety retirement and received the following information:

- Law enforcement and fire department personnel may enroll in the plan while EMS providers may not.
- There would be no cost to the state to allow EMS providers to enroll in the plan because costs would be paid by participating EMS providers.
- The contribution rate for the public safety retirement plan with prior service is 18.04 percent which consists of a 5.50 percent employee contribution, 11.40 employer contribution, and a 1.14 percent retiree health credit.
- The contribution rate for the public safety retirement plan without prior service is 15.80 percent which consists of a 5.50 percent employee contribution, 9.16 employer contribution, and a 1.14 percent employer contribution relating to the retiree health credit.
- The PERS Board has the authority to adjust the employer contribution rate based on actuarial estimates.

The committee discussed distressed ambulance services and received the following testimony:

- A process is needed to determine when an ambulance service is distressed.
- Clear guidelines should be provided regarding the process to notify an ambulance service that it is not meeting state or federal guidelines.
- Ambulance services should have the ability to respond to service deficiencies before being declared a distressed ambulance service.

The committee also received information regarding:

- EMS training provided for law enforcement at the Highway Patrol Law Enforcement Training Academy. The Law Enforcement Training Academy requires basic law enforcement academy students to be trained in basic first aid and CPR.
- The North Dakota Critical Incident Stress Management program. Critical Incident Stress Management team members provide stress management services for EMS personnel to minimize the harmful effects of stress, particularly in crisis or emergency situations.
- Emergency medical telemedicine can be used to assist EMS crews and hospital emergency rooms.

Committee Discussion

Committee members reviewed a bill draft to create a distressed ambulance program in DHHS. Committee members supported the bill draft and also reviewed other options to enhance EMS in the state. No opposition to the bill draft was noted. The committee also reviewed bill drafts relating to liability protection for 988 and 211 hotline operators and to allow EMS personnel to participate in PERS retirement plans. However, some committee members indicated the drafts needed further refinement and will be sponsored by individual legislators during the 2025 legislative session.

Committee Recommendations

The committee recommends Senate Bill No. 2033 to create a distressed ambulance program in DHHS to administer a process to address ambulance services that are not complying with state or federal law or are likely to fail to respond to requests for service.

STUDY OF BRAIN INJURY SERVICES

The study of whether the services provided in the state relating to the care and treatment of individuals with brain injury are adequate was required to include a review of the state's existing programs to identify potential pathways and treatment options for individuals with brain injury, gap identification with programmatic recommendations identifying potential strategies to address the gaps, potential federal and state funding sources for services, and developing a method to evaluate the efficacy of new programs.

Previous Studies

The 2009-10 interim Long-Term Care Committee studied the impact of individuals with a traumatic brain injury (TBI) on the state's human services system. The committee specifically received information from the National Guard regarding services available to veterans with TBI. Information also was received from the Department of Public Instruction regarding services available to students with TBI.

The 2013-14 interim Human Services Committee conducted a study of the need for a comprehensive system of care for individuals with a brain injury. The committee reviewed options to allow access to Medicaid for individuals with brain injury who are working. The committee also reviewed requirements for providers of employment-related services to register with the Department of Labor and Human Rights.

Statutory Provisions

Definition of Brain Injury

Section 50-06.4-01 provides "brain injury" means damage to the brain or the coverings of the brain which produces an altered mental state and results in a decrease in cognitive, behavioral, emotional, or physical functioning. The term does not include an insult of a degenerative or congenital nature.

Lead Agency to Provide Services

Section 50-06.4-02 provides DHHS "shall act as lead agency in the state for the purpose of coordinating services to individuals with brain injury. At least annually the department shall call a joint meeting of the adjutant general, the department of veterans' affairs, and the superintendent of public instruction to discuss the provision of services to individuals with brain injury. State agencies and political subdivisions shall cooperate with the department to permit the department to efficiently coordinate services to individuals with brain injury while avoiding duplication of services."

Prevention and Identification

Section 50-06.4-05 directs DHHS to "provide outreach services and conduct public awareness efforts regarding the prevention and identification of brain injury."

Services and Support

Section 50-06.4-07 provides DHHS "shall contract with public or private entities for the provision of informal supports to individuals with brain injury. As used in this section, 'informal supports' includes information sharing and referral services, peer mentoring, training, facilitation of support groups, public awareness efforts, and individual and programmatic advocacy efforts."

Section 50-06.4-08 provides DHHS "shall provide or contract for the provision of social and recreational services, including day supports, to individuals with brain injury, if the department determines that available vocational rehabilitative services do not meet the individuals' needs."

Section 50-06.4-09 provides DHHS "shall provide or contract for the provision of increased and specialized vocational rehabilitation and consultation to individuals with brain injury who receive case management for personal care services. Services under this section include extended support for individuals at risk of losing their employment upon exhausting their vocational services."

Brain Injury Advisory Council

Membership

Section 50-06.4-10, which was most recently amended by House Bill No. 1418 (2023), establishes the membership of the Brain Injury Advisory Council. The section provides:

"1. The governor is to appoint at least eight, but no more than thirteen, voting members which include:

   a. At least two brain injury survivors, nominated by the council;

   b. At least two family members of a brain injury survivor, nominated by the council;

   c. At least one service provider who provides services to brain injury survivors, nominated by the council, who may be a brain injury survivor or a family member of a brain injury survivor;

   d. An individual representing the Indian affairs commission, nominated by the Indian affairs commission, who may be a brain injury survivor or a family member of a brain injury survivor; and

   e. At least one individual representing a religious, charitable, fraternal, civic, educational, legal, veteran, welfare, or professional group or organization, who may be a brain injury survivor or a family member of a brain injury survivor.

2. The speaker of the house of representatives shall appoint one member of the house of representatives and the president pro tempore of the senate shall appoint one member of the senate to serve as members of the council.

3. Each of the following entities shall appoint a representative to serve as a nonvoting member of the council who serves at the pleasure of the appointing entity:

   a. The protection and advocacy project, one representative;

   b. Department, one individual representing injury prevention, one representative representing emergency medical services and trauma, one individual representing behavioral health, one individual representing Medicaid, one individual representing the adult and aging population, and one individual representing vocational rehabilitation; and

   c. Department of public instruction, one representative.

4. The governor may appoint an individual representing stroke health and an individual representing a brain injury advocacy organization to serve as nonvoting members of the council who serve at the pleasure of the governor."

Duties

The Brain Injury Advisory Council is to advise DHHS and participate in activities to improve the quality of life for an individual with brain injury and the individual's family through brain injury awareness, prevention, research, education, collaboration, support services, and advocacy. DHHS is to contract with a private, nonprofit agency that does not provide brain injury services, to facilitate and provide support services to the council.

Testimony Received and Committee Considerations

Members of the North Dakota Brain Injury Network provided the following information:

- Brain injuries can be caused by external events including a fall or vehicle accident or by an internal event such as a stroke or aneurysm.
- Each year an estimated 5,500 individuals in the state sustain traumatic brain injury.
- More than 13,000 individuals in the state have a long-term disability from a traumatic brain injury.

Members of the North Dakota Brain Injury Network provided updates regarding a study of brain injury services being conducted by the National Association of State Head Injury Administrators. They reported the following findings:

Area	Findings
Care and treatment	• Gaps exist in the continuum of care from acute care to community-based services and within other settings such as substance use programs and criminal legal systems. • While there is infrastructure for brain injury resource facilitation, expansion of this support is needed. • Specifically identified underserved areas include the American Indian population, those engaged in the criminal legal system, and individuals from rural areas of the state.
Providers	• North Dakota has a lack of brain injury informed providers as well as a lack of providers.
Education	• There is a lack of awareness of brain injury and eligibility requirements for special education services. • Supports are lacking for people with brain injury transitioning from high school to work or a different educational setting.

Area	Findings
Behavioral health	• Options for behavioral health supports are lacking for people with brain injury. • Housing issues exist, including availability of and affordability of housing.
Advocacy	• Gaps exist in self-advocacy and caregiver advocacy skill training.

Committee Recommendations

The committee makes no recommendations regarding the study of brain injury services.

FENTANYL AWARENESS CAMPAIGN REPORT

Section 19-03.1-23.5 provides reporting requirements related to fentanyl awareness. The section requires DHHS to provide a report to the Legislative Management and the Governor by November 1 of each year summarizing the number of deaths that occurred in the state caused by or related to fentanyl consumption during the preceding calendar year, including the county in which the deaths occurred and the age and gender of the deceased individuals. The department also is to make the data reported available to the public by:

- Making the information easily accessible on the department's government website;
- Publishing easily comprehensible printed materials on fentanyl awareness, information, and resources;
- Placing visible billboards in high-traffic areas to inform the public of the dangers of fentanyl; and
- Developing a media and social media campaign to expand statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic occurring within the state.

Opioid Settlement Fund

The opioid settlement fund was created in House Bill No. 1447 (2023). Money recovered by the state as a result of opioid litigation must be deposited in the fund. The State Investment Board is to invest money in the fund, and income earned on the money in the fund must be credited to the fund. Money in the fund may be used in compliance with any court-ordered restrictions and as authorized by legislative appropriation; however, legislative appropriations from the fund may not exceed $8 million in a biennium.

Opioid Settlement Advisory Committee

The Opioid Settlement Advisory Committee, which also was created in House Bill No. 1447 (2023), is composed of the following members:

- One member of the North Dakota Association of Counties appointed by the Chairman of the Legislative Management, who shall serve a term of 2 years.
- One member of the North Dakota League of Cities appointed by the Chairman of the Legislative Management, who shall serve a term of 2 years.
- One member of the North Dakota State Association of City and County Health Officials appointed by the Chairman of the Legislative Management, who shall serve a term of 2 years.
- One member who represents the Highway Patrol appointed by the Highway Patrol Superintendent, who shall serve a term of 2 years.
- The Executive Director of the Department of Health and Human Services Division of Behavioral Health.
- The managing Director of the Office of Recovery Reinvented.
- One member appointed by the Governor who shall serve as a nonvoting member and as the presiding officer of the committee, who shall serve a term of 2 years.

The committee is to make recommendations to DHHS regarding the spending of legislative appropriations for remediation or abatement of the state opioid crisis. In developing the recommendations, the committee is to receive input from political subdivisions and the public.

Report

Representatives of DHHS reported:

- The drug overdose death rate has increased from 0.98 per 10,000 individuals in 2019 to 1.44 per 10,000 individuals in 2022.
- On average, two residents of the state die each week from an unintentional drug overdose.
- Most individuals who have an unintentional overdose are under the age of 39.

- The Opioid Settlement Advisory Committee has hosted listening sessions to gather public input regarding efforts to reduce opioid misuse.
- There are four licensed opioid treatment programs in the state with 1,125 active participants.
- From October 2023 through July 2024 a total of 25,800 naloxone kits were distributed with 707 known successful overdose reversals using naloxone.

HIGHER EDUCATION COMMITTEE

The committee was delegated by the Legislative Management the responsibility to:

- Study funding for dual-credit courses, pursuant to Section 43 of House Bill No. 1003 (2023). The study must include a review of all funding sources relating to dual-credit courses in the state, including tuition and fees, the higher education funding formula, elementary and secondary education integrated formula payments, institution scholarships, state scholarships, and the Bank of North Dakota. The study also must include a review of funding for dual-credit courses in other states.
- Receive an annual comprehensive report from the State Board of Higher Education (SBHE) regarding grants awarded from the economic diversification research fund, pursuant to North Dakota Century Code Section 6-09-53. The report must include information on how the research efforts by each institution align with the state's priorities, how the institutions collaborate when appropriate, and how the outcomes of the research meet established performance expectations. The State Board of Higher Education is required to develop reporting requirements for the institutions under the control of the board, including criteria for assessing performance outcomes related to grants awarded from the economic diversification research fund.
- Receive a report from SBHE by September 1 of each even-numbered year regarding the skilled workforce student loan repayment program and the skilled workforce scholarship program, pursuant to Sections 15-10-38.1 and 15-10-38.2.
- Receive an annual report from SBHE regarding the number of North Dakota scholarships, academic scholarships, and career and technical education (CTE) scholarships provided and demographic information pertaining to the recipients, pursuant to Section 15-10-59.
- Receive a report from the State Commissioner of Higher Education on SBHE policies regarding communications between board members and board member access to current and historic board information, pursuant to Section 15-10-66.
- Receive an annual report from the State Commissioner of Higher Education regarding trends in higher education, including state and regional student enrollment, North Dakota University System institution reserves, state and regional tuition rates, state and regional student financial assistance, and the University System's response to the trends and changes, including new or expanded educational programs, closed programs, and future budget requests, pursuant to Section 15-10-71.
- Receive a biennial program report from SBHE by September 1 of each even-numbered year regarding awards under the workforce education innovation program, pursuant to Section 15-10-75. The report must include information per educational institution regarding the number, amount, and type of awards; the name of each educational program created, enhanced, or promoted; the amount and percentage of funds used for leadership and coordination costs; and detailed expense reports, including the type of equipment and technology purchased and the number of instructors hired or trained.
- Receive a biennial report and recommendations 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 biennial report from SBHE 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, pursuant to Section 15-54.1-02.
- Receive a report from SBHE, pursuant to Section 38 of House Bill No. 1003 regarding the transfer of appropriation authority from the operations to the capital assets line items within subdivisions 2 through 14 of Section 1 of the bill.
- Receive a 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, pursuant to Section 15-70-05.
- Receive a report from the National Guard before June 1, 2024, on the award of out-of-state postsecondary tuition grants to qualifying members of the National Guard, including the number of grants awarded for use at out-of-state institutions and grants awarded for online or remote coursework, pursuant to Section 37-07.2-01.1.

Committee members were Representatives Mark Sanford (Chairman), Landon Bahl, Larry Bellew, Claire Cory, Jay Fisher, Karla Rose Hanson, Matt Heilman, Dennis Johnson, Bob Martinson, Mike Nathe, David Richter, Mike Schatz, Cynthia Schreiber-Beck, and Steve Swiontek and Senators Sean Cleary, Robert Erbele, Karen K. Krebsbach, Curt Kreun, Jonathan Sickler, and Ronald Sorvaag.

Representative Bellew was a member of the committee until he resigned on December 31, 2023.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

BACKGROUND

The Legislative Management has established a Higher Education Committee each interim since 1999. These committees have reviewed higher education funding, expectations of the 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 2023-24 interim Higher Education Committee toured Dickinson State University (DSU), Bismarck State College (BSC), Valley City State University (VCSU), Williston State College (WSC), Minot State University (MiSU), the North Dakota State College of Science (NDSCS), North Dakota State University (NDSU), Lake Region State College (LRSC), and UND.

North Dakota 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 received authority to transition into a polytechnic institution that offers baccalaureate degrees in technical fields and DSU 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.

The University System reported fall 2023 total degree credit headcount enrollment of 44,227 students and a total degree credit full-time equivalent (FTE) enrollment of 33,422 students, compared to fall 2022 headcount enrollment of 43,545 students and FTE enrollment of 33,164 students.

Legislative Appropriations

Legislative appropriations for the 2023-25 biennium for higher education institutions, Forest Service, and the University System office total $3,318,989,269, of which $868,522,227 is from the general fund. Of the total general fund appropriation amount, $56,839,701 was considered one-time funding. The following is a history of legislative appropriations for higher education since the 2013-15 biennium:

Biennium	General Fund	Special Funds	Total
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[1]	$2,059,950,275	$2,739,388,905
2019-21	$660,517,805	$2,400,897,468	$3,061,415,273
2021-23	$703,453,294	$2,117,621,160	$2,821,074,454
2023-25	$868,522,227	$2,450,467,042	$3,318,989,269

NOTE: The special funds amounts for the 2017-19 through 2023-25 bienniums reflect the appropriation of tuition and local funds.

[1]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 2013-15 biennium:

General Fund Appropriations			
Biennium	Ongoing Appropriations	One-Time Appropriations	Total
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[1]	$679,438,630
2019-21	$648,667,805	$11,850,000	$660,517,805
2021-23	$686,328,526	$17,124,768	$703,453,294
2023-25	$811,682,526	$56,839,701	$868,522,227

[1]The 2017-19 biennium one-time amount includes $53.6 million of supplemental funding appropriated by the 2019 Legislative Assembly.

DUAL-CREDIT FUNDING STUDY

The committee studied funding for dual-credit courses, including:

- A review of all funding sources relating to dual-credit courses in the state, including tuition and fees, the higher education funding formula, elementary and secondary education integrated formula payments, institution scholarships, state scholarships, and the Bank of North Dakota; and
- A review of funding for dual-credit courses in other states.

A dual-credit course is a one-semester college course taken through a 2- or 4-year institution of higher education for which the student earns one-half unit of high school credit. North Dakota's dual-credit program allows students in grades 10 through 12 to take college courses and receive college credit, which also may be used to meet high school graduation requirements. Tuition, fees, books, and other costs are the student's responsibility. Classes are taught by approved instructors, either face-to-face in the classroom, online, through the Center for Distance Education, or through an Interactive Video Network. The Higher Learning Commission requires teachers of dual-credit courses to have a master's degree or higher in the discipline or subfield in which they will be teaching. If the individual holds a master's degree or higher in a discipline or subfield other than that in which they will be teaching, a minimum of 18 graduate credit-hours must be completed in the academic field in which they will be teaching.

The committee was informed 5,240 headcount high school students were enrolled in college coursework for the fall 2023 semester, including dual-credit and early entry courses. Representatives of the University System reported the enrollment of high school students in college coursework has increased from fewer than 3,000 headcount high school students for the fall 2015 semester.

Tuition and Fees

Representatives of the University System reported students enrolled in dual-credit courses are charged a standardized, systemwide tuition and fee rate, regardless of the University System institution from which the student is receiving college credit. The University System reported a dual-credit student is charged a subsidized rate of $89.43 per credit if the course is taught by an instructor paid by the high school, or an unsubsidized rate of $153.96 per credit if the course is taught by an instructor paid by the University System institution. The tuition and fees are paid by the student to the University System institution.

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 funding for an institution.

The University System institutions receive funding through the higher education funding formula for student credit-hours completed by dual-credit students at the same level as the institution would receive for credit-hours completed by traditional students. Representatives of the University System reported 66,137 student credit-hours completed by high school students from the 2019-21 biennium were included in the funding formula calculation for the 2023-25 biennium appropriation. These credit hours totaled approximately 3.4 percent of total credit hours completed during the 2019-21 biennium and resulted in $9.1 million, or 1.4 percent, of funding determined under the formula.

Elementary and Secondary Education Integrated Formula Payments

In 2013, the Legislative Assembly approved the implementation of an integrated formula payment to provide school funding. The legislative appropriation for the state school aid program integrates property tax relief in the K-12 state school aid funding formula. The formula provides the state will determine an adequate base level of support necessary to educate students by applying an integrated payment rate to the weighted student units. For the 2023-25 biennium, the integrated payment rates provide $10,646 during the 1st year of the biennium and $11,072 during the 2nd year of the biennium. This base level of support will be provided through a combination of local tax sources, local revenue, and state integrated formula payments. The local funding requirement is set at 60 mills and a percentage of identified local in lieu of property tax sources and local revenues. Base level support not provided by local sources is provided by the state through the integrated formula payment. For the 2023-25 biennium, the Legislative Assembly provided an appropriation of $2.3 billion, of which $1.6 billion is from the general fund, $157 million is from the foundation aid stabilization fund, $510.9 million is from the state tuition fund, and $14 million is from the strategic investment and improvements fund (SIIF), for state school aid for integrated formula payments.

The committee was informed the K-12 state school aid funding formula provides the same level of support for a student enrolled in dual-credit courses as it does for a student not enrolled in dual-credit courses.

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. Under this program, a student is eligible for $250 for each successfully completed dual-credit course, up to a maximum of $750. The Legislative Assembly, in House Bill No. 1003 (2023) appropriated $1.5 million from Bank of North Dakota profits to SBHE for the dual-credit tuition scholarships, the same amount as the 2021-23 biennium.

Representatives of the University System reported the scholarship program provides an incentive at the collegiate level for taking dual-credit courses in high school. The committee was informed students enrolled at any postsecondary institution in North Dakota, including public, private, tribal, or proprietary institutions, may be eligible for a dual-credit tuition scholarship if the student completed a dual-credit course and graduated from high school.

Bank of North Dakota

The Bank of North Dakota provides low-income dual-credit assistance to eligible students, including 459 students enrolled in 798 classes in 2021. To be eligible, a student must be a sophomore, junior, or senior in high school in the state, qualify for free or reduced-price lunch, and submit an application to the Bank during the course enrollment process. Costs covered by the Bank under this program include the college application fee, tuition and fees, and books for up to two courses per year.

Other States

Representatives of the University System provided the following information regarding funding for dual-credit courses in other states, including Minnesota, Montana, and South Dakota:

- Minnesota

  High school students may enroll in dual-credit and college-credit-only courses at no cost to the students.

  K-12 schools receive state funds to contract with accredited postsecondary institutions.

  33,159 students participated in dual-credit courses in 2021.

  $4 million was appropriated in 2021, providing $50.48 per student per course for the postsecondary institutions.

- Montana

  2-year programs and community colleges are authorized to provide dual-credit opportunities.

  Each of the 14, 2-year schools has a specific service region in the state.

  High school students enrolled in dual-credit courses delivered in the high school classroom may complete two courses at no charge and are charged $55 per credit for any additional courses.

  High school students enrolled in dual-credit courses delivered on the college campus or online may complete two courses at no charge and are charged 50 percent of the regular tuition rate for any additional courses.

- South Dakota

  Dual-credit courses are limited to high school juniors and seniors.

  High school students enrolled in dual-credit courses taught by college faculty are charged one-third of the regular tuition rate ($50.84 per credit) and the state reimburses the higher education institution the remaining two-thirds of the tuition rate.

  High school students enrolled in dual-credit courses taught by a qualified high school teacher are charged $40 per credit and no additional state funds are directed to the higher education institution.

Committee Conclusion

The committee made no recommendation regarding funding for dual-credit courses.

ECONOMIC DIVERSIFICATION RESEARCH FUND

The Legislative Assembly approved Section 16 of House Bill No. 1003 (2023) to provide for an economic diversification research fund. Section 10 of the bill provides for a transfer of $5.5 million from SIIF to the economic diversification research fund. The Bank of North Dakota may spend from the fund to provide grants to institutions under the control of SBHE for economic diversification research. The sum of $5 million must be awarded to NDSU and UND with equal amounts awarded to each institution. The remaining funding must be awarded to the other institutions under the control of SBHE, as determined by the board.

Section 6-09-53 requires SBHE to provide an annual comprehensive report regarding grants awarded from the economic diversification research fund. The report must include information on how the research efforts by each institution align with the state's priorities, how the institutions collaborate when appropriate, and how the outcomes of the research meet established performance expectations. The board is required to develop reporting requirements for the institutions under the control of the board, including criteria for assessing performance outcomes related to grants awarded from the economic diversification research fund. The Higher Education Committee was assigned to receive this report.

Report

The University System office reported the SBHE developed guidelines for requesting funding and reporting requirements on an annual basis. Williston State College and Dakota College at Bottineau (DCB) elected to not participate in fiscal year 2024 and the allocation for those institutions will be available during the fiscal year 2025 awarding period. Funding for fiscal year 2024 was distributed to the remaining institutions as follows in December 2023:

Institution	Economic Diversification Research Grant
Bismarck State College	$26,250
Lake Region State College	20,000
University of North Dakota	1,250,000
North Dakota State University	1,250,000
North Dakota State College of Science	26,250
Dickinson State University	26,250
Mayville State University	32,500
Minot State University	40,000
Valley City State University	26,810
Total	$2,698,060

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 provided for the transfer of up to $4.5 million from Bank of North Dakota profits to the special funds created for the career builders programs. The 2023 Legislative Assembly transferred $6.8 million from Bank profits to the special funds created for the career builders programs.

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.

Report

Representatives of the University System reported:

- The career builders scholarship and loan repayment programs target high-need and emerging occupations identified by the North Dakota Workforce Development Council.
- Career builders scholarships were awarded to 374 applicants, with an average award of $9,144.
- A total of $2.8 million in scholarships has been disbursed through the program as of August 2024.
- Matching funds for the scholarships were received from 133 donors.
- 243 scholarship recipients graduated and are working in the state, 89 are active in the program, and 42 defaulted.
- Career builders loan repayment was awarded to 183 applicants, with an average award of $13,471.
- A total of $1.2 million in loan repayments has been disbursed through the program as of August 2024.
- Matching funds for the loan repayments were received from 48 donors.
- 138 loan repayment recipients remain employed, 18 are paid in full, and 27 did not continue employment.

Representatives of the University System suggested the Legislative Assembly consider expanding program eligibility to residents of neighboring states who work in North Dakota.

Committee Consideration

The committee considered but did not recommend a bill draft to amend statutory provisions relating to the career builders scholarship and loan repayment programs to expand eligibility to residents of neighboring states who work in North Dakota and to preclude funds from being awarded to a relative of the individual who provided matching funds.

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. Senate Bill No. 2289 (2021) created a new scholarship titled the North Dakota scholarship and provided for the transition of academic and CTE scholarship recipients to the new North Dakota scholarship program. 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. A student may continue to receive a scholarship if the student is enrolled in a graduate program and has not received the lifetime maximum amount of scholarship awards.

The committee reviewed the following summary of funding for the North Dakota scholarship and the academic and CTE scholarship programs:

Biennium	General Fund
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
2023-25	$17,216,749

Section 15-10-59 requires SBHE to provide an annual report to the Legislative Management regarding the number of North Dakota scholarships and academic and CTE scholarships awarded and demographic information pertaining to the recipients.

Report

The University System reported that of the 8,028 high school seniors in the state who graduated in 2024, a total of 1,785, or 22 percent, qualified to receive an academic or CTE scholarship. Since the program began in 2010, there have been 119,722 high school graduates in the state and 25,257, or 21 percent, of those graduates were eligible to receive an academic or CTE scholarship. Of the 25,257 eligible students, 137 qualified for a North Dakota scholarship, 13,575 students qualified for an academic scholarship, and 11,545 students qualified for a CTE scholarship. The University System reported a total of 5,051 students received an academic or CTE scholarship during the fall 2023 semester.

BOARD MEMBER ACCESS TO HISTORIC INFORMATION

The Legislative Assembly approved Senate Bill No. 2343 (2023) to require SBHE to establish a policy ensuring transparent communication between members of the board on all topics relating to the specific powers and duties of the board. Section 3 of the bill provides the University System and SBHE may not deny a member of the governing body access to a record that is closed or confidential, as defined in Chapter 44-04, including a meeting record, whether written or recorded, unless otherwise prohibited by law. Section 15-10-66 requires the State Commissioner of Higher Education to report to the Legislative Management on SBHE policies regarding communications between board members and board member access to current and historic board information.

Report

The University System reported SBHE amended its policy 100.6, regarding the authority and responsibilities of the board, chancellor, and institution presidents, to ensure board member access to current and historic board information and communications.

HIGHER EDUCATION TRENDS

Section 15-10-71 requires the State Commissioner of Higher Education to provide an annual report to the Legislative Management regarding trends in higher education, including state and regional student enrollment, University System institution reserves, state and regional tuition rates, state and regional student financial assistance, and the University System's response to the trends and changes, including new or expanded educational programs, closed programs, and future budget requests.

Report

Representatives of the University System reported higher education trends to the committee on August 3, 2023, and August 23, 2024. The reports indicated:

- National higher education enrollment peaked in 2011 with 20.9 million students and decreased to 18.6 million students in 2021.
- Undesignated institution reserves ranged from $502,148 at DCB to $12,029,592 at NDSU.
- Minnesota and South Dakota provided funding to freeze tuition rates for the 2024-25 academic year.
- The University System added 47 undergraduate certificates, 12 associate degrees, 7 bachelor's degrees, 12 graduate certificates, and 5 master's degrees during the 2023-24 academic year.
- The University System terminated 3 undergraduate certificates, 3 associate degrees, 1 bachelor's degree, 3 graduate certificates, 3 master's degrees, and 1 doctoral degree during the 2023-24 academic year.

WORKFORCE EDUCATION INNOVATION PROGRAM

The Legislative Assembly approved House Bill No. 1241 (2023) to establish the workforce education innovation program to create or enhance educational programs that address the workforce needs of North Dakota business and industry. Section 15-10-75 provides for the Legislative Management to receive a biennial program report from SBHE by September 1 of each even-numbered year regarding awards under the workforce education innovation program. The report must include information by institution regarding the number, amount, and type of awards; the name of each educational program created, enhanced, or promoted; the amount and percentage of funds used for leadership and coordination costs; and detailed expense reports, including the type of equipment and technology purchased and the number of instructors hired or trained. The Higher Education Committee was assigned to receive this report.

House Bill No. 1241 (2023), as introduced, included an appropriation of $24 million from the general fund for workforce education innovation grants; however, this appropriation was removed by the House before final passage of the bill. House Bill No. 1003 (2023), as approved by the House and Senate, included an appropriation of $10 million from the general fund for workforce education grants; however, this funding was removed by the Conference Committee before final passage of the bill. Therefore, no funding was appropriated for this program for the 2023-25 biennium.

Report

Representatives of the University System reported the University System would support proposals to provide funding for the workforce education innovation program for the 2025-27 biennium.

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 UNDSMHS 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 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 UNDSMHS Advisory Council regarding the strategic plan, programs, and facilities of the school. Representatives of the council reported UNDSMHS has doubled its research grants and contracts over the past decade, with funding primarily from federal funds. The report noted the availability of laboratory space is becoming an issue due to the increase in research. The council reported the medical student class size will increase by 29 percent by the 2026-27 academic year as part of the health care workforce initiative to ensure more health care provider graduates are available for the state.

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:

	Tier II		Tier III	
Institution	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
Total	$10,000,000	$10,000,000	$9,000,000	$18,000,000

The funding in Tier II was appropriated directly to the institutions and the funding in Tier III was appropriated to the University System office with a directive to allocate the money as identified in the schedule above as matching funds are secured. An additional $11.1 million from the general fund, which must be matched by each institution with $1 of matching funds from operations or other sources for each $1 of appropriated extraordinary repairs funding used for a project, excluding NDSU and UND, which must provide $2 of matching funds from operations or other sources for each $1 of appropriated 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 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.

The Legislative Assembly continued the capital building fund program for the 2023-25 biennium in Section 11 of House Bill No. 1003 (2023), including a transfer of $24 million from SIIF to the University System capital building fund. The Legislative Assembly also provided for certain institutions to use moneys from the capital building fund without securing any matching funds for projects, including LRSC ($1,000,000), WSC ($637,947), Mayville State University (MaSU) ($2,330,087), VCSU ($1,025,082), and DCB ($1,000,000). The transfer of $24 million from SIIF was allocated to the institutions as follows:

Institution	Tier II		Tier III	
	SIIF	Institution Match ($1 to $1)	SIIF	Institution Match ($2 to $1)
Bismarck State College	$638,540	$638,540	$500,000	$1,000,000
Dakota College at Bottineau	159,096	159,096	500,000	1,000,000
Lake Region State College	266,062	266,062	500,000	1,000,000
North Dakota State College of Science	751,042	751,042	500,000	1,000,000
Williston State College	206,920	206,920	500,000	1,000,000
Dickinson State University	403,293	403,293	500,000	1,000,000
Mayville State University	360,044	360,044	500,000	1,000,000
Minot State University	859,202	859,202	500,000	1,000,000
Valley City State University	463,705	463,705	500,000	1,000,000
North Dakota State University	4,349,394	4,349,394	2,250,000	4,500,000
University of North Dakota	6,542,702	6,542,702	2,250,000	4,500,000
Total	$15,000,000	$15,000,000	$9,000,000	$18,000,000

Report

Representatives of the University System reported state funds continued from prior bienniums in the University System capital building fund were anticipated to be allocated during the 2023-25 biennium. Representatives of the University System attributed the use of funding continued from prior bienniums to a one-time exemption approved by the Legislative Assembly to allow certain institutions to use money from the capital building fund without securing any matching funds for projects. The exemption allowed:

- LRSC to allocate $1,000,000 to replace a wind turbine gearbox and for parking lot repairs.
- WSC to allocate $637,947 for a medical health care building.
- MaSU to allocate $2,210,102 for a renovation of Old Main.
- VCSU to allocate $1,025,082 for a renovation of McCarthy Hall.
- DCB to allocate $1,000,000 for a renovation of Old Main.

The University System reported major uses of money in the University System capital building fund have included:

- The construction of a polytechnic building at BSC.
- The construction of the Hofstad Ag Center and replacement of a wind turbine gearbox at LRSC.
- The remodel of Stevens Hall and construction of a medical health care building at WSC.
- The renovation of the Chester Fritz Library at UND.
- Residence hall repairs at NDSU.
- The remodel of the Gene Haas Center for Advanced Manufacturing at NDSCS.
- The renovation of Old Main at MaSU.
- Student Center repairs at MiSU.
- The renovation of McCarthy Hall at VCSU.
- The renovation of Old Main at DCB.
- Various deferred maintenance and extraordinary repairs projects, including mechanical and electrical upgrades, building exterior repairs, paving and area lighting, and utilities and infrastructure repairs.

Committee members suggested:

- The University System capital building fund could be adjusted to eliminate the legislative appropriation process for individual capital projects.
- The University System capital building fund could provide a consistent source of funding for future capital projects, allowing institutions to plan and prioritize the allocation of funding for projects.

Committee Consideration and Recommendation

The committee recommends the Legislative Assembly consider amending the University System capital building fund program to reduce Tier III matching requirements and to limit Tier III funds to legislatively approved capital projects.

The committee considered but did not recommend a bill draft to restrict the use of money in the University System capital building fund for extraordinary repairs and deferred maintenance projects, including bond payments for these projects, for only academic facilities.

Committee members expressed concern regarding:

- The use of money in the University System capital building fund for bond payments.
- Potential conflicting appropriations and statutory amendments that may occur during the legislative session if the bill draft is recommended and not referred to the Appropriations Committees.

TRANSFERS BETWEEN LINE ITEMS

The Legislative Assembly approved Section 38 of House Bill No. 1003 (2023) to allow for the transfer of appropriation authority from the operations line item to the capital assets line item of higher education institutions and the Forest Service. The State Board of Higher Education is required to report to the Legislative Management regarding any line item transfers made pursuant to the section.

Report

Representatives of the University System reported VCSU transferred $408,319 of appropriation authority from the operations line item to the capital assets line item to provide matching funds for extraordinary repairs, pursuant to Section 38 of House Bill No. 1003. The transfer was made to provide matching funds required under Section 4 the bill, which requires institutions to provide $1 of matching funds from operations or other sources for each $1 of appropriated extraordinary repairs funding used for a project, excluding NDSU and UND, which must provide $2 of matching funds from operations or other sources for each $1 of appropriated extraordinary repairs funding used for a project.

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.

Each tribal college receiving a grant under Chapter 15-70 is required to submit a report to the Legislative Council detailing the expenditures of the grant funds received by the institution. Additionally, each college must 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
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		
2023-25	$1,400,000		

Report

Representatives of the University System provided a report to the committee regarding the allocation of tribal college assistance grants. The University System reported $7,136 of grant funding was awarded per FTE nonbeneficiary student during the 2023-24 academic year. The committee reviewed the following schedule detailing the allocation of grant funding during the 2023-24 academic year:

Tribal College Assistance Grants - 2023-24 Academic Year			
Institution	Headcount of Nonbeneficiary Students	FTE Enrollment of Nonbeneficiary Students	Grant Funds Provided
Cankdeska Cikana Community College	47	35.3	$251,886
Fort Berthold Community College	27	14.4	102,752
Sitting Bull College	16	12.4	88,481
Turtle Mountain Community College	21	15.4	109,888
United Tribes Technical College	24	20.6	146,993
Total	135	98.1	$700,000

NATIONAL GUARD TUITION GRANTS

Funding included in the tuition, recruiting, and retention line item in the Adjutant General's budget provides the resources required to offer up to 100 percent tuition reimbursement for qualified National Guard members and to provide a $500 stipend to current members of the National Guard who provide a lead on a recruit that results in an enlistment. Prior to 2023, only members enrolled in a North Dakota institution of higher education were eligible for tuition reimbursement.

The Legislative Assembly approved Senate Bill No. 2094 (2023) to expand eligibility to provide for a member of the National Guard who enrolls in a higher education institution which is located outside the state to receive a grant in an amount not to exceed 100 percent of the cost of tuition and fees for similar courses and credit hours at a University System institution. Section 37-07.2-01.1 requires the Adjutant General to report to the Legislative Management regarding the tuition grant usage, including the number of grants awarded for enrollment at out-of-state institutions and grants awarded for online or remote coursework.

The table below details legislative appropriations for tuition, recruiting, and retention since the 2013-15 biennium.

Biennium	General Fund
2013-15 biennium	$2,517,500
2015-17 biennium	$2,517,500
2017-19 biennium	$2,617,500
2019-21 biennium	$4,782,072
2021-23 biennium	$3,042,235
2023-25 biennium	$3,362,235

Report

The Adjutant General provided a report regarding the tuition assistance program to the Higher Education Committee on April 3, 2024. The Adjutant General reported 17 fall 2023 semester applications and 17 spring 2024 semester applications for out-of-state tuition assistance, totaling approximately $30,000 per semester.

OTHER COMMITTEE WORK

The committee received information regarding the higher education funding formula and other student financial assistance programs administered by the University System office.

Higher Education Funding Formula

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 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		
	2019-21	2021-23	2023-25
North Dakota State University, University of North Dakota	$60.87	$61.81	$73.15
Dickinson State University, Mayville State University, Minot State University, Valley City State University	$90.98	$92.60	$103.76
Bismarck State College, Dakota College at Bottineau, Lake Region State College, North Dakota State College of Science, Williston State College	$97.06	$98.84	$110.38

Representatives of SBHE recommended the Legislative Assembly consider:

- Addressing equity concerns due to an equalization function in the formula that results in three base rate tiers.
- Addressing unintended reductions in the formula for growing institutions impacted by the credit completion factor.
- Strategically aligning credit weightings with the highest demand degrees.
- Evolving the formula to incentivize private-public partnerships and to reward institutions that educate students who remain in the state after graduation.

Committee Recommendation

The committee recommends Senate Bill No. 2034 to:

- Amend the higher education funding formula to ensure institutions with increasing enrollment do not receive reduced funding due to reductions in the credit completion factor; and
- Provide legislative intent that wind energy technology and law enforcement credits be weighted under the CTE instructional program classification factor in the higher education funding formula.

Student Financial Assistance Grants

The Legislative Assembly provided $29,917,306 from the general fund for student financial assistance grants for the 2023-25 biennium. The maximum grant award amount under the program is $1,375 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
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
2023-25	$2,750	$29,917,306		$29,917,306

The committee received information regarding the Minnesota North State Promise Program, a new program which pays the cost of tuition and fees for Minnesota residents who have not earned a bachelor's degree and have a family adjusted gross income below $80,000. Representatives of the University System reported the Legislative Assembly could consider expanding the student financial assistance grants program to provide a similar scholarship for North Dakota residents. Committee members suggested the impact on enrollment for the fall 2024 semester be considered before making any changes to financial assistance provided by the state. Representatives of the University System reported the preliminary enrollment numbers for the fall 2024 semester were mostly positive compared to the fall 2023 semester.

Committee Consideration

The committee considered but did not recommend a bill draft to expand the student financial assistance grant program to provide scholarships to students with family incomes less than $80,000 to cover the full cost of tuition when combined with the student's base student financial assistance grant and any federal Pell grant award.

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
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
2023-25	$1,807,115

Native American Scholarship Program

The Legislative Assembly provided $1 million from the general fund for Native American scholarships. The committee reviewed the following summary of funding for the Native American scholarship program:

Biennium	General Fund
2013-15	$649,267
2015-17	$649,267
2017-19	$555,323
2019-21	$555,323
2021-23	$555,323
2023-25	$1,000,000

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 committee reviewed the following summary of funding for the professional student exchange program:

Biennium	General Fund	Student Loan Trust Fund	Total
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
2023-25	$3,699,342		$3,699,342

Higher Education Challenge Grant Program

The committee received information regarding the higher education challenge grant program. The program is used to provide grants to University System institutions to match private donations. The 2023 Legislative Assembly provided $20 million from the general fund for higher education challenge grants, $8.85 million more than the 2021-23 biennium appropriation of $11.15 million. The 2023 Legislative Assembly made statutory changes to allow the NDSU Agricultural Experiment Station to participate in the program. 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
2023-25	$20,000,000		$20,000,000

Of the funding appropriated, $2.7 million each was designated to be available to each UND and NDSU; $2.2 million was designated to be available to UNDSMHS and to the NDSU Agricultural Experiment Station; $1.7 million each was designated to be available to BSC, MiSU, and NDSCS; $1.1 million each was designated to be available to DSU, MaSU, and VCSU; and $600,000 each was designated to be available to DCB, LRSC, and WSC. The University System reported of the $20 million available for higher education challenge grants, approximately $16.8 million had been awarded through April 2024. The University System reported approximately 64 percent of all funding awarded to campuses since the inception of the higher education challenge grant program has been for student scholarships.

Committee members suggested the challenge grant program could be adjusted or expanded to work in conjunction with the career builders scholarship program through the provision of nonendowed scholarships. Other committee members expressed concerns about changing a program that is working well.

Committee Recommendation

The committee recommends the Legislative Assembly consider expanding the challenge grant program to include funding specifically for nonendowed scholarships.

HUMAN SERVICES COMMITTEE

The Human Services Committee was assigned the following studies:

- Section 1 of House Bill No. 1026 (2023) directed a study of the implementation of the recommendations of the 2018 North Dakota behavioral health system study conducted by the Human Services Research Institute (HSRI) and the 2022 acute psychiatric and residential care needs study conducted by Renee Schulte Consulting, LLC.
- Section 51 of Senate Bill No. 2012 (2023) directed a study of early child care programs and child care services to identify major needs and systemic approaches to stabilize child care infrastructure.
- Section 54 of Senate Bill No. 2012 (2023) directed a study of payment rates for intermediate care facilities, including options to increase the rates.
- Section 2 of Senate Bill No. 2155 (2023) directed a study of federally qualified health care centers (FQHC).
- House Concurrent Resolution No. 3017 (2023) directed a study of the increasing need for inpatient mental health care for children and whether there are adequate home- and community-based care and outpatient services for the number of children and the location of need.

The Legislative Management assigned the committee the responsibility to:

- Receive an annual report from the Department of Health and Human Services (DHHS) regarding the progress of the pay for success program developed by the department to improve educational, social, or emotional achievements of at-risk children, improve the health of children, and increase participation in the workforce by individuals who qualify for governmental assistance (North Dakota Century Code Section 50-06-47).
- Receive a report from DHHS during the 2023-24 interim regarding the status of early childhood programs managed by the department (Section 4 House Bill No. 1540 (2023) and Section 56 of Senate Bill No. 2012 (2023)).
- Receive a report from DHHS by January 1, 2024, and every 6 months thereafter during the 2023-25 biennium, on the department's findings and recommendations regarding the foster care and adoption child welfare redesign (Section 7 of Senate Bill No. 2080 (2023)).
- Receive periodic reports from DHHS on the impact, usage, and costs associated with the family caregiver service pilot project (Section 50-24.1-47).
- Receive an annual report from the Children's Cabinet regarding the activities and findings of the cabinet (Section 50-06-43.1).
- 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 from DHHS before August of each even-numbered year on the tribal health care coordination fund and tribal government use of money distributed from the fund (Section 50-24.1-40(4)).
- Receive an annual report from DHHS describing enrollment statistics and costs associated with the children's health insurance program state plan (Section 50-29-02).

Committee members were Representatives Matthew Ruby (Chairman), Karen A. Anderson, Mike Beltz, Jayme Davis, Kathy Frelich, Dwight Kiefert, Alisa Mitskog, Brandon Prichard, Karen M. Rohr, Mary Schneider, Greg Stemen, and Michelle Strinden and Senators Sean Cleary, Kyle Davison, Dick Dever, Kathy Hogan, Judy Lee, and Kent Weston.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

STUDY OF THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE 2018 NORTH DAKOTA BEHAVIORAL HEALTH SYSTEM STUDY

House Bill No. 1026 (2023) directed a study of the implementation of the recommendations of the 2018 HSRI study of North Dakota's behavioral health system and the 2022 Renee Schulte Consulting's study of acute psychiatric and residential care needs. The study required the committee to:

1. Receive regular updates on each of the major recommendation areas from the reports;

2. Identify the availability, access, and delivery of behavioral health services;
3. Seek input from stakeholders, including law enforcement, social and clinical service providers, medical providers, mental health advocacy organizations, emergency medical service providers, juvenile court personnel, educators, tribal governments, and state and local agencies; and
4. Consider options for improving access and the availability for behavioral health care.

Previous Studies

2017-18 Human Services Committee Updates

The 2017-18 interim Human Services Committee received updates from the Department of Human Services (DHS) and HSRI regarding the study of the state's behavioral health system. The committee recommended Senate Bill No. 2030 (2019) which included a general fund appropriation of $408,000 and 1.5 full-time equivalent positions for the purpose of coordinating the implementation of recommendations of the study of the state's behavioral health system. The bill did not pass but Senate Bill No. 2012 (2019), which was approved by the Legislative Assembly, included a $300,000 general fund appropriation for the implementation of study recommendations.

2021-22 Acute Psychiatric Hospitalization and Residential Care Study

Section 5 of House Bill No. 1012 (2021) provided for a study 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 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 Chairman of the Legislative Management approved the Acute Psychiatric Treatment Committee contracting with Renee Schulte Consulting, LLC, for $247,000 to assist the committee in its study and provide recommendations regarding the number of beds needed, the location of beds, and facilities needed for acute psychiatric services.

The committee received short- and long-term recommendations regarding facilities needed and recommended bill and resolution drafts to:

- Provide for a Legislative Management study regarding the implementation of behavioral health and acute psychiatric treatment recommendations.
- Provide a one-time $4 million appropriation from the general fund to DHHS to demolish unused buildings on the State Hospital campus, including the administrative building, employee building, associated tunnels, water tower, pig barn, and water treatment plant buildings.
- Replace outdated terminology in the Constitution of North Dakota related to the State Hospital and other institutions.

Human Services Research Institute Study and Report

In 2017, DHS contracted with HSRI to conduct a review of the state's behavioral health system. The goals of the study were to conduct an in-depth review of the state's behavioral health system; to analyze current utilization and expenditure patterns by payer source; to provide recommendations for enhancing the integration, cost-effectiveness, and recovery orientation of the system to effectively meet community needs; and to establish strategies for implementing the recommendations. The study gathered data by reviewing existing reports and documents, by conducting stakeholder interviews, and by reviewing Medicaid claims and state service utilization data for behavioral health services.

As a result of the study, the final HSRI report identified 13 recommendations and 65 specific strategies to direct future behavioral health policy and services in the state. The following are the recommendations and strategies included in the report:

Recommendation	Strategy
1. Develop a comprehensive implementation plan	1.1 Reconvene system stakeholders, including service users and their families 1.2 Form an oversight steering committee to coordinate with key stakeholder groups 1.3 Establish workgroups to address common themes identified in this report
2. Invest in prevention and early intervention	2.1 Prioritize and implement evidence-based social and emotional wellness initiative 2.2 Expand existing substance use prevention efforts, restore funding for the Parents Listen, Educate, Ask, Discuss program 2.3 Build upon and expand current suicide prevention activities 2.4 Continue to address the needs of substance exposed newborns and their parents 2.5 Expand evidence-based services for first-episode psychosis

Recommendation	Strategy
3. Ensure all North Dakotans have timely access to behavioral health services	3.1 Coordinate and streamline information on resources 3.2 Expand screening in social service systems and primary care 3.3 Ensure a continuum of timely and accessible crisis response services 3.4 Develop a strategy to remove barriers to services for persons with brain injury 3.5 Continue to invest in evidence-based harm-reduction approaches
4. Expand outpatient and community-based service array	4.1 Ensure access to needed coordination services 4.2 Continue to shift funding toward evidence-based and promising practices 4.3 Expand the continuum of substance use disorder treatment services for youth and adults 4.4 Support and coordinate efforts to enhance the availability of outpatient services in primary care 4.5 Address housing needs associated with behavioral health needs 4.6 Promote education and employment among behavioral health service users 4.7 Restore/enhance funding for recovery centers 4.8 Promote timely linkage to community-based services following a crisis 4.9 Examine community-based alternatives to behavioral health services currently provided in long-term care facilities
5. Enhance and streamline system of care for children and youth	5.1 Improve coordination between education, early childhood, and service systems 5.2 Expand targeted, proactive in-home supports for at-risk families 5.3 Develop a coordinated system to enhance treatment-related foster care capacity and cultural responsiveness 5.4 Prioritize residential treatment for those with significant/complex needs
6. Continue to implement and refine criminal justice strategy	6.1 Ensure collaboration and communication between systems 6.2 Promote behavioral health training among first responders and others 6.3 Review behavioral health treatment capacity in jails 6.4 Ensure Medicaid enrollment for individuals returning to the community
7. Engage in targeted efforts to recruit and retain competent behavioral health workforce	7.1 Establish a single entity for supporting workforce implementation 7.2 Develop a single database of statewide vacancies for behavioral health positions 7.3 Provide assistance for behavioral health students working in areas of need in the state 7.4 Raise awareness of student internships and rotations 7.5 Conduct comprehensive review of licensure requirements and reciprocity 7.6 Continue establishing training and credentialing programs for peer services 7.7 Expand credentialing programs to prevention and rehabilitation practices 7.8 Support a robust peer workforce through training, professional development, and competitive wages
8. Expand the use of telebehavioral health	8.1 Support providers to secure necessary equipment/staff 8.2 Expand the availability of services for substance use disorders, children and youth, and American Indian populations 8.3 Increase types of services available 8.4 Develop clear, standardized regulatory guidelines
9. Ensure the system reflects values of person centeredness, cultural competence, and trauma-informed approaches	9.1 Promote shared decisionmaking 9.2 Promote mental health advance directives 9.3 Develop a statewide plan to enhance commitment to cultural competence 9.4 Identify cultural/language/service needs 9.5 Ensure effective communication with individuals with limited English proficiency 9.6 Implement additional training 9.7 Develop/promote safe spaces for LGBTQ individuals within the behavioral health system 9.8 Ensure a trauma-informed system 9.9 Promote organizational self-assessments
10. Encourage and support the efforts of communities to promote high-quality services	10.1 Establish a state-level leadership position representing persons with lived experience 10.2 Strengthen advocacy 10.3 Support the development of and partnerships with peer-run organizations 10.4 Support community efforts to reduce stigma, discrimination, and marginalization 10.5 Provide and require coordinated behavioral health training among related service systems
11. Partner with tribal nations to increase health equity	11.1 Collaborate within and among tribal nations and with state and local human service agencies
12. Diversify and enhance funding for behavioral health	12.1 Develop an organized system for identifying/responding to funding opportunities 12.2 Pursue 1915(i) Medicaid state plan amendments 12.3 Pursue options for financing peer support and community health workers 12.4 Sustain/expand voucher funding and other flexible funds for recovery supports 12.5 Enroll eligible service users in Medicaid 12.6 Join in federal efforts to ensure behavioral and physical health parity

Recommendation	Strategy
13. Conduct ongoing, systemwide, data-driven monitoring of needs and access	13.1 Enhance and integrate provider data systems 13.2 Develop system metrics to monitor progress on key goals 13.3 Identify and target services to those with the highest service costs

State Hospital

Background

The State Hospital was 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. 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 institution for mental disease 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 Psychiatrics Services Unit provides services for patients aged 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.

Behavioral health services available at the State Hospital include residential substance use disorder (SUD) treatment, residential sexual offender treatment, residential transitional living, outpatient SUD treatment, outpatient adult forensic assessments, outpatient youth forensic assessments, and outpatient restoration treatment. Statistics provided include:

- 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.

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%

Buildings	Use	Year Built	Square Footage	Percentage Used
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[1]	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[1]	N/A	1961	13,140	0%
Water treatment	N/A	1958	4,802	0%
Employee building[1]	N/A	1952	34,345	0%

[1]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, on the State Hospital campus is used for the treatment of adults who receive psychiatric and substance abuse services. 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 effectively treated 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; and
- Ruth Meiers Adolescent Center - Grand Forks.

Behavioral Health Funding

The Legislative Assembly has increased the biennial appropriations to DHHS for behavioral health programs as detailed in the schedule below since the 2017-19 biennium.

	2017-19 Biennium Appropriation	2019-21 Biennium Appropriation	2021-23 Biennium Appropriation	2023-25 Biennium Appropriation
Behavioral health				
General fund	$7,975,380	$21,981,044	$42,025,043	$74,909,557
Other funds	35,853,789	50,420,587	50,073,179	65,502,059
Total	$43,829,169	$72,401,631	$92,098,222	$140,411.616

Testimony Received and Committee Considerations

The committee received information from DHHS that the Behavioral Health Planning Council selected the following 13 areas of recommendations for improvements with associated goals:

1. Develop and implement a comprehensive strategic plan.
2. Invest in prevention and early intervention.

3. Ensure all North Dakotans have timely access to behavioral health services.
4. Expand outpatient and community-based service array.
5. Enhance and streamline the system of care for children with complex needs.
6. Continue to implement and refine the criminal justice strategy.
7. Engage in targeted efforts to recruit and retain a qualified and competent behavioral health workforce.
8. Continue to expand the use of telebehavioral health services.
9. Ensure the system reflects values of percent-centeredness, health equity, and trauma-informed approaches.
10. Encourage and support communities to share responsibility with the state for promoting high-quality services.
11. Partner with tribal nations to increase health equity for American Indian populations.
12. Diversify and enhance funding for behavioral health.
13. Conduct ongoing, systemwide data-driven monitoring of need and access.

The Department of Health and Human Services reported many of the goals will take several years to achieve. The department has established a timeline to address recommendations made in previous studies.

Committee members noted the importance of continuing to implement the recommendations of the studies to address gaps in the behavioral health needs of the state.

Conclusions

The committee makes no recommendation regarding the study of the implementation of the recommendations of the 2018 North Dakota behavioral health system study.

STUDY OF EARLY CHILD CARE PROGRAMS AND SERVICES

Section 51 of Senate Bill No. 2012 (2023) directed a study of early child care programs and child care services. This study required the identification of major needs and systemic approaches to stabilize child care infrastructure. Section 4 of House Bill No. 1540 (2023) and Section 56 of Senate Bill No. 2012 (2023) also required a report on the status of early childhood programs managed by DHHS.

Previous Studies and Reports

2013-14 Economic Impact Committee Child Care Services Study

During the 2013-14 interim, the Economic Impact Committee conducted a study to determine the current and potential needs for child care services and the current and potential needs related to child care, and the current quality of child care services. According to the United States Census Bureau, in approximately 78 percent of the families in North Dakota with children under the age of 18, both the husband and wife are in the labor force. The 2013 Kids Count Factbook produced by the Annie E. Casey Foundation reports in 2010 over 82 percent of mothers with children under the age of 17 in this state are engaged in the labor force. The factbook also reports in 2011 there were an estimated 16,000 families in the state in which the family income was less than twice the federal poverty level, at least one parent worked 50 or more weeks during the previous year, and there was at least one child under the age of 18 in the family.

2015-16 Health Services Committee Child Care Assistance Review

During the 2015-16 interim, the Health Services Committee conducted a study on the employment restrictions in public assistance programs. As part of the study, the committee requested DHS review child care subsidies and provide recommendations regarding gradual reductions in benefits to mitigate the "cliff effect" on participants when work hours are increased. The department made no recommendation regarding polices to mitigate the cliff effect. The committee received testimony that due to the 2015-17 general fund budget reductions, effective April 1, 2016, DHS revised the child care sliding fee schedule from 85 percent of state median income to 60 percent of state median income and increased family's monthly copayments. Families eligible for the temporary assistance for needy families program are not subject to the sliding fee schedule and were not affected by the change. The child care assistance program caseload decreased from 2,049 in April 2016 to 1,549 in June 2016.

North Dakota Law

Chapter 50-11.1 addresses early childhood services. Section 50-11.1-02 defines early childhood services as "the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services." However, the following are excluded from the definition of early childhood services:

- Substitute parental child care provided pursuant to Chapter 50-11.

- Child care provided in any educational facility, whether public or private, in grade 1 or above.
- Child care provided in a kindergarten or a nonpublic elementary school.
- Child care, preschool, and prekindergarten services provided to children under 6 years of age in any educational facility through a program approved by the Superintendent of Public Instruction.
- Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding 4 continuous hours while the child's parent is attending church services or is engaged in other activities on the premises.
- Schools or classes for religious instruction conducted by religious orders during the summer months for not more than 2 weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
- Summer resident or day camps for children which serve no children under 6 years of age for more than 2 weeks.
- Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- Head Start and early Head Start programs that are federally funded and meet federal Head Start performance standards.
- Child care provided in a medical facility by medical personnel to children who are ill.

Section 50-11.1-06 allows an in-home provider to apply for a voluntary annual registration document from DHHS. An in-home provider is defined under Section 50-11.1-01 as "any person who provides early childhood services to children in the children's home." Except for onsite child care services for fewer than 10 children per location and which are located in the actual building in which the child's parent is employed, a person may not operate a family child care, group child care, preschool, school-age child care, or child care center unless licensed by DHHS. A family child care is defined as "a private residence licensed to provide early childhood services for no more than seven children at any one time, except the term includes a residence licensed to provide early childhood services to two additional school-age children." A group child care is defined as "a child care program licensed to provide early childhood services for thirty or fewer children." A preschool is "a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day." A school-age child care program is "a child care program licensed to provide early childhood services on a regular basis for children aged at least five years through eleven years." A child care center is "an early childhood program licensed to provide early childhood services to nineteen or more children."

To obtain a license to operate an early childhood program, an applicant must submit an application and a license fee to DHHS. In addition, Section 50-11.1-04 requires the department or an authorized agent of the department to investigate the applicant's activities and proposed standards of care and the applicant's premises. The applicant for a license and the staff members and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Section 50-11.1-06.2 requires upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant for early childhood services licensure, self-declaration, or in-home provider, as well as new staff members of early childhood services programs and new household members of a residence out of which early childhood services are provided, must obtain two sets of the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints. The individual is required to request the agency to submit the fingerprints and a completed fingerprint card for each set to the Division of Children and Family Services of DHHS or to the department's authorized agent. If the division has no record of a determination of services required for child abuse or neglect, the division is required to submit the fingerprints to the Bureau of Criminal Investigation to determine if there is any criminal history record information regarding the applicant, household members, or staff members. The results of the investigations must be forwarded to the division or to the department's authorized agent.

In addition to the licensed early childhood programs, Chapter 50-11.1 provides for a voluntary self-declaration for documentation of an individual providing early childhood services in a private residence for up to three children below the age of 24 months or for no more than five children through the age of 11. An individual may apply to DHHS for a self-declaration, and the department is responsible for determining if the individual meets the standards determined by rule by the department for a self-declaration.

Section 50-11.1-07 authorizes DHHS to investigate and inspect an early childhood program, or a holder of a self-declaration or registration document and the conditions of their premises, the qualifications of a provider of early childhood services, of current and prospective staff members, of any in-home provider or applicant seeking or holding a license, self-declaration, or registration document. In addition, Chapter 50-11.1 provides procedures under which the department may issue correction orders, fiscal sanctions, or suspension or revocation of a license, self-declaration, or registration document.

Section 50-11.1-08 authorizes DHHS to adopt reasonable minimum standards for early childhood programs and adopt rules for the regulation of early childhood services. Section 50-11.1-14 authorizes DHHS to establish a statewide system to build systematic early childhood workforce voluntary training which may include distance learning formats, a professional registry, certificates, and specializations.

Section 50-11.1-14.1 also addresses early childhood care and education workforce issues. Under that section, the department is required to provide voluntary, progressive training opportunities leading to credentials, provide supports for the early childhood care and education workforce, and implement a registry to track workforce participation. In addition, that section requires the department to implement a voluntary quality improvement process for licensed early childhood facilities. The department is authorized to provide a quality incentive payment and a higher reimbursement rate for child care assistance program payments to a participating early childhood facility, provide technical assistance and support to an early childhood facility that applies for quality improvement, and provide financial incentives to an early childhood facility that sustains and increases program quality. The department may contract with a private, nonprofit agency to provide the technical assistance.

Section 50-11.1-18 authorizes DHHS to establish an early childhood inclusion support services program and hire early childhood services specialists for providing direct payments and technical assistance to providers serving children with disabilities, special needs, or developmental delays.

Chapter 50-33 provides for a child care assistance program. Under that chapter, DHHS is responsible for paying child care costs required as a result of participation in allowable activities by the eligible caretaker in a temporary assistance for needy families program household or diversion assistance household. Subject to the availability of funding, the department may expand child care assistance to include an eligible caretaker who is attending a postsecondary education program in pursuit of a 1-year, 2-year, or 4-year degree or certificate. The chapter provides application requirements and requires the department to adopt rules for administration of the program.

Early Childhood Programs and Services

Child Care Assistance Program

The child care assistance program (CCAP) helps pay a portion of the cost of child care for working families, or families in training or education programs. Payment is made directly to the provider unless the provider requests that payment be made directly to the family. Families with low income must meet certain eligibility criteria to qualify for the program. In most cases, families pay a copayment, which is a portion of the child care cost. A copayment is determined on a sliding fee scale based on a family's income, household size, age of the child, type of provider, and level of care. In 2022, North Dakota increased the income level for CCAP to 85 percent of the state's median income to increase the number of families eligible for the program. The program serves an average of 4,911 children from 3,002 families. A total of 1,469 providers are enrolled in the program.

Best in Class

Beginning in 2021, North Dakota's best in class program is a targeted state investment in programs committed to delivering the highest quality experiences to the children and families they serve, and whose actions can demonstrate the return that is possible with intentional, research-supported investments in early childhood. The program is built on characteristics that drive results, including high-quality, supported interactions between adults and children based on developmentally appropriate experiences.

Teaching staff are coached and supported in implementing developmentally appropriate environments, play-based curriculum, and authentic observation-based assessments to drive individualized experiences to support children in reaching widely held expectations in the year before kindergarten.

The work done in these programs is monitored, evaluated, and supported to ensure the investment is making an impact.

For the 2023-24 academic year, there were 45 programs serving 881 children. This model provides educational services to 4-year-olds and parent training to all families involved.

Head Start and Early Head Start

Head Start and Early Head Start are child development programs serving children from birth to age 5, expectant mothers, and families. The overall goal of Head Start is to increase the social ability of children in low-income families and children with disabilities and improve the chances of success in school.

Head Start has been the creator in the movement to address the needs of the whole child, including the educational, vocational, and material needs of the entire family. Head Start's philosophy is parents are the primary educators of their children, and successful child development programs must involve and empower parents in order to have a lasting impact on the lives of low-income children. This philosophy is reflected in Head Start's administrative structure which includes a parent Policy Council that has decisionmaking authority.

Head Start began in 1965 and has been recognized through seven presidential administrations for its effectiveness in helping children become more self-confident and successful. Though federally funded, each program is required to provide a 20 percent local funding match. This nationwide program works through several major areas, including education, health and nutrition, parent involvement, and social services. There have been Head Start programs in North Dakota since 1965.

The basic elements of Head Start are regulated through federal Program Performance Standards. Grantees and parents have control over their programs, and each is designed to meet the needs of families in the local community. Broadly, the objectives of Head Start are based on the idea that children deserve the opportunity to enter school ready to learn and that children's readiness depends on their educational experience, their physical and mental health, and the involvement of their parents and families. The following are objectives of Head Start:

- The improvement of the child's health and physical abilities, including appropriate steps to correct present physical and mental problems and to enhance every child's access to an adequate diet.
- The improvement of the family's attitude toward future health care and physical abilities.
- The encouragement of self-confidence, spontaneity, curiosity, and self-discipline which will assist in the development of the child's social and emotional health.
- The enhancement of the child's mental processes and skills with particular attention to conceptual and communications skills.
- The establishment of patterns and expectations of success for the child, which will create a climate of confidence for present and future learning efforts and overall development.
- An increase in the ability of the child and the family to relate to each other and to others.
- The enhancement of the sense of dignity and self-worth within the child and his or her family.

Early Head Start is responding to strong evidence suggesting that early intervention through high-quality programs enhances children's physical, social, emotional, and cognitive development; enables parents to be better caregivers and teachers to their children; and helps parents meet their goals, including economic independence. Early Head Start programs are designed to reinforce and respond to the unique strength and needs of each child and family. These services include:

- Quality early education both in and out of the home;
- Home visits, especially for families with newborns and other infants;
- Parent education, including parent-child activities;
- Comprehensive health and mental health services, including services for women before, during, and after pregnancy;
- Nutrition; and
- Ongoing support for parents through case management and peer support groups.

North Dakota Afterschool Network

The North Dakota Afterschool Network works to equip North Dakota after school, before school, and summer learning programs with the tools and support to expand program quality, build leadership capacity, and increase access to high-quality out-of-school time programs for youth across the state. Afterschool includes any program serving youth in prekindergarten through grade 12 with organized, regularly scheduled academic or enrichment activities in a supervised environment. These programs can take place in schools, school-age licensed child care facilities, community-based organizations, libraries, summer camps, and more.

2023-25 Biennium Child Care Funding

The 68th Legislative Assembly appropriated $113.9 million, of which $77.8 million is from the general fund, for child care assistance programs for the 2023-25 biennium. This represents an increase of $79.2 million from the 2021-23 biennium. The increased funding was for the following purposes:

Purpose	Amount
Expand program eligibility and cost and caseload changes	$35,619,826
Increase payments for infant and toddler care	15,000,000
Establish quality tiers	3,000,000
Eliminate certain family copays	2,300,000
Provide application assistance and outreach	500,000
Provide state match for employer-led child care cost-sharing program	5,000,000
Provide child care provider grants for startup, inclusion, and quality	7,000,000
Provide nontraditional hours child care	1,800,000
Provide worker training stipends	2,000,000
Provide grants to improve provider infrastructure	3,000,000
Automate the background check process	1,000,000
Provide matching funds for state employee participation in program	3,000,000
Total	$79,219,826

Testimony Received and Committee Considerations

The committee received information and reports from DHHS regarding child care programs. The department reported there are 45,000 households in the state with a child under age 5. Seventy-five percent of households with children under age 5 have all parents working. There are 37,842 child care placements being provided by 1,165 licensed early childhood service providers. Child care assistance program expenditures for the 1st year of the 2023-25 biennium totaled $26 million, and the average assistance per child per month was $609.

According to testimony, to be affordable, child care should cost no more than seven percent of a household budget. However, many families are paying up to 40 percent of their gross household income on child care. The average cost for infant care ranges from $672 to $838 per month depending on whether the care is provided in a center-based or a home-based setting. Most households earning less than 150 percent of the state median income will have difficulty paying for child care. Effective July 2023, families with income at or below 30 percent of the state median income are no longer charged a copayment for child care expenses.

The Department of Health and Human Services has implemented a series of grants and incentives intended to support child care facilities, including:

- Quality improvement grants awarded to 142 child care providers who have attained or maintained a Step 2, 3, or 4 quality rating.
- Inclusive care support grants awarded to 52 child care providers to help the providers create and maintain inclusive environments that can support children with disabilities or developmental delays to learn, grow, play, and develop with their peers.
- Facility improvement grants awarded to 142 child care providers to revitalize child care facilities and support providers in meeting space-based licensing requirements with a disbursement of $1.1 million for the 2023-25 biennium.
- Grow child care grants awarded to six providers that created 80 spaces, supporting both child care startups and expansions.

Committee members noted there are more job openings in the state than workers available and lack of child care can be a barrier for someone to obtain employment. In some instances, an individual may not advance in employment opportunities because the higher income would result in a loss of benefits, including CCAP.

Conclusions

The committee makes no recommendation regarding the study of child care programs and services.

STUDY OF PAYMENT RATES FOR INTERMEDIATE CARE FACILITIES

Section 54 of Senate Bill No. 2012 (2023) directed a study of the payment rates for intermediate care facilities, including options to increase the rates. The study required the consideration of the funded percentage of costs for services, including day and small group care, individual employment, in-home supports, respite care, habilitative care, independent habitation, and residential habitation.

Previous Reports and Studies

2009-10 Interim Rate Structure of Developmental Disability Providers Study

Section 1 of House Bill No. 1556 (2009) required DHS to report to the Legislative Management regarding the outcomes and recommendations from the study of the methodology and calculations for the ratesetting structure for public and private licensed developmental disabilities and home- and community-based service providers. The committee recommended a bill to require DHS to implement a prospective reimbursement pilot project for the developmental disabilities program during the 2011-13 biennium. The committee also recommended the department maintain the 95 percent occupancy rule while proceeding with the prospective reimbursement pilot project.

Interim Status Reports

During each interim since 2011, a Legislative Management committee has been assigned the duty to receive updates regarding the developmental disabilities system reimbursement project.

Intermediate Care Facility

An intermediate care facility for individuals with an intellectual disability (ICF/ID) is an optional Medicaid benefit that provides comprehensive and individualized health care and rehabilitation services to individuals. The ICF/ID services are the highest level of care to provide active treatment. A total of 15 developmental disability providers are licensed to provide services in 22 communities. A total of 457 individuals were authorized to receive ICF/ID services between April and June 2023.

Developmental Disability Funding

The Legislative Assembly approved $742,793,592 of grant funding for the 2023-25 biennium as follows:

Intermediate care facility grants	$224,289,381
Home- and community-based services	518,504,211
Total	$742,793,592
Less other funds	390,731,727
General fund	$352,061,865

Home- and community-based services include residential habilitation, day programs, infant development, family support, individual employment, family care option, self-directed supports, extended home health, and independent habilitation.

Intermediate Care Facility Rates

The ICF/ID daily rate is all inclusive and includes room, board, day programming, and habilitative care. The rate does not include direct health-related costs such as dental and pharmacy. At the completion of the state fiscal year, each provider is required to complete a statement of cost to determine an upper payment limitation.

The ICF/ID rate includes the following components:

- Direct care staff wages;
- Employment-related expenditures;
- Relief staff wages;
- Program support expenditures;
- Room and board expenditures;
- General and administrative expenditures; and
- Vacancy factor.

Additional components can be included in the rate calculation for new facility costs, medically intensive individuals, and additional support for individuals between the ages of 16 and 21 to account for additional support during school holidays and summer hours.

The final rate is based on the individual receiving services. An individual is assessed by a third party to determine the level of intensity needed. The assessment level of need is converted to determine the average hours of services needed by the individual. The number of hours of services needed each day is multiplied by the previously computed rate to determine the total payment.

Testimony Received and Committee Considerations

The committee received the following testimony regarding the study:

- ICF/ID providers are paid 89.7 percent of the amount calculated through the developmental disability provider funding formula.

- Residential habilitation providers are paid 91.6 percent of the amount calculated through the development disability provider funding formula.
- The average cost of providing services through an ICF/ID is significantly higher than providing home- and community-based services.

The committee considered a bill draft that would have provided an appropriation of $23.1 million, of which $11.3 million is from the general fund, to DHHS to study the payment rates for intermediate care facilities and residential habilitation services providers and would have increased the provider rates based on the results of the study.

Conclusions

The committee makes no recommendation regarding the study of payment rates for intermediate care facilities.

STUDY OF FEDERALLY QUALIFIED HEALTH CENTERS

Section 2 of Senate Bill No. 2155 (2023) directed a study of the expansion of FQHCs. The study required consideration of increasing the number of FQHCs in the state and improving FQHC collaboration with local public health units.

Previous Studies and Reports

2011-12 Interim Health Services Committee

The Legislative Management assigned the 2011-12 interim Health Services Committee the duty to review the public health model of the FQHC established by the Coeur d'Alene Tribe in Idaho. The review included services, governance, and funding of the center.

2011-12 Interim Health Care Reform Review Committee

The 2011-12 interim Health Care Reform Review Committee studied the state's health care delivery plan. As part of the study, the committee received an overview of how community health centers (CHCs) operate in North Dakota. A community health center is a nonprofit entity that exists in areas where health care is scarce. The committee received testimony indicating approximately 31 percent of the North Dakota CHC patients are uninsured. Under the federal Affordable Care Act, CHCs received funds to expand the program. The Affordable Care Act provision relating to CHCs had the potential to add 20 million new CHC patients nationwide.

Overview of Community Health Centers

The mission of CHCs is to provide high-quality, affordable, comprehensive primary and preventive health care, including medical, dental, and behavioral health services. regardless of a patient's insurance status or ability to pay. Community health centers are nonprofit, community-driven clinics with a unique FQHC designation. Federally qualified health centers are entities that receive federal funds to provide services for low-income residents on a sliding fee scale basis.

Community health centers are governed by community- and patient-led boards. In some cases, the centers collaborate with local health and service providers. North Dakota has five CHCs in 19 communities with 21 delivery sites. The centers serve approximately 36,000 medical and behavioral health care patients and nearly 13,000 dental patients. In 2021, about 20 percent of health center patients were uninsured, 12 percent were best served in a language other than English, and nearly half lived in families with an income below the federal poverty level. Community health centers, located in rural and urban communities across North Dakota, also offer dental services while focusing on the unmet needs of Medicaid patients.

Community health centers offer sliding fee discounts based on the income of uninsured and underinsured patients. Each health center's sliding fee discount amount is reported to the federal government. The centers reported in 2020 and 2021 providing total sliding fee discounts of $5.4 million to patients by North Dakota CHCs and total uncompensated care of $11 million, which is the sliding fee discounts plus the patient balances that were written off due to patients being unable to pay.

Funding History

The Legislative Assembly, pursuant to Section 1 of Senate Bill No. 2155 (2023), provided $2 million from the general fund to DHHS to provide grants to FQHCs during the 2023-25 biennium. The Department of Health and Human Services is required to award grants to FQHCs in North Dakota to continue, expand, and improve FQHC services to low-income populations. The grant amount for each center must be proportional to the amount of discounts granted to patients of the center for the most recent calendar year to the total amount of discounts granted by all centers in North Dakota during the most recent calendar year as reported on the federal uniform data system report in conformance with the Bureau of Primary Health Care program expectations policy information note 98-23, except one FQHC may receive no more than 50 percent of the total amount of grants awarded under this section.

The Department of Health and Human Services provides funding to FQHCs for services provided to Medicaid-eligible patients. The following schedule provides the funding budgeted by the department for FQHCs for the 2005-07 biennium through the 2023-25 biennium:

Biennium	Budget	Increase (Decrease)
2005-07	$1,745,228	N/A
2007-09	$2,237,118	$491,890
2009-11	$2,939,309	$702,191
2011-13	$5,169,468	$2,230,159
2013-15	$7,921,657	$2,752,219
2015-17	$10,103,340	$2,181,683
2017-19	$8,012,737	($2,090,603)
2019-21	$11,563,270	$3,550,533
2021-23	$10,461,194	($1,102,076)
2023-25	$9,117,992	($1,343,202)

Testimony Received and Committee Considerations

The committee received information indicating the majority of patients at FQHCs have income under 200 percent of the poverty level and the average payor sources at the centers is 41.2 percent Medicaid, 13.3 percent Medicare, 15.3 percent uninsured, and 31.5 percent private payor insurance. Medicaid allows FQHCs to bill for medical, behavioral health, and dental services. Only 44 percent of the need for dental care in the state is being met and some FQHC facilities provide dental care in underserved areas. Some FQHCs provide services to children at their schools.

The committee acknowledged providing care through FQHCs can reduce the number of emergency room visits and FQHC mobile units are able to serve individuals in rural areas.

Conclusions

The committee makes no recommendation regarding the study of FQHCs.

STUDY OF INPATIENT MENTAL HEALTH CARE FOR CHILDREN

House Concurrent Resolution No. 3017 (2023) directed a Legislative Management study relating to the need for inpatient mental health care for children. The resolution indicated because of an increasing need for inpatient mental health care for children in the state, the study was to determine recommendations to address the gaps between home- and community-based services available in the state and the need for inpatient mental health care for children.

Previous Reports and Studies

2019-20 Interim Education Policy Committee

The 2019-20 interim Education Policy Committee studied student behavioral health issues. The committee received information from DHHS and other key stakeholders regarding the needs for student behavioral health services. The committee received updates regarding the implementation of behavioral health services in elementary and secondary schools.

North Dakota Law

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

Section 50-06-41 provides for DHHS to publish a quarterly report on behavioral health services provided by or supported by the department. The report must include each type of behavioral health service, the number of clients served for each service, and the amount of state and federal funds budgeted and spent for each service. The data must be identified for behavioral health services by human service region and by mental health services provided to children, mental health services provided to adults, and substance abuse services.

Section 50-06-43.1 establishes the Children's Cabinet to assess, guide, and coordinate the care for children across the state's branches of government and tribal nations.

Overview of 2020-21 National Survey of Children's Health

According to the 2020-21 National Survey of Children's Health, approximately 34,412 children and youth in the state have a special health care need. Children with special health care needs are defined as those children and youth who have a chronic condition of at least 1 year, a physical disability, or a mental health/behavior health diagnosis. Many children and youth who may have a physical disability and a chronic health issue also may have a co-occurring mental health diagnosis.

The National Data Center for Child and Adolescent Health provides data on the complexities of children and youth with special health care needs. Data reviewed by the committee provided an overview related to mental, emotional, developmental, or behavioral needs in North Dakota. The data indicated 24.4 percent of children aged 3 to 17 have one or more mental, emotional, developmental, or behavioral problem. Of the total children identified with a problem, 50.8 percent received treatment or counseling and 49.2 percent received no services.

Psychiatric Residential Treatment Facilities

Psychiatric residential treatment facilities are facilities that provide children and adolescents with a comprehensive 24-hour therapeutic environment integrating group living, educational services, and a clinical program based upon an interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. Psychiatric residential treatment facilities are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be treated effectively in their family home or in another home, or in a less-restrictive setting. North Dakota psychiatric residential treatment providers include the Dakota Boys and Girls Ranch in Bismarck, Fargo, and Minot; Nexus-PATH Family Healing in Fargo; Pride Manchester House in Bismarck; and Ruth Meiers Adolescent Center in Grand Forks. Psychiatric residential treatment facilities are licensed by DHHS and may be accredited by national accreditation bodies.

Funding History

The following schedule provides a comparison of funding for the psychiatric residential treatment facilities program for the 2015-17 biennium through the 2023-25 biennium, including funding from the general fund and other funds, including federal funds.

Biennium	Budget	Increase (Decrease)
2015-17	$25,615,188	N/A
2017-19	$32,407,032	$6,791,844
2019-21	$42,087,531	$9,680,499
2021-23	$34,657,042	($7,430,489)
2023-25	$23,651,704	($11,005,338)

Testimony Received and Committee Considerations

The Department of Health and Human Services provided information regarding the North Dakota system of care grant which will be used to provide community-based behavioral health services and supports for children and youth with serious emotional disturbances. The services will include outpatient programs, 24-hour crisis services, case management, day treatment, respite care, recovery support services, and services to transition youth into adult programs.

The Department of Health and Human Services reported there are 64 youth acute psychiatric beds, 82 psychiatric residential treatment facility beds, 76 qualified residential treatment program beds, 45 youth shelter beds, and 73 substance abuse youth beds in the state. The testimony contended the behavioral health bed management system will assist in placing individuals needing care into available beds.

Committee members noted the importance of providing community-based mental health care to allow children to be served from home instead of an institution. Crisis and mental health services also may be used to divert children from being placed in an institution.

Conclusions

The committee makes no recommendation regarding the study of inpatient mental health care services for children.

PAY FOR SUCCESS PROGRAM

House Bill No. 1480 (2023) requires DHHS to provide a report to the Legislative Management regarding the progress of the pay for success program developed by the department. The department is required to develop the program with outcomes focused on improving educational, social, or emotional achievement of at-risk children, improving the health of children, and increasing participation in the workforce by individuals who qualify for government assistance.

The pay for success program may include a performance-based grant, contract, or other agreement for initiatives to improve outcomes that result in increased public value and social benefits, including improved outcomes, cost-savings, increased public revenue, or minimal administrative requirements. The pay for success program must include the following:

1. A provision that a bonus payment may be provided to the recipient of the grant, contract, or agreement to expand capacity for a proposed initiative;
2. A provision that a bonus payment may be provided to the recipient of the grant, contract, or agreement only after a 20 percent cost reduction has been achieved;
3. A provision that a bonus payment may not exceed half of the cost reduction; and
4. A formal evaluation to determine whether the program has met its proposed outcomes.

The Legislative Assembly approved a transfer, during the 2023-25 biennium, of $2.5 million from the strategic investment and improvements fund to the pay for success fund for the program.

Report

Representatives of DHHS reported:

- The goals for the pay for success program include reducing foster care numbers, reducing institutional placements, reducing length of stay in out-of-home settings, reducing out-of-state placements, reducing substance abuse as an abuse and neglect factor, reducing severity of school-based behaviors, and increasing evidence-based supports for children.
- Neglect accounted for 60 percent of reports of suspected abuse or neglect, and 85 percent of child neglect reports involved families with income less than 200 percent of the federal poverty level.
- The pay for success program will help families address their most basic financial needs and provide greater stability.
- Payments from the fund will begin when partners are selected for the program and formal definitions of success and methods to measure success are developed.

FOSTER CARE AND ADOPTION CHILD WELFARE REDESIGN

Section 7 of Senate Bill No. 2080 (2023) requires DHHS to conduct a foster care and adoption child welfare redesign. The redesign must include a review of methods to streamline adoptions by licensed, certified, or approved family foster home for children providers and identify a fit and willing relative interested in adoption earlier in the process. The department is required to report its findings and recommendations to the Legislative Management by January 1, 2024, and every 6 months after the initial report during the 2023-25 biennium.

Report

A representative of DHHS reported:

- Adoption redesign sought to streamline the process of adopting children from foster care with a goal of adoption finalization to occur within 60 days of termination of parental rights in 80 percent of those cases.
- Four specific constraint areas in the adoption process identified for improvement are termination of parental rights/legal issues; relative search/active efforts; referral paperwork process/custodial team meeting; and adoption home study/foster care licensing.
- Catholic Charities North Dakota manages the adoption program contract for the state.
- DHHS will pay for background checks for adopting families.

FAMILY CAREGIVER SERVICE PILOT PROJECT

Section 2 of Senate Bill No. 2276 (2023) requires DHHS to provide periodic reports on the impact, usage, and costs associated with the family caregiver service pilot project. The department is required to establish the family caregiver service pilot project to assist in making payments to a legally responsible individual who provides extraordinary care to an eligible individual who is a participant in the Medicaid 1915(c) waivers, excluding the home- and community-based services aged and disabled waiver. The family caregiver service pilot project may include funding for extraordinary care, which means care:

1. Exceeding the range of activities a legally responsible individual would ordinarily perform in the household on behalf of an individual without extraordinary medical or behavioral needs; and
2. Is necessary to assure the health and welfare and avoid institutionalization of the individual in need of care.

The Department of Health and Human Services may adopt rules addressing management of the family caregiver service pilot project and establish the eligibility requirements and exclusions for the family caregiver service pilot project. The department is required to utilize an assessment of an eligible individual to determine the level of care authorized and to determine the best interests of the individual in need of care. The pilot project may not provide a payment for any care that is otherwise compensated through a Medicaid 1915(c) waiver or the Medicaid state plan.

The Legislative Assembly, in Senate Bill No. 2276, appropriated $2.5 million from the general fund to establish and issue payments as part of a family caregiver service pilot project. Of this amount, $300,000 may be used by the department for the purpose of hiring up to 1 full-time equivalent position to serve as the family caregiver service pilot project coordinator, who would be responsible for implementing the pilot project, and for establishing a payment portal. Participation in this service pilot project is capped at 120 individuals.

Report

Representatives of DHHS reported administrative rules for the program were developed and approved by the Administrative Rules Committee. The department reviewed examples of the program in other states and tested the program rules with a sample of volunteers. Application criteria, program guidelines, instructions, and the development of a payment portal were completed, and the program began on April 1, 2024.

Through October 2024, there were 42 households approved for the program and $410,550 spent for direct care services. The total estimated funding required for the program for the 2023-25 biennium is $2.1 million.

CHILDREN'S CABINET

Section 1 of Senate Bill No. 2034 (2023) requires DHHS to provide an annual report to the Legislative Management regarding the activities and findings of the Children's Cabinet. The cabinet was created by the 2019 Legislative Assembly to assess, guide, and coordinate the care for children across the state's branches of government and the tribal nations.

The Legislative Assembly amended Section 50-06-43.1 in 2021 and 2023 to change the membership and duties of the cabinet. The Chairman of Legislative Management is required to appoint one of the legislative members to serve as the presiding officer of the cabinet. The Children's Cabinet selects one of its members to serve as the vice-presiding officer.

The Children's Cabinet consists of the following members:

1. The Governor, or the Governor's designee;
2. The Chief Justice of the Supreme Court, or the Chief Justice's designee;
3. A member of the House of Representatives from an even-numbered legislative district and a member of the House of Representatives from an odd-numbered legislative district appointed by the Majority Leader of the House of Representatives to serve 2-year terms;
4. A member of the Senate from an even-numbered legislative district and a member of the Senate from an odd-numbered legislative district appointed by the Majority Leader of the Senate to serve 2-year terms;
5. The Superintendent of Public Instruction, or the Superintendent's designee;
6. The Director of the Committee on Protection and Advocacy, or the Director's designee;
7. The Commissioner of the department, or the Commissioner's designee;
8. A representative of the tribal nations in the state, who is appointed by the Governor; and
9. Four individuals representing parents, private service providers, or other community interests, who are appointed by the Governor to serve a term of 2 years, at the pleasure of the Governor.

The Children's Cabinet is required to:

1. Coordinate broad-based leadership across programs, agencies, branches of government, and tribal nations to meet the needs of children;
2. Develop strategies to address gaps or needs regarding early care and education, medical and behavioral health, community, child welfare, and juvenile justice;
3. Develop strategies to provide for the full continuum of care in the delivery of services, including promotion, prevention, early identification and intervention, service delivery, and recovery;
4. Seek to engage cooperation across public and private service providers;
5. Provide a comprehensive vision for how and where children are best served, attending to children in a respectful and relevant manner;

6. Seek strategies to provide services to children without consideration of prior engagement with juvenile services;
7. Provide for the active participation of consumers and providers statewide on advisory committees;
8. Receive information and recommendations from DHHS, Department of Corrections and Rehabilitation, and other state agencies; and
9. Provide an annual report to the Legislative Management and Governor regarding the activities and findings of the cabinet.

The Department of Health and Human Services is required to provide the Children's Cabinet with staffing and administrative services. The cabinet is required to meet at least quarterly and additional meetings may be held at the discretion of the presiding officer.

Report

Representatives of the Children's Cabinet reported the cabinet meets monthly to review children's services. The cabinet has received information regarding children's services provided through state agencies, including DHHS, the Department of Public Instruction, and the Protection and Advocacy Project. The cabinet also received updates regarding other programs and services, including updates from regional education associations, the Juvenile Justice Commission, and the Dakota Boys and Girls Ranch. The cabinet is developing strategic goals with a main goal to connect agencies, nonprofit organizations, and private-sector businesses.

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 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 before August 1 of each even-numbered year 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 2022:

Service	2018	2022
Inpatient	166.0%	151.9%
Outpatient	169.5%	124.2%
Professional	174.5%	144.3%
Overall	169.7%	140.3%

TRIBAL HEALTH CARE COORDINATION FUND

Section 50-24.1-40 requires DHHS to facilitate care coordination agreements between health care providers and tribal health care organizations that will result in 100 percent federal funding for eligible medical assistance provided to an American Indian. The section, as originally enacted, created a tribal health care coordination fund and provided that 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 that 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 government in accordance with agreements between DHHS and the tribal governments. 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 be 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 June 30, 2025, no more than 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 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 required to 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 has signed agreements with the Turtle Mountain Band of Chippewa Indians and the Three Affiliated Tribes of the Fort Berthold Reservation.
- Total savings from the agreements through June 2024 have been $165,033, with $33,007 deposited in the general fund and $132,026 deposited in the tribal health care coordination fund.

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 plan intended to help meet the health care needs of children from working families whose earnings exceed qualifying for full Medicaid coverage but are insufficient 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:

- From July 1, 2023, through August 1, 2024, a total of $16,593,465 was expended for the following program services:

Service	Amount
Inpatient services	$2,245,033
Outpatient services	2,884,995
Psychiatric residential treatment facility services	967,426
Professional services	3,815,476
Other services	4,806,113
Dental services	1,874,422
Total	$16,593,465

- From August 2023 through August 2024, program enrollment ranged from 3,227 enrollees to 4,503 enrollees.

OTHER INFORMATION RECEIVED

In addition to the committee's other responsibilities, the committee received information regarding:

- Geriatric psychiatric care in the state.
- Federal minimum staffing standard changes for long-term care facilities.

- The status of domestic violence programs in the state.
- DHHS child welfare services and child abuse concerns in the state.
- The Medicaid institution for mental disease waiver.
- The cross-disability advisory council.

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. Review the ITD business plan and statewide information technology (IT) policies, standards, and guidelines.
5. Receive and review information related to IT projects with a total cost of $500,000 or more, including startup and closeout reports.
6. 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.
7. Receive a report from the CIO regarding the prioritization of proposed major IT projects and other IT issues.
8. Receive information from the State Board of Higher Education (SBHE) 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 2023-24 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. Similar provisions are included in Section 54-10-28. This duty did not require action by the Information Technology Committee during the 2023-24 interim.

The committee is responsible for receiving various reports, including:

- A report from the SBHE regarding higher education IT planning, services, and major projects, pursuant to Sections 15-10-44 and 54-35-15.2.
- A report from the CIO regarding the prioritization of proposed major IT projects and other IT issues , pursuant to Section 54-35-15.2.
- The department annual report from ITD, pursuant to Section 54-59-19.
- A report from any agency with a major IT project that has exceeded planned budget costs by 20 percent or exceeded the planned schedule by 20 percent, which requires a report to ITD, pursuant to Section 54-59-23(2), if the agency has not taken adequate corrective measures within 90 days of the report to ITD, pursuant to Section 54-59-23(3).

In addition to its statutory responsibilities, 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, pursuant to Section 54-59-02.2.
- Receive 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, pursuant to Section 54-59-12.
- 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, pursuant to Section 54-59-36.

- Receive a report from the CIO regarding all disclosed cybersecurity incidents as required by Chapter 54-59.1, including the status of the cybersecurity incident and any response or remediation to mitigate the cybersecurity incident, pursuant to Section 54-59.1-07.
- Receive a report from the Emergency Services Communications Coordinating Committee (ESC3) before November 1 of each even-numbered year, regarding the use of assessed communications services fee revenue and recommendations for changes to the operating standards for emergency services communications, pursuant to Section 57-40.6-12.
- Study the emergence of artificial intelligence (AI) and the potential impacts on the state's institutions, agencies, businesses, citizens, and youth, pursuant to Section 44 of House Bill No. 1003 (2023).
- Study emergency and interoperable public safety communications system governance needs and options, pursuant to Section 5 of House Bill No. 1242 (2023).

Committee members were Representatives Glenn Bosch (Chairman), Josh Christy, Corey Mock, Nathan Toman, Jonathan Warrey, and Robin Weisz; Senators Keith Boehm, Randy A. Burckhard, Kyle Davison, Greg Kessel, Jonathan Sickler; and Citizen Member Greg Hoffman.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

STUDY OF ARTIFICIAL INTELLIGENCE

Background

Pursuant to Section 44 of House Bill No. 1003 (2023), the committee studied the emergence of AI and the potential impacts on the state's institutions, agencies, businesses, citizens, and youth. Study requirements included a review of the effect of AI on the provision of health care, effects on student learning, potential opportunities or threats to the integrity of state services, the potential impact on electoral processes, including mitigating action to be taken leading up to the 2024 state elections, opportunities for state investment or policy changes to promote AI businesses, and cybersecurity implications across all state institutions.

The committee was informed AI is a field that combines computer science and large or complex datasets to enable problem solving. Artificial intelligence uses machine and deep learning and algorithms to:

1. Create new technologies and systems to make predictions or classifications based on input data;
2. Increase the productivity and efficiency of work-based or daily tasks;
3. Solve complex problems;
4. Provide for quicker decisionmaking; and
5. Automate mundane or repetitive processes, allowing individuals to focus time and resources on other topics or products.

The committee was informed of the types of AI, including:

- Artificial narrow intelligence, also known as weak AI, is AI trained and focused on performing specific tasks. Common uses of artificial narrow intelligence technologies include speech recognition, online virtual customer service agents, computer vision that collects information from images, videos, and text, recommendation engines for advertisements and commerce, and automated stock trading. Common examples of artificial narrow intelligence include Apple's Siri, Amazon's Alexa, IBM Watson, and autonomous vehicles.
- Machine learning is a subfield of artificial narrow intelligence that requires human intervention to learn differences between data inputs, which then allows the device or system to imitate intelligent human behavior to perform complex tasks or solve human problems. A machine learning algorithm includes data that uses statistical techniques to help it "learn" how to get progressively better at a task, without being specifically programmed for that task. Instead, machine learning algorithms use historical data as inputs to predict new output values.
- Deep learning is a subfield of artificial narrow intelligence and a form of machine learning that refers to a neural network comprised of more than three input, output, and hidden program layers to create an advanced algorithm to perform AI processes. Deep learning eliminates a portion of manual human intervention and is used often when working with large or complex datasets.
- Artificial general intelligence, also known as artificial super intelligence or strong AI, is a theoretical form of AI in which a machine has human-equivalent intelligence and is capable of problem solving and planning for future

work or concerns. Artificial general intelligence has been theorized by AI researchers and scientists, but no artificial general intelligence devices or systems have been developed.

Generally Positive Artificial Intelligence Testimony

Information Technology Department

The committee received testimony from representatives of ITD regarding AI benefits and threats, including AI used by state agencies, future AI usage plans, and the effect of AI on cybersecurity of North Dakota state and local government. Testimony indicated:

- ITD has formed an AI team to bring together specialists in data science and robotic process automation.
- ITD has developed AI policies and guidelines to address future AI needs of state agencies and has developed data and cybersecurity policies and guidelines to address how the state can use AI while protecting against any potential AI misuse.
- AI is being used in ITD cybersecurity operations to respond to phishing incidents, build confidence for automatically closing or forwarding alerts to analysts, finding duplicate phishing emails, and allowing staff to focus time and resources on more important tasks.
- Dangers of AI for cybersecurity operations include increases in automated attacks, adaptive malware, intelligence botnets, and vulnerabilities in AI-generated code.
- AI risk mitigation efforts include training staff for AI enabled attacks and ensuring AI risks are considered as part of a defense strategy to prevent, detect, and respond to cybersecurity threats.
- ITD is maintaining an inventory of AI projects and state government systems that use AI but because there are multiple definitions of AI, evaluating whether a project or system is using AI, and determining if the project or system should be added to the list, is challenging.

Department of Public Instruction

The committee received testimony from representatives of the Department of Public Instruction (DPI) regarding AI benefits and threats for students and teachers, including AI used by North Dakota schools, plans for the use of AI technologies, legislative suggestions related to AI, and national education AI opportunities and concerns, including education AI guidance and examples used in other states. Testimony indicated:

- Teaching K-12 students about computer science and AI will be critical for student success.
- The three components of K-12 AI education relate to understanding, application, and ethical use of AI; providing educators with the knowledge to use AI in the classroom; and school administration use of AI.
- School districts are not required to have an AI policy, but DPI provides guidance on best practices if a school district elects to adopt an AI policy.
- The goal for using AI in the classroom and by school administration should be to reduce time spent completing paperwork and to increase time interacting with students.
- DPI has partnered with other states to collaborate in AI guidance workgroups and with ITD and TeachAI to coordinate a North Dakota workgroup of teachers and leaders to draft North Dakota's school AI guidance and toolkit documents.
- DPI has partnered with the Department of Career and Technical Education (CTE) and EduTech to update cybersecurity education standards to include AI concepts.

North Dakota University System

The committee received testimony from representatives of the University System regarding AI benefits and threats for students, professors, and higher education IT, including AI used by the University System, plans for the use of AI technologies, and legislative suggestions related to AI. Testimony indicated:

- The University System is examining the benefits of AI for higher education students, as well as risks, which include data privacy, security, bias, copyright and intellectual concerns, cheating and plagiarism, and unproven third-party AI tools.
- Multiple University System campuses have hosted AI related events for students, and in May 2023, SBHE launched an Envision 2035 strategic planning exercise to determine what higher education faculty should teach students about AI and digital sciences and how faculty can utilize AI for operations.
- North Dakota higher education students have used AI for research in various fields, including computer science, medicine, agriculture, biology, energy, and cybersecurity.

- North Dakota has an opportunity to take advantage of growing demand for AI and data centers due to the state's energy and infrastructure capabilities.
- Data centers utilizing AI can provide economic development and workforce value to state agencies, the University System, local government entities, K-12 schools, and the private sector.
- SBHE suggests the Legislative Assembly recognize AI as an opportunity for economic growth; study the policy actions of other states, the federal government, and other countries; cultivate a system that attracts individuals to the state to pursue AI opportunities; and recognize the importance of AI infrastructure for state agencies, including data storage and computation.

Governor's Office

The committee received testimony from representatives of the Governor's office regarding the executive branch's AI workgroup activities and proposed uses of AI for state agencies. Testimony indicated:

- The Governor's office and ITD collaborated with executive branch agencies to develop AI guidance and policy documents detailing opportunities and risks of using AI for state government programs. Executive branch agencies required to receive services from ITD must adhere to the AI policies while all other state and local government agencies are encouraged to follow the AI policies.
- The Governor's office partnered with gener8tor, an organization that provides early-stage investments, entrepreneurship training, and other assistance for new businesses, and Microsoft to conduct a generative AI skills accelerator. This involved 67 executive branch employees from 13 state agencies collaborating over 6 weeks to develop generative AI uses to improve government operations.
- Implementation of AI may assist government agencies and the private sector in addressing workforce challenges.

Department of Health and Human Services

The committee received testimony from representatives of the Department of Health and Human Services (DHHS) regarding AI benefits and threats for the health care industry, including AI used by North Dakota health care providers and future plans for the use of AI technologies. Testimony indicated:

- DHHS uses narrow generative AI for public health services, machine learning to forecast data and trends for human services, and reactive AI for management of behavioral health electronic records.
- DHHS anticipates increasing AI use for data analytics, chatbots, and AI grant writing for public health services; predictive analytics for medical services; forecasting and chatbots for human services; and machine learning for behavioral health eligibility, denials, and authorizations.
- The primary concern with using AI for DHHS programs and services is security of private or sensitive citizen data, which has resulted in DHHS collaborating with ITD and other agencies to ensure proper security measures are in place before integrating new AI functions.

Department of Transportation

The committee received testimony from representatives of the Department of Transportation (DOT) regarding AI benefits and threats for the transportation infrastructure in the state, including AI used for transportation purposes and future plans for the use of AI technologies. Testimony indicated DOT is:

- Engaged in multiple AI research projects with the University System, including a project to study the use of machine learning and digital imagery for roadway and transportation infrastructure drone surveillance.
- Testing adaptive signal controllers that use AI to adjust traffic signal timings, based on real time traffic conditions, to manage traffic congestion.
- Analyzing other potential AI uses, including the benefits of using AI to identify trends and preventative measures to reduce traffic accidents, identifying adverse road conditions to assist department staff in knowing when to deploy road safety materials, and utilizing AI for citizen calls and information inquiries.

Greater North Dakota Chamber

The committee received testimony from representatives of the Greater North Dakota Chamber regarding AI benefits and threats for public and private sector entities and any legislative suggestions related to AI. Testimony indicated every sector is using AI, including manufacturing, construction, technology, hospitality, finance, transportation, health care, energy, and communications. The committee was informed 23 percent of small businesses use AI, primarily for marketing, customer outreach, inventory management, attracting new customers, limiting cost increases, addressing supply chain challenges, and addressing staffing issues.

Microsoft

The committee received testimony from representatives of Microsoft regarding AI benefits, threats, and capabilities, including how Microsoft is using AI and future potential uses of AI technologies. Testimony indicated AI can provide opportunities for agriculture technology, transportation, infrastructure, supply chain management, health care, life sciences, citizen services, and climate change adaptation and mitigation.

Generally Negative or Neutral Artificial Intelligence Testimony

Attorney General

The committee received testimony from representatives of the Attorney General's office regarding AI benefits and threats for children and any legislative suggestions related to AI. Testimony indicated:

- AI has created challenges for law enforcement agencies, including the Bureau of Criminal Investigation cybercrime unit.
- AI has made it easier to alter images of individuals, which has resulted in a significant increase in AI generated pornographic images and videos of children. This has increased the number of sextortion cases and tips and reports received by the Bureau of Criminal Investigation cybercrime unit and has raised legal questions regarding whether an individual can possess and distribute AI-generated photos depicting children in a sexual manner.
- The Attorney General's office is not aware of model legislation examples in other states at this time, but will continue to work with law enforcement on concerns and challenges with AI and may present proposed legislation for the Legislative Assembly to consider regarding the use of AI and the protection of adults and children.

Children's Advocacy Centers of North Dakota

The committee received testimony from representatives of the Children's Advocacy Centers of North Dakota regarding AI benefits and threats for children and any legislative suggestions related to AI. Testimony indicated:

- Child sexual abuse material has increased due to the availability of AI-generating software.
- In September 2023, the National Association of Attorneys General sent a letter to congressional leaders requesting an expert commission be established to study how AI is used to generate child sexual abuse material, to propose solutions, and for federal laws related to possession and distribution of child sexual abuse material to be expanded to cover AI-generated material.
- Potential benefits of AI include having an ability to refine forensic interviews of children and to prevent child abuse through predictive analytics.

Secretary of State

The committee received testimony from representatives of the Secretary of State's office regarding AI benefits and threats for North Dakota's election processes, including AI used for election purposes, future plans for the use of AI technologies, and any action needed for the security and integrity of the 2024 state elections and future elections. Testimony indicated:

- While there are opportunities for the Secretary of State's office to use AI for customer service, fraud detection, and workflow efficiencies, North Dakota's ballot equipment is not connected to the Internet, the state's election processes do not use AI, and there are no plans to use AI for future elections.
- One negative effect of election-related AI used by third parties is the spread of misinformation concerning public office candidates seeking election.

National Conference of State Legislatures

The committee received testimony from representatives of the National Conference of State Legislatures regarding AI legislation proposed or enacted in other states. Testimony indicated:

- During 2023 legislative sessions, 28 states enacted AI-related legislation and, of the 46 states holding a 2024 legislative session, 43 states have enacted or are considering AI-related legislation.
- Common AI topics in other states include AI taxes, cybersecurity, oversight and governance, health use, elections, auditing requirements, child pornography, education, government use, private sector use, and criminal use.
- Colorado and Utah have approved legislation related to AI consumer protections which require online disclosure to consumers if a website or source is using AI.
- Multiple states have proposed or enacted legislation to regulate the use of AI and deep fakes for child pornography.

Conclusion

Although the committee concluded there may be a need for AI legislation in the future as AI technology and uses continue to develop, the committee makes no recommendation regarding the study of AI.

STUDY OF EMERGENCY AND INTEROPERABLE PUBLIC SAFETY COMMUNICATION SYSTEM GOVERNANCE

Background

Pursuant to Section 5 of House Bill No. 1242 (2023), the committee studied emergency and interoperable public safety communications system governance needs and options. Study requirements included:

1. Analyzing of options to manage and operate state and local emergency and interoperable public safety systems, including the statewide interoperable radio network (SIRN).
2. Evaluating the current and most appropriate governance roles for each state and local emergency and interoperable public safety government entity.
3. Determining the most appropriate state or local emergency and interoperable public safety government entity to have responsibility for the ongoing administrative and operational maintenance cost of SIRN.
4. Considering input from ITD, the Department of Emergency Services (DES) Division of State Radio, the Statewide Interoperability Executive Committee (SIEC), ESC3, the North Dakota Association of Counties (NDACo), and local public safety entities.

Statewide Radio Systems Assessment and Evolution Study

The committee was informed that during the 2013-14 interim, SIEC coordinated funding from various public safety entities to conduct a study of North Dakota mission-critical radio communication systems used by public safety responders and public safety entities. The Statewide Interoperability Executive Committee selected Televate, LLC, to assess the status of mission-critical land mobile radio networks statewide and to develop a strategic plan to combine communications into an expansive network that enhances public safety response statewide. In January 2015, Televate, LLC, released a report regarding the study of mission-critical radio communication systems and provided recommendations related to evolving fragmented legacy radio technologies, improving radio system coverage and capacity, enhancing state and local interoperability, conducting effective training and exercises, improving funding allocations, engaging local stakeholders in the development of state initiatives, and centralizing state systems while providing local autonomy.

Information Technology Department

Section 37-17.3-02 provides the CIO of ITD is charged with the operation and maintenance of SIRN as directed by SIEC and allows the CIO to purchase the necessary apparatus and equipment to construct or establish SIRN within North Dakota to enable seamless interoperable communications from local, state, and federal levels. However, the CIO may not use state funds, including resources from the SIRN fund for dispatch consoles, connectivity, and associated necessary software, equipment, or services to support a public safety answering point (PSAP) unless these items are intended for use by a state agency or state department.

Section 37-17.3-12 establishes the SIRN fund in the state treasury, which, subject to legislative approval and SIEC approval, must be used for providing the required state share of funding for expenses associated with the purchase, installation, operation, and maintenance of SIRN. The fund consists of money transferred into the fund, interest earned on money in the fund, payments to the fund, and other fund earnings. The Chief Information Officer may apply for and accept funds, grants, gifts, or services made available for SIRN by an agency or department of the federal government or any other person. Any funds, grants, or gifts, or money received from services received related to SIRN must be deposited in the SIRN fund.

Section 57-40.6-02 provides a governing body of a county or city may impose a fee on all assessed communications services, provided the fee does not exceed $1.50 per month per communication connection. The fee must be applied equally upon all assessed communication services and does not apply to prepaid wireless services. Political subdivisions are required to add an additional fee of $0.50 to the original fee assessed on communication services and remit the additional $0.50 to the State Treasurer for deposit in the SIRN fund for the implementation of SIRN.

Division of State Radio

Section 37-17.1-02.1 establishes State Radio as a division of DES. The Adjutant General is the Director of DES. Chapter 37-17.3 relates to the State Radio broadcasting system, which consists of the State Radio network and North Dakota telecommunications system that is used to enhance interoperable communications that promotes officer and citizen safety.

Section 37-17.3-04 requires the Director of the Division of State Radio to broadcast all dispatches and reports submitted which have a reasonable relation to or connection with the apprehension of criminals, the prevention of crimes, or the maintenance of peace and order in the state, including disaster emergency services.

Statewide Interoperability Executive Committee

The Statewide Interoperability Executive Committee includes representatives of state agencies, public safety entities, and legislators. The committee was informed SIEC is responsible for oversight of public safety interoperable communications, is required to prepare recommendations regarding SIRN, and may adopt rules governing the connection or integration of PSAPs to SIRN.

A subcommittee of SIEC is responsible for management and implementation of public safety interoperable communication policies and includes four state agency representatives, four local urban representatives, and four local rural representatives. Each regional board aligns with emergency management regions and has one representative for each 911 jurisdiction. Each regional board includes a tribal representative and one member from each 911 jurisdiction or county in the region. The regional boards are responsible for addressing local and regional interoperability issues while receiving local input to statewide initiatives.

The committee was informed SIEC includes workgroups comprised of volunteers who focus on simulcast, public information, fleet mapping, encryption, radio, fire, law enforcement, education and training, security, PSAP users, and emergency medical services and hospitals.

Emergency Services Communications Coordinating Committee

Section 57-40.6-12 establishes ESC3. The governing body of a city or county which adopted a fee on assessed communication services is required to submit a report of income, expenditures, and the status of its emergency services communication system to ESC3. The members of ESC3 include four members appointed by the North Dakota 911 Association, NDACo, CIO of ITD, and Adjutant General. The Emergency Services Communications Coordinating Committee provides Next Generation 9-1-1 services to North Dakota, which is a nationwide initiative to improve 911 services between the public and PSAPs.

The committee was informed ESC3 is responsible for implementing new Next Generation 9-1-1 services to efficiently and cost-effectively deliver 911 calls to a PSAP while SIEC is responsible for developing a statewide integrated public safety radio system like SIRN that PSAPs and all emergency response agencies will utilize for public safety communications. Next Generation 9-1-1 services receive incoming 911 calls and routes the calls to PSAPs. Next Generation 9-1-1 services and SIRN provide information to PSAP dispatchers to relay emergency messages to dispatch responders. The Emergency Services Communications Coordinating Committee and SIEC work together as new technologies are implemented.

Public Safety Answering Points

Chapter 57-40.6 relates to emergency services communications systems and defines a PSAP as a communications facility or combination of facilities which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies. Section 57-40.6-10 requires the governing body of local governmental units with jurisdiction over an emergency services communication system to designate a governing committee to operate or contract for the operation of at least one PSAP to manage emergency services communications and to maintain the law enforcement, fire, and emergency medical service response boundaries for the PSAP service area.

2019-20 Government Administration Committee

Pursuant to Section 10 of House Bill No. 1021 (2019), the 2019-20 interim Government Administration Committee studied consolidated emergency and interoperable public safety communications system governance and funding options. Testimony was provided from representatives of the Division of State Radio, ITD, SIEC, ESC3, and NDACo regarding the SIRN governance, opportunities to improve emergency services communications, future statewide emergency services radio communication coverage as a result of SIRN, each organization's role related to SIRN, suggestions regarding the consolidation of SIRN governance and public safety communications, suggestions for consolidating PSAPs, any concerns or challenges related to SIRN and the consolidation of public safety communications, and other organizational duties not related to SIRN.

The 2019-20 interim Government Administration Committee was informed local PSAP partners have concerns PSAPs will be forced to consolidate. State Radio and local partners stated PSAP consolidation should occur only if PSAP operations and emergency communications would benefit from the consolidation, rather than mandating the dissolution of PSAPs. Other than State Radio, all PSAPs are funded by local sources. Testimony suggested as the new radio frequency trunking system is implemented as part of the SIRN project and there are fewer geographic location issues, consolidation of PSAPs may occur at the local level due to cost-savings and available resources. Local agencies recommended delaying any governance changes until SIRN is complete and is operating statewide.

The 2019-20 interim Government Administration Committee received testimony from a representative of ESC3 that indicated ESC3 would not support a merger with SIEC at that time because ESC3 is focused on the development of Next Generation 9-1-1 services while ITD and SIEC are focused on the SIRN project. The Emergency Services Communications Coordinating Committee provided testimony indicating SIEC should focus on the completion of the SIRN project before considering a potential merger with ESC3. Testimony suggested ESC3 believes any proposal to merge ESC3 and SIEC must be done at the appropriate time, will require changes in governance structure and responsibilities, must not harm the work already achieved by the organizations, and must consider how the newly formed organization will be funded.

The 2019-20 interim committee recommended emergency and interoperable public safety communications system governance not be modified from the current governance model until the SIRN project is complete and providing statewide interoperability for public safety communications, at which time additional analysis of governance consolidation may be necessary.

Funding

The Legislative Assembly has appropriated a total of $295 million to ITD for SIRN since the 2015-17 biennium, as follows:

	2015-17 Biennium	2017-19 Biennium	2019-21 Biennium	2021-23 Biennium[1]	2023-25 Biennium[1]	Total
General fund	$1,401,750			$1,858,240	$1,858,240	$5,118,230
SIRN fund[2]		$13,700,000	$12,330,000	12,335,556	16,543,229	54,908,785
Strategic investment and improvements fund			20,000,000			20,000,000
Bank of North Dakota loan[3]		15,000,000				15,000,000
Bank of North Dakota profits[4,5]			20,000,000		20,000,000	40,000,000
Bank of North Dakota line of credit[4,5]			80,000,000			80,000,000
State Fiscal Recovery Fund[5]					80,000,000	80,000,000
Total	$1,401,750	$28,700,000	$132,330,000	$14,193,796	$118,401,469	$295,027,015

[1]Funding from the general fund for SIRN during the 2021-23 and 2023-25 bienniums is for tower maintenance operating expenses, which was transferred by the 2021 Legislative Assembly from the DES Division of State Radio to ITD.

[2]Funding deposited in the SIRN fund is derived from a $0.50 fee on assessed communication services. Actual revenues deposited in the SIRN fund is approximately $9 million per biennium. Additional appropriation has been provided in the event additional revenue is generated from the $0.50 fee.

[3]The Information Technology Department did not borrow funding from the Bank of North Dakota for SIRN during the 2017-19 biennium.

[4]Of the $132.33 million appropriated to ITD for SIRN for the 2019-21 biennium, ITD was required to spend $25 million of the $80 million Bank of North Dakota line of credit before the $20 million transfer of Bank profits could occur. The department did not spend funding from the line of credit during the 2019-21 biennium, resulting in no transfer of Bank profits for the SIRN project during the 2019-21 biennium.

[5]In House Bill No. 1242, the Legislative Assembly appropriated $100 million of one-time funding for the SIRN project, of which $20 million is transferred from Bank of North Dakota profits to the SIRN fund to repay funding utilized by ITD from the Bank line of credit authorized by the 2019 Legislative Assembly and $80 million is from the federal State Fiscal Recovery Fund.

Information Technology Department

The committee received testimony from representatives of ITD regarding SIRN governance, an overview of the SIRN trunk systems, memorandums of understanding with local entities, participation in SIRN, the status of the SIRN project, including plans for the use of funding appropriated for the project for the 2023-25 biennium, the status of radios purchased by local entities utilizing the state's cost-share program, current and future projected ongoing operations and maintenance costs of SIRN, potential revenue sources available, and future concerns and needs of interoperable public safety communication system governance in the state.

Statewide Interoperable Radio Network Project

Testimony indicated:

- Through March 2024, 46 of the 140 towers needed for SIRN are constructed and compatible with the network, 15 are in a final memorandum of understanding acceptance phase, 29 are under construction, and 50 are either in the site acquisition or site searching phase.
- Through March 2024, ITD reimbursed local public safety entities $12.9 million for the purchase of 8,695 personal and vehicular radios.

- Through March 2024, the estimated revenue available for ongoing SIRN operations for the remainder of the 2023-25 biennium and the 2025-27 biennium is $26.8 million. Estimated expenditures for the remainder of the 2023-25 biennium and 2025-27 biennium is between $26.1 million and $28.1 million.
- The SIRN project is anticipated to be complete in 2026. Items to consider as the SIRN project nears completion and as the process transitions to an operational phase include which agency should have the obligation for maintenance and operation of the SIRN system, which agencies need to be included in the process to ensure ongoing success of SIRN, how to ensure stakeholders have a continued voice in SIRN operations, and how to fund ongoing maintenance and operations.

Statewide Interoperable Radio Network Governance

Testimony indicated:

- A proposed new governance model could include an executive group that makes decisions on emergency communications topics and issues, an advisory group that provides guidance and input to the executive group, and workgroups comprised of the coordinated regional interoperability boards (CRIBs) and ITD staff.
- ITD surveyed local public safety entities regarding a proposed new public safety communication system governance that includes an executive group, advisory group, and workgroups. Of the 19 surveys sent to public safety entities, ITD received 13 responses that provided an average approval rating of 2.97 on a 5 point scale.
- Future needs of interoperable public safety communication system governance includes continued partnership between ITD, DOT, DES, and the Highway Patrol to minimize contract duplication, reduce financial burden between agencies, and ensure active engagement and support with all stakeholders.

Statewide Interoperability Executive Committee

The committee received testimony from representatives of the SIEC regarding the SIEC's role in public safety communication systems, any challenges with public safety network and equipment, governance consolidation needed, and suggestions to improve public safety and emergency services communications. Testimony indicated:

- SIEC is considering entering a memorandum of understanding with the Northern Plains Uncrewed Aircraft Systems Test Site to collaborate the SIRN project with the beyond visual line of sight uncrewed aircraft systems program, also known as Vantis, to increase reliability and coverage between flight crewmembers to ensure the safe operation of uncrewed flight operations.
- SIEC established a subcommittee to focus on SIRN and the CRIBs to provide for a comprehensive emergency communications governance model in the state.
- CRIBs believe the emergency communications governance model is working well and are not in favor of governance changes before the SIRN system is fully operational.

Emergency Services Communications Coordinating Committee

The committee received testimony from representatives of ESC3 and NDACo regarding ESC3's role in public safety communication systems, any challenges with public safety network and equipment, governance consolidation needed, and suggestions to improve public safety and emergency services communications. Testimony indicated ESC3:

- Focuses on 911 emergency communications and defers any radio-related emergency communication issues to SIEC.
- Provides guidance to NDACo and the North Dakota 911 Association's strategic technology and planning subcommittee, which includes providing direction to NDACo regarding contracts for services and administration of the Next Generation 9-1-1 program.
- Has concerns regarding the increasing pressure on the general fund of local governments to pay for emergency communications network and equipment expenses as 911 fees have remained relatively unchanged in recent years.
- Met in January 2024 to discuss SIRN governance and possible consolidation of emergency communication governance committees and agreed there are benefits to transitioning to a governing structure that combines 911, radio, public safety broadband, and other public safety emerging technologies.
- Will continue to work with NDACo and emergency services communications entities to determine the feasibility of changing the governance structure.

Division of State Radio

The committee received testimony from representatives of the DES Division of State Radio regarding State Radio's role in public safety communication systems, challenges with public safety network and equipment, governance consolidation needed, and suggestions to improve public safety and emergency services communications. Testimony indicated:

- State Radio provides 911 dispatch services for 25 of North Dakota's 53 counties and will be the last PSAP to transition to the SIRN system.
- Challenges will include annual maintenance costs of the SIRN system, clarifying which entity owns SIRN data, and hardware replacement costs and availability.
- DES recommends the SIEC be phased out to allow the ESC3 to manage the SIRN system, but to continue with the current CRIB and SIRN workgroups to allow for local feedback and guidance.

Department of Transportation

The committee received testimony from representatives of DOT regarding the department's role in public safety communication systems, any challenges with public safety network and equipment, governance consolidation needed, suggestions to improve public safety and emergency services communications, and any leases entered with private entities for radio tower space, pursuant to Section 24-02-45.2. Testimony indicated:

- DOT's primary responsibility in the public safety system is to ensure and maintain continuous operation of the 45 state-owned towers used for the current very high frequency radio network.
- 37 of the 45 state-owned towers will be used as part of the SIRN system.
- During the 2021-23 biennium, DOT spent approximately $2.6 million on utilities, network fees, lease payments, and service contracts to operate and maintain state-owned towers and the very high frequency radio network.
- Transportation funding may be used for maintenance and operation of the state-owned tower network only if the towers are used for transportation-related purposes.
- The SIRN system will be used for a broad range of public safety purposes, some of which are not transportation related, meaning a new funding source will be needed for SIRN-related expenses.
- DOT anticipates transitioning to the SIRN network by the 4th quarter of 2024.
- DOT has entered lease agreements with federal and state agencies on 14 towers, but not with any private entities. The department anticipates continuing to manage tower lease contracts and either provide or manage maintenance services for each tower location in the SIRN system.

Local Public Safety Entities

The committee received testimony from a representative of Grand Forks County regarding emergency communications and SIRN. Testimony indicated a desire for the Legislative Assembly to make no changes to SIRN system governance.

Conclusion

After review of stakeholder testimony and the proposed new SIRN governance model from ITD, the committee concluded a consensus has not been reached among public safety entities regarding the need for governance changes for public safety communication services in the state. The committee makes no recommendation related to the study of emergency and interoperable public safety communications system governance needs and options.

MAJOR 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 major IT project. A major 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 2023-24 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 100 projects in an initiating, planning, executing, transitioning, or closing project stage during the 2nd quarter of 2024:

- The total budgeted costs for all projects is $468.7 million and the combined budget variance for all projects was $4.4 million less than budgeted.

- There are 2 projects with a schedule variance of more than 20 percent, which are the ITD SIRN project and the Department of Environmental Quality laboratory information system replacement project.
- No projects exceeded the 20 percent budget variance threshold.
- DPI's child nutrition and food distribution system project, also known as NDFoods, has been delayed due to difficulties with the project vendor, LINQ. The committee was informed the system is used to administer 11 DPI programs, including sponsor applications, claim reimbursement, and managing school food inventory. Testimony provided by a representative of DPI indicated because it has become difficult to support the NDFoods system, DPI entered a contract with LINQ to replace NDFoods with a new system. In June 2024, DPI terminated the LINQ contract. Through September 10, 2024, DPI spent $548,737 of the $3.8 million of federal funds received for the project and intends to use the remaining funding to work with ITD and contract with a new vendor to modernize the current system.

Prioritization of Proposed Major Information Technology Projects

Section 54-35-15.2(13) requires the Information Technology Committee receive information from ITD regarding proposed major IT projects with an estimated cost more than $500,000 for executive branch state agencies, excluding institutions under the control of the SBHE and agencies of the judicial and legislative branches. The CIO is required to submit a report to the committee by October 1st of each even-numbered year regarding the proposed major IT projects for the next biennium. Through September 30, 2024, ITD reported the following information is known about 33 potential requests from state agencies for funding for major IT projects during the 2025-27 biennium:

Agency	Project Name	Estimated Project Cost
108 - Secretary of State	Central indexing system upgrade	$910,000
112 - ITD	Statewide data strategy	16,086,762
112 - ITD	Digital experience/business gateway	16,227,923
112 - ITD	Vulnerability management	4,771,963
112 - ITD	IT modernization and innovation fund	45,573,956
112 - ITD	North Dakota Health Information Network (NDHIN) data lake	1,716,105
112 - ITD	Data center infrastructure upgrade	1,719,061
125 - Attorney General	Victim notification system replacement	Unknown
180 - Judicial branch	AI for clerks	1,250,000
180 - Judicial branch	Problem-solving court case management system	780,000
180 - Judicial branch	Digital evidence management	980,000
180 - Judicial branch	Secure access to court records	960,000
303 - Department of Environmental Quality	Solid waste environmental data system upgrade	585,000
325 - DHHS	Vocational rehabilitation system replacement	Unknown
325 - DHHS	Food and lodging management system	Unknown
325 - DHHS	Health facilities emergency management services licensure system	Unknown
325 - DHHS	State Hospital network redundancy	Unknown
325 - DHHS	Electronic health record pharmacy system redundancy	Unknown
325 - DHHS	Technical debt remediation	Unknown
485 - Workforce Safety and Insurance	Claims and policy system, release 13	2,452,357
485 - Workforce Safety and Insurance	Claims and policy system, release 14	2,706,443
485 - Workforce Safety and Insurance	myWSI, release 9	675,740
530 - Department of Corrections and Rehabilitation	Offender management system	58,500,000
530 - Department of Corrections and Rehabilitation	Timekeeper system	2,599,600
530 - Department of Corrections and Rehabilitation	IT data management and enhancements	1,549,552
530 - Department of Corrections and Rehabilitation	Facility case management system	2,961,000
530 - Department of Corrections and Rehabilitation	College technology solution	675,000
770 - Department of Water Resources	Migration of big data	2,171,284
801 - DOT	Modernized appointment system	2,500,000
801 - DOT	Chatbot	750,000
801 - DOT	AI search for DOT manuals	1,000,000
801 - DOT	Spring load restriction technology	1,700,000
801 - DOT	Grants management system	1,000,000
Total		$172,801,746

The committee was informed ITD plans to prioritize major IT project requests based on strategic alignment, operational alignment, feasibility, financial considerations, and technology capabilities.

EDUCATION INFORMATION TECHNOLOGY

University System

The committee received testimony from representatives of the SBHE regarding higher education IT activities, pursuant to Sections 15-10-44 and 54-35-15.2. Testimony indicated:

- During the fall 2023, the University System initiated an enterprise resource planning (ERP) market analysis to identify a product to replace the current ERP software to better meet the financial, human resources, and student information system needs of the 11 higher education institutions. The University System intends to request funding from the 2025 Legislative Assembly for the ERP360 project to replace the PeopleSoft financial and human resources ERP software during the 2025-27 biennium.
- The University System intends to transition IT systems to cloud-based platforms and will request $10 million for a cloud readiness assessment during the 2025-27 biennium and additional funding for the cloud transition project during the 2027-29 biennium, with the goal of being fully transitioned to cloud platforms by 2035. The two vendors being considered to work on the cloud transition project are Oracle Corporation, which owns the PeopleSoft software, and Workday, Inc.
- The University System intends to request $3 million for AI and machine learning enhancements to higher education systems, $2.6 million to replace obsolete technical infrastructure, $3 million for technical workforce development, $8 million for high-performance computing upgrades, and $8 million for research computing needs at the University of North Dakota (UND) and North Dakota State University during the 2025-27 biennium.
- The UND NetX campus network project is in the planning phase and a vendor, Apogee, has been selected to provide network services at UND.

Elementary and Secondary Education

The committee received testimony from a representative of EduTech regarding IT initiatives for elementary and secondary education, including accomplishments, future initiatives, and computer and cybersecurity standards and credentials. 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. Through May 2024, 52 of the state's 168 school districts are using the ClassLink education and data system, 20 districts are in the implementation phase, and 10 districts are in the planning phase.

INFORMATION TECHNOLOGY STATUTORY REPORTS

Distributed Ledger Technology Report

Pursuant to Section 54-59-02.2, the committee received a report regarding the implementation of distributed ledger technologies. The Information Technology Department indicated there are no major distributed ledger technology projects in state government.

Information Technology Department 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. The committee received a report from representatives of ITD stating the 2023-25 biennium business plan primarily is focused on closing workforce gaps, enabling decisionmaking, managing risk, and enhancing citizen and business engagement. The 2025-27 biennium ITD business plan will not be finalized until after the 2025 legislative session when the next biennium funding authorization is known.

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 SBHE, each executive branch agency and institution is required to comply with the policies and standards developed by ITD. The committee was informed ITD 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 SBHE, 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 was informed although the deadline for each agency to submit its IT plan to ITD for inclusion in the statewide IT plan is August 15 of each even-numbered year, some agencies were granted extensions by ITD through September 2024. The department anticipates the statewide IT plan will be published in November or December 2024. The Information Technology Department may request the Legislative Assembly to make changes to statewide IT plan statutes during the 2025 legislative session; however, the specific changes are not yet known.

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 SBHE regarding higher education IT planning, services, and major projects. The committee received testimony from representatives of ITD and the University System regarding coordination of services.

Testimony indicated ITD coordinates with political subdivisions on network, cybersecurity, social, 911, interoperable radio network, geographic information system, health alert network, criminal justice information sharing, clerk of court, and election system services and with the University System on network, cybersecurity, distance education, PeopleSoft, and co-location services. Testimony from a representative of the University System indicated the University System works with ITD on the University System's information security council, network committee, ERP360 planning group, IT service management, PeopleSoft, and AI planning group.

Information Technology Department 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. The department prepared and presented a report for fiscal year 2023, which included an executive summary, accomplishments, financial metrics and financial statements, and performance measures. The report addressed performance management, records management, financial measures, rate comparisons, and project highlights.

The fiscal year 2024 report was not available when the committee completed its interim responsibilities.

Statewide Longitudinal Data System

Pursuant to Section 54-59-36, the committee received a report from the Statewide Longitudinal Data System Committee on the status of SLDS. The Information Technology Department indicated during the 2023-24 interim, the Statewide Longitudinal Data System Committee expanded SLDS to include career and technical education data. The committee was informed SLDS also receives data from DPI, the University System, Job Service North Dakota, and the North Dakota Education Standards and Practices Board.

Disclosed Cybersecurity Incidents

Pursuant to Section 54-59.1-07, the committee received a report regarding all disclosed cybersecurity incidents, including the status of the cybersecurity incidents and any response or remediation to mitigate the cybersecurity incidents. Testimony indicated:

- Through July 2024, ITD identified 28,598 cybersecurity incidents for calendar year 2024, compared to 53,700 cybersecurity incidents identified during calendar year 2023.
- Since the passage of Section 54-59.1-07 in 2021, ITD has been notified of 39 reportable cybersecurity incidents, which are most often a result of phishing efforts.

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 Emergency Services Communications Coordinating Committee recommends the 2025 Legislative Assembly amend the definition of "public safety telecommunicator" in Section 57-40.6-01 to replace "an individual" with "a first responder."

OTHER INFORMATION

Information Technology Security Audits

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 and its third-party vendor, Secure Yeti, regarding the status of the IT security audits. Testimony indicated:

- ITD, the University System's Core Technology Services, and the 11 higher education institutions were included in the audit.
- Physical locations tested during the audit included the ITD building, State Capitol, UND, Williston State College, Minot State University, Lake Region State College, and Dakota College at Bottineau.
- The audit revealed 130 vulnerabilities throughout ITD and the University System, of which 1 is considered critical risk, 36 high risk, 54 medium risk, and 39 low risk.
- The key findings of the audit include an insufficient number of University System analysts to effectively monitor the network (critical risk), an insecure ITD firewall configuration (high risk), excessive permissions for ITD and University System workstation users (high risk), digital verification of network traffic was not always enforced by ITD and the University System (high risk), and insecure University System legacy protocols.
- Positive results of the 2021-23 biennium audit include an improvement in the number of critical and high risks compared to the 2019-21 biennium audit, establishing the vulnerability management program, reducing the number of externally exposed assets, and transitioning to a zero trust network model since the 2019-21 biennium audit.

2023-25 Biennium

Senate Bill No. 2004 (2023) 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 and the third-party vendor, Secure Yeti, regarding the status of the IT security audits. Testimony indicated:

- The purpose of the IT security audits is to evaluate the security posture of state networks by testing network systems using techniques commonly used by individuals with malicious intent.
- The IT security audits included external penetration testing, internal vulnerability scanning, internal penetration testing, and onsite social engineering.
- Security Yeti identified 51 vulnerabilities, including 12 critical risk, 18 high risk, 8 medium risk, and 12 low risk vulnerabilities, and 1 informational finding.
- ITD is addressing vulnerabilities identified in the audit report but some of the vulnerabilities will be difficult to remediate unless updates are made to state systems.

Information Technology Department Budget

Broadband Infrastructure Grants

During the November 2021 special legislative session, in House Bill No. 1505 (2021), the Legislative Assembly appropriated $45 million from the federal Coronavirus Capital Projects Fund to ITD for broadband infrastructure grants during the 2021-23 biennium. The program is to provide funding to telecommunication carriers for the purpose of building infrastructure capable of providing high-speed broadband services to unserved and underserved areas in the state. In Section 9 of House Bill No. 1021 (2023), the Legislative Assembly authorized ITD an exemption to continue the $45 million for broadband infrastructure grants into the 2023-25 biennium. The department is required to approve any grant application that includes the use or implementation of fiber optic cable in the proposed service area unless fiber optic cable currently serves the proposed service area.

In Section 10 of House Bill No. 1021, the Legislative Assembly required OMB to transfer any uncommitted Coronavirus Capital Projects Fund appropriation authority from ITD to CTE for career academy inflationary costs during the 2023-25 biennium. The funding may be spent by CTE only if the federal government approves a state plan amendment on the planned use of money in the fund. If the state plan amendment is not approved, OMB Is required to transfer the uncommitted funding to ITD for broadband infrastructure grants.

The committee received testimony from representatives of ITD regarding funding spent and expected to be spent from the Coronavirus Capital Projects Fund for broadband infrastructure grants and funding transferred to CTE for career academy inflationary costs. Testimony indicated of the $45,000,000 appropriated from the Coronavirus Capital Projects Fund, ITD retained $38,680,527 for the broadband infrastructure grant program, including $37,251,986 for 11 grant projects to 7 telecommunication companies to serve approximately 2,165 underserved and unserved locations and $1,428,541 for administrative costs, while the remaining $6,319,473 was transferred to CTE for career academy costs.

The committee was informed in March 2024, the United States Department of the Treasury approved North Dakota's state grant plan amendment to allow additional funding from the Coronavirus Capital Projects Fund to be used for career academies rather than broadband infrastructure grants.

Broadband, Equity, Access, and Deployment Grant Program

In House Bill No. 1021, the Legislative Assembly appropriated $147,762,480 of federal funds to ITD for broadband and cybersecurity programs available as a result of the federal Infrastructure Investment and Jobs Act, primarily related to the broadband equity, access, and deployment (BEAD) grant program and digital equity program during the 2023-25 biennium. The BEAD program is intended to expand high-speed broadband infrastructure in unserved and underserved areas of the state. The digital equity program is intended to ensure all citizens in the state have the technology and capacity to utilize high-speed broadband services.

The committee received testimony from representatives of ITD regarding the BEAD program and digital equity program. The committee was informed the federal government awarded ITD $130.2 million for the BEAD and digital equity programs, of which $5 million is for a BEAD planning program and $516,800 is for a digital equity planning program. The BEAD planning funding has been used to hire a management consulting company, Guidehouse, and for staff salaries to develop a 5-year plan for the BEAD program.

The committee was informed ITD's initial BEAD program plan was approved by the United States Department of Commerce National Telecommunications and Information Administration (NTIA). The department and Guidehouse have worked with telecommunication companies to determine there are approximately 4,500 to 6,000 unserved or underserved locations in the state that may be eligible for funding through the BEAD program. Once approval is provided from NTIA, ITD will have 1 year to complete the subgrantee selection process for work to be performed by telecommunication companies. It is unknown if bids will be received from telecommunication companies to provide services to all identified unserved and underserved locations in the state. Therefore, it is unknown how much funding will be spent during the 2023-25 biennium. The Information Technology Department will select grant recipients in fall 2024 or winter 2025, and anticipates submitting a final proposal for NTIA approval in late 2024 or early 2025.

Testimony indicated the $516,800 for the digital equity planning program was available through March 2024, of which ITD spent approximately $515,000 on staff salaries and consulting costs to Guidehouse. Of the $130.2 million awarded for the BEAD and digital equity programs, ITD anticipates receiving a total of $6 million to $7 million from NTIA in three annual payments for digital equity capacity grants. Additional funding for the digital equity program may become available on a competitive basis but program information has not yet been released by NTIA.

Testimony from representatives of ITD indicated unused funding from the BEAD grant program may be used for the digital equity program, but any amount of remaining BEAD grant funding will not be known until late 2024 or early 2025. The department anticipates requesting an exemption to continue funding for the BEAD program and digital equity program into the 2025-27 biennium.

State and Local Cybersecurity Grant Program

In House Bill No. 1021, the Legislative Assembly appropriated $487,520 to ITD for a state and local cybersecurity grant program during the 2023-25 biennium. The program is primarily a federal funds passthrough grant to be provided to political subdivisions for cybersecurity costs. The committee was informed ITD has partnered with DES to administer the program. Both departments are using funds appropriated from the general fund to match federal funds used by local government entities for cybersecurity projects. Both departments participate in a local government task force to address cybersecurity concerns.

The committee was informed North Dakota was one of a limited number of states that successfully applied for the state and local cybersecurity grant through the Infrastructure Investment and Jobs Act. Total federal funding awarded for federal fiscal years 2022 and 2023 was $6,953,348, which will be provided to political subdivisions for cybersecurity modernization expenses.

2025-27 Biennium Budget Request

The committee received testimony from representatives of ITD regarding the department's 2025-27 biennium budget request, including optional adjustment requests and funding options to address state government technical debt. Testimony indicated ITD anticipates requesting funding for the statewide data strategy, the universal vulnerability management project, and a myfiND citizen digital experience portal project and may propose the Legislative Assembly create a modernization and innovation fund to provide ongoing funding for IT projects and improve the prioritization, governance, and oversight of IT projects.

The committee was informed that due to increased demand from state agencies for additional IT services and projects not budgeted for in previous legislative sessions, ITD may request the 2025 Legislative Assembly establish a continuing appropriation allowing ITD to expend funds received from agencies without specific legislative approval and provide ITD budget flexibility when providing services. The Information Technology Department may request licensing, end user collaboration, network connection, hosting, certified network defender, support and service desk, telephone, mainframe, and agency-specific services be paid pursuant to the continuing appropriation. Costs that would be funded with biennial appropriations under this proposal include ITD staff salaries and benefits, capital assets, and nondirect overhead services.

According to testimony, the use of a continuing appropriation would reduce the amount of "double" appropriations to ITD and agencies for IT services, may require increased appropriations from the general fund, and may result in some agencies being unable to use federal funds for IT services provided by ITD.

Health Information Technology

The committee received testimony from representatives of ITD regarding the continued development of NDHIN. The North Dakota Health Information Network is a public-private partnership for the secure exchange of health information that enables clinical users, such as providers, nurses, and clerical staff to easily and efficiently view information relating to a patient's electronic medical record. The North Dakota Health Information Network expansion project includes establishing 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 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, the full amount for the project will not be received.

In House Bill No. 1021, the Legislative Assembly appropriated $2 million of ongoing funding from the general fund, $3.7 million of ongoing funding from the electronic health information exchange fund, and $3 million of one-time funding from the health information technology planning loan fund, which the Bank of North Dakota was 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 2023-25 biennium.

The committee received information from representatives of ITD regarding the activities of the Health Information Technology Advisory Committee and NDHIN, other health IT initiatives, and transfers from the health information technology planning loan fund, pursuant to Section 3 of House Bill No. 1021. Testimony indicated:

- CMS approved the Health Information Technology Office Medicaid cost allocation methodology in December 2023, resulting in a $4 million reimbursement to the state for NDHIN expenses incurred between October 2021 through December 2023, and allowing ITD to submit new expenses to CMS for reimbursement.
- ITD does not anticipate spending the $2 million general fund appropriation provided for health IT during the 2023-25 biennium.
- The Health Information Technology Office has begun transitioning the health information exchange to a health data utility. This new health IT model will enable better collaboration between government agencies, tribal entities, private providers, and patients; increase data sharing and access to data networks; and support additional public health research.
- Challenges of the health information exchange transitioning to a health data utility include staffing needs, participation and contributions from providers, and receiving prior approval from CMS for the use of federal funds for the project.
- ITD does not anticipate a transfer from the health information technology planning loan fund to the electronic health information exchange fund will be needed during the 2023-25 biennium.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned four studies:

- House Bill No. 1341 (2023) directed a study of those provisions of the North Dakota Century Code that place restrictions on carrying firearms and dangerous weapons. The study required an examination of the state's current firearm and weapon possession prohibitions as compared to the nation's historical regulations and restrictions on the time, place, and manner in which firearms and dangerous weapons may be restricted; and an assessment of recent federal court cases relating to firearm restrictions, including public carry, and examining the definition of a dangerous weapon and whether the current definition of a dangerous weapon should be maintained, narrowed, or expanded. The study also required input from the Attorney General, the Superintendent of Public Instruction, a representative of the North Dakota University System, and representatives of the Supreme Court, the North Dakota Association of Counties, the North Dakota League of Cities, the North Dakota State's Attorney's Association, the Commission on Legal Counsel for Indigents, the North Dakota Peace Officers Association, and an association or organization with an interest in firearm legislation.
- Section 6 of Senate Bill No. 2304 (2023) directed a study of statewide charitable gaming. The study required input from the Attorney General, stakeholders from large and small charitable organizations, local political subdivisions that authorize sites, gaming equipment manufacturers and distributors, gambling addiction counselors, and other industry leaders. The study also required an evaluation of the economic impact of charitable gaming on the state in urban and rural areas; gambling addiction and treatment services currently available; the civic benefit of charitable gaming to the communities most closely related to the gaming sites; the manner in which site authorization is approved and renewed, including whether charities have equitable access to sites; the gaming tax structure; public support for charitable gaming; statewide local restrictions placed on charitable gaming; gaming expansion; site locations where gaming is taking place; charitable gaming proceeds and the eligible uses of gaming proceeds, including the percentage of proceeds that may be used for administration; the categories of organizations that are allowed to conduct charitable gaming, including the missions of those organizations; the placement of gaming activity within a gaming site, including electronic pull-tab device placement; the rental rate paid by organizations to alcoholic beverage establishments; and the authority of the Attorney General to regulate alcoholic beverage establishments.
- Senate Bill No. 2376 (2023) directed a study of the recording practices of local and state law enforcement during custodial interrogations to determine the feasibility and desirability of uniform implementation of recording practices. The study required an assessment of the number of law enforcement agencies recording custodial interrogations and policies regarding how the recording of interrogations is conducted; the storage and retention practices associated with recording interrogations; the types of equipment used to record interrogations; the types of locations at which interrogations are recorded; the types of criminal investigations in which interrogations are recorded and the frequency at which those interrogations are recorded; the disclosure of recorded interrogations in criminal discovery; best practices and current requirements for the recording of interrogations, including adoption of the Uniform Electronic Recordation of Custodial Interrogations Act; the financial costs associated with the recording of custodial interrogations and implementation of uniform practices; and barriers to uniform implementation of the recording of custodial interrogations.
- Senate Bill No. 2278 (2023) directed a study of the laws and procedures relating to courts established under Chapter 40-18. The study required an examination of the number and geographic location of existing municipal courts; access to municipal court ordinances; jurisdiction of the municipal courts; municipal court judge qualifications and training; transfer of cases to district court; appeal of cases to district court; Supreme Court's general oversight of municipal courts; applicability of judicial administrative rules to municipal courts; requirements for recording proceedings in municipal court; and requirements to report information to the Supreme Court on the establishment or abolition of a court, the election, appointment and removal of municipal court judges and clerks, and annual caseload data and annual financial information on the imposition, collection, and disposition of fines and fees.

The Legislative Management assigned the committee the responsibility:

- To review uniform laws recommended by the North Dakota Commission on Uniform State Laws, pursuant to 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 assigned the committee the responsibility to receive the following 10 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).
- Annual reports 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.
- 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 Health and Human Services (DHHS) 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 Commissioner of DHHS, pursuant to Section 50-06-31.
- Annual reports from DHHS on the number of applications, registered qualifying patients, registered designated caregivers, registered compassion center agents, 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.
- Annual reports 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 the Supreme Court by June 1, 2024, regarding the Supreme Court's findings and recommendation and any legislation required to implement the statutory change of drug court to wellness court, pursuant to Section 55 of Senate Bill No. 2012 (2023).
- A report from the Supreme Court before September 1, 2024, on the implementation of a uniform bail schedule and the standard amount of bail for each state offense, pursuant to Section 29-08-03.1.
- A report from the Ethics Commission on the activities and operations of the commission, including information regarding the number of complaints received by the commission, education and outreach efforts, and the status of the commission's budget, pursuant to Section 4 of Senate Bill No. 2024 (2023).

Committee members were Senators Janne Myrdal (Chairman), Ryan Braunberger, Michael Dwyer, Judy Estenson, Diane Larson, Bob Paulson, and Jonathan Sickler and Representatives Claire Cory, Matt Heilman, Pat D. Heinert, Karen Karls, Jim Kasper, Lawrence R. Klemin, Ben Koppelman, Shannon Roers Jones, Bernie Satrom, Kelby Timmons, and Lori VanWinkle.

Representative Nico Rios served on the committee until his removal on January 9, 2024.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

FIREARM AND DANGEROUS WEAPONS STUDY

House Bill No. 1341 (2023) directed a study of those provisions of the Century Code that place restrictions on carrying firearms and dangerous weapons. The study required an examination of the state's current firearm and weapon possession prohibitions as compared to the nation's historical regulations and restrictions on the time, place, and manner in which firearms and dangerous weapons may be restricted, and an assessment of recent federal court cases relating to firearm restrictions, including public carry, and the definition of a dangerous weapon and whether the current definition of a dangerous weapon should be maintained, narrowed, or expanded.

Background

Federal Law

The Gun Control Act of 1968, codified at 18 U.S.C. § 922(g), is a federal law that regulates the firearms industry and firearm ownership. Due to constitutional limitations, the Act primarily is based on regulating interstate commerce by prohibiting interstate firearm transfers except by manufacturers, dealers, and importers licensed under a scheme set up under the Act. The Act was amended in 1993 to include a background check requirement of prospective firearm purchasers by licensed sellers, and to create a list of individuals to whom the sale of a firearm is prohibited. The 1993 amendment to the Act was aimed primarily at prohibiting firearm possession by convicted felons; however, the amendment also included prohibiting the following individuals from firearm possession and ownership:

- A fugitive from justice;
- An unlawful user of or individual addicted to any controlled substance;
- An individual who has been adjudicated as mentally defective or who has been committed to a mental institution;
- An alien who:
  Is illegally or unlawfully in the United States; or
  Has been admitted to the United States under a nonimmigrant visa;
- An individual who has been discharged from the armed forces under dishonorable conditions;
- A citizen of the United States, who has renounced their citizenship;
- An individual who, subject to a court order, is restrained from harassing, stalking, or threatening an intimate partner or child of the intimate partner; and
- An individual who has been convicted of a misdemeanor crime of domestic violence.

Federal law prohibits possessing a firearm on certain types of federal property, including the federal Capitol; in post offices; in airports and airplanes, and near schools.

North Dakota Law

Title 62.1 sets forth the provisions relating to weapons, specifically the possession of weapons, handguns, concealed weapons, machine guns, automatic rifles, silencers, and bombs. Under Section 62.1-01-01, a dangerous weapon does not include a spray or aerosol containing ortho-chlorobenzamalonitrile; alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage or the device uses a projectile and may be used to apply multiple applications of voltage during a single incident, then the term includes the device for an individual who is prohibited from possessing a firearm. Section 62.1-01-01 defines a firearm or weapon as any device that expels or is readily capable of expelling a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.

Chapter 62.1-02 provides the specific circumstances under which an individual may not possess a firearm and when an individual's right to possess a firearm may be restored. Section 62.1-02-01 sets forth the limitations as to who may not possess a firearm and prohibits the following individuals from possessing a firearm:

- An individual who has been convicted anywhere of a felony offense involving violence or intimidation;
- An individual who has been convicted anywhere of a felony offense or a Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon;
- An individual who is or has ever been diagnosed and confined or committed to a hospital or other institution due to mental deficiency; and
- An individual under the age of 18 years, except while under the direct supervision of an adult for the purposes of firearm safety training, target shooting, or hunting.

Section 62.1-02-05 prohibits the possession of a firearm or dangerous weapon at a school or school-sponsored event on school property, a church or other place of worship; and a publicly owned or operated building.

Section 62.1-02-10 prohibits an individual from keeping or carrying a loaded firearm in a motor vehicle, including an off-highway vehicle or snowmobile. The section also sets forth several exceptions, such as a law enforcement officer or an individual engaged in lawful hunting or trapping.

Section 62.1-03-01 allows an individual to carry a handgun if the handgun is unloaded and in plain view or secured. However, there are 13 exceptions to the limitation of unloaded and in plain view or secured.

Section 62.1-04-02 prohibits an individual, other than a law enforcement officer, from carrying a firearm or dangerous weapon concealed unless the individual is licensed to do so or exempted under Chapter 62.1-04. The section allows an individual who is not otherwise precluded from possessing a Class 2 firearm and dangerous weapon license under Chapter 62.1-04 and who has possessed for at least 30 days a valid driver's license or nondriver identification card issued by the Department of Transportation to carry a firearm concealed.

Testimony

The committee received testimony from representatives of the Bureau of Criminal Investigation and the North Dakota Peace Officers Association. According to the testimony, Section 62.1-02-04 prohibits an individual from entering or remaining in that part of the establishment either set aside for the retail sale of alcoholic beverages and the consumption of purchased alcoholic beverages or used as a gaming site where bingo is the primary gaming activity, while knowingly possessing a firearm or dangerous weapon. The testimony contended the state has robust and pragmatic statutory firearm provisions and the law should not be amended to allow the possession of a firearm inside a liquor establishment.

The committee received testimony from representatives of the Commission on Legal Counsel for Indigents contending any restriction or expansion of the definition of dangerous weapon should not be used to enhance criminal sentences because minimum mandatory sentences have done nothing to curb alleged violence or protect society. Testimony indicated minimum mandatory sentences have increased jail populations, prison populations, and the number of cases requiring an attorney.

The committee received testimony from a representative of the North Dakota State's Attorneys' Association. The committee was informed the association does not have concerns regarding the state's firearm and dangerous weapon restrictions and the law should not be amended to allow firearms to be carried inside a liquor establishment due to the devastating consequences that arise when alcohol misuse is combined with firearms. Testimony indicated excessive alcohol consumption combined with firearm use is a leading cause of preventable injury and death in the United States. The committee was informed alcohol plays an outsized role in firearm fatalities and one in three individuals who committed homicide with a firearm had been heavily drinking when they murdered their victims. The testimony indicated more than 30 percent of gun homicide victims had been heavily drinking when they were killed.

The committee received testimony from representatives of the Department of Public Instruction and the University System. The committee was informed the federal Gun-Free Schools Act requires each state receiving federal Elementary and Secondary Education Act funds to have in effect a state law requiring local educational agencies to expel from school for a period of not less than 1 year a student who was determined to have brought a weapon to school. Testimony indicated the Gun-Free Schools Act does not apply to a firearm that is lawfully stored inside a locked vehicle on school property, or to a firearm used in activities approved and authorized by the local educational agency, if the local educational agency adopts appropriate safeguards to ensure student safety. The committee was informed the University System opposes expansion of firearm possession and carry on college campuses because of concerns balancing rights with safety, especially in consideration of the elevated suicide risk in the traditional college-age population, the increased mental health crisis, the unsecured environments in the residence halls, the early brain development and impulse control in traditional college-aged students, and the lack of funding to provide equitable safe storage for an entire campus population.

The committee received testimony from representatives of the North Dakota Association of Counties and the North Dakota League of Cities indicating both counties and cities are in favor of the prohibition on possessing a firearm in a publicly owned or operated building. Testimony indicated counties support local governments having the authority to determine sensitive places within their jurisdictions which are locations a firearm can be prohibited without violating the Second Amendment. The committee was informed cities would appreciate the legal flexibility to adapt to changing needs and circumstances if substantial changes are made to state firearm and dangerous weapon restrictions. Testimony also indicated cities are concerned about firearms being allowed in liquor establishments.

The committee received testimony from the Attorney General stating in *New York State Rifle & Pistol Association Inc. v. Bruen*, the United States Supreme Court held firearm restrictions are constitutional only if there is a historical tradition of such regulation. In *U.S. v. Rahimi*, the Supreme Court applied the *Bruen* analysis to 18 U.S.C. 922(g)(8), which requires that an individual be found by a court to pose a credible threat to the physical safety of another person before the individual is temporarily prohibited from possessing a firearm. Ultimately, the Court determined the statute is consistent with the nation's historical tradition of firearm regulation because from the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others.

Committee Considerations

The committee expressed support for the state's statutory firearm and weapon possession provisions as being one of the most pro-Second Amendment nationwide. The committee acknowledged the state's deep-rooted support and appreciation for the Second Amendment and that the state maintains a robust and pragmatic system for firearm ownership, possession, and prohibitions.

Conclusion

The committee makes no recommendation regarding its study of the state's current firearm and weapon possession prohibitions.

CHARITABLE GAMING STUDY

Section 6 of Senate Bill No. 2304 (2023) directed a study of statewide charitable gaming. The study required input from the Attorney General, stakeholders from large and small charitable organizations, local political subdivisions that authorize sites, gaming equipment manufacturers and distributors, gambling addiction counselors, and other industry leaders. The study also required an evaluation of the economic impact of charitable gaming on the state in urban and rural areas, gambling addiction and treatment services currently available, the civic benefit of charitable gaming to the communities most closely related to the gaming sites, the manner in which site authorization is approved and renewed, the gaming tax structure, public support for charitable gaming, statewide local restrictions placed on charitable gaming, gaming expansion, site locations where gaming is taking place, charitable gaming proceeds and the eligible uses of gaming proceeds, the categories of organizations that are allowed to conduct charitable gaming, the placement of gaming within a gaming site, the rental rate paid by organizations to alcoholic beverage establishments, and the authority of the Attorney General to regulate alcoholic beverage establishments.

Background

History of Charitable Gaming

In the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The operators of the lottery were willing to offer the state an initial payment of $100,000, followed by annual payments of $75,000, for the privilege of operating a lottery. The scandal and controversy following this attempt led to the state's first constitutional amendment. The amendment added what eventually became Section 25 of Article XI of the Constitution of North Dakota and outlawed all forms of lotteries and gift enterprises.

The constitutional prohibition was maintained until 1976 when it was amended to allow certain forms of charitable gaming. Under the 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.

During the first 3 interims after the passage of Chapter 53-06.1 in 1981, Legislative Council interim committees studied charitable gaming and suggested many of the changes that have since been made to the law. The most comprehensive proposal was that of the 1981-82 interim Political Subdivisions Committee, which suggested a bill that, when enacted, contained 23 sections changing various aspects of the charitable gaming law. Changes from that session and others primarily have affected the kinds of games that can be held, the kinds of organizations that can hold the games, the allocation of expenses of conducting the games, administration of the charitable gaming law, enforcement of the charitable gaming law, and taxation of gaming proceeds.

In 1987, draw poker and stud poker were added to the list of permitted games. Also, that 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. Paddlewheels were added as a game of chance in 1991, and electronic quick shot bingo, fifty-fifty raffle systems, and electronic pull tabs were added as games of chance in 2017.

Charitable Organizations and Taxation on Proceeds

There are two critical elements specifically mentioned in the constitutional amendment allowing charitable gaming--the kinds of organizations that can conduct the games and the use of the proceeds from the games. The constitutional provision requires the charity to be a bona fide nonprofit veterans', charitable, educational, religious, or fraternal organization, a civic or service club, or a public-spirited organization authorized by the Legislative Assembly. The constitutional provision also requires the net proceeds be used only for educational, charitable, patriotic, fraternal, religious, or other public-spirited uses.

All organizations must meet the first test to conduct charitable gaming. Some of these organizations also meet the second test and thus can use the net proceeds for the organization's own purpose. Organizations that meet only the first constitutional test must give the proceeds to beneficiaries that meet the second test.

A state tax has been imposed on the proceeds of charitable gaming since 1977. In the 1977 law, a tax of 3 percent of adjusted gross proceeds was established and allocated to the general fund of the state. The tax was part of the expense limit for the charity. The tax rate was increased to 5 percent in 1979, was payable from adjusted gross proceeds, and was not charged against the allowable expenses of the charity.

House Bill No. 1212 (2021) further amended the gaming tax structure in Section 53-06.1-12 to impose the charitable gaming tax on total adjusted gross proceeds and changed the charitable gaming tax to 1 percent of adjusted gross proceeds for a licensed organization with adjusted gross proceeds not exceeding $50,000, and for a licensed organization with adjusted gross proceeds exceeding $50,000, the tax is $500 plus 12 percent of adjusted gross proceeds exceeding $50,000.

House Bill No. 1509 from the 2021 special legislative session added as an exception to the gaming tax structure imposed by House Bill No. 1212 (2021) that for a licensed organization permitted to conduct raffles in this state with adjusted gross proceeds exceeding $50,000, a gaming tax of 1 percent of gross proceeds is imposed on the total gross proceeds received by the licensed organization from raffles in a quarter. The tax must be computed and paid to the Attorney General on a quarterly basis on the tax return. The tax must be paid from adjusted gross proceeds and is not part of the allowable expenses.

Administration and Enforcement of Charitable Gaming

From the inception of charitable gaming, administration of the law has been the responsibility of the Attorney General and local officials. The phrase "licensing authority" has been used in each version of the law to refer to the Attorney General who has served as the primary licensing authority since 1977. Local government officials were the primary approving agency for what were known as Class B charities. Since 1979, local government officials have been the primary approving agencies for the issuance of a local permit or a charity local permit for conducting raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. Although the Attorney General now licenses charities, local officials remain involved in charitable gaming.

Gambling Addiction

During the 2021-22 interim, the Judiciary Committee completed a study of the economic and societal impacts of gambling addiction in the state. The committee received testimony indicating 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. 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. Electronic pull tabs are the source of most 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.

In fiscal year 2016, after the creation of the compulsive gambling prevention and treatment fund, the Department of Human Services 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 program used two certified problem gambling counselors on the east side of the state and two on the west side who provide outpatient individual and group counseling services. According to a 2016 survey of problem gambling services in the United States, North Dakota ranked 3rd out of the 50 states in terms of per capita public funds invested in problem gambling services. In December 2022, the Gamblers Choice program was placed permanently with DHHS.

Testimony

The committee received testimony from representatives of DHHS. Testimony indicated Gamblers Choice provides outpatient treatment services to problem gamblers and treatment services are personalized and include assessments of court-ordered evaluations, group and individual counseling, family education, relapse prevention counseling, aftercare services, and ongoing recovery maintenance programming such as alumni groups. The committee was informed Gamblers Choice collaborates in addressing prevention and responsible gambling messages and activities.

The committee received testimony from representatives of the Charitable Gaming Association of North Dakota and the North Dakota Gaming Alliance. Testimony contended the authority of cities or other regulatory authorities regarding site authorization should be limited to the authority to deny access to bad actors or those not in good standing. The ability for bars and charities to negotiate and voluntarily enter contracts, when both entities proactively agree to work together for mutual benefit, should be preserved. The committee was urged to resist any proposal allowing cities or other regulatory authorities to choose which charities can operate in specific bars.

The testimony indicated charitable gaming generated $222 million in adjusted gross revenues in fiscal year 2022, which resulted in $74 million in charitable contributions and nearly $20 million in gaming taxes. According to the testimony, the charitable gaming industry created 2,100 jobs and $71 million in labor income. The North Dakota Gaming Alliance recommended retaining the current categories and qualifications for a gaming license and a focus on enforcement and transparency regarding gaming operations.

The committee received testimony from the Attorney General indicating a gaming tax is imposed on the total gross proceeds received by a licensed organization in a quarter and the tax must be computed and paid to the Attorney General on a quarterly basis on the tax return. According to the testimony, rent for electronic pull tabs increased per device to $175 for the first 5 devices and $75 per additional device with a maximum of 10 devices per site. The committee was informed the Gaming Division has encountered an issue with third parties soliciting nonprofits and offering to conduct gaming for the nonprofits, ensuring the nonprofits receive at least 40 percent of revenue for charitable purposes. The testimony indicated money laundering is nearly impossible to detect or regulate and is occurring in North Dakota, although the state cannot quantify how frequently it occurs or in what amounts.

The testimony indicated charitable gaming organizations use "eligible use" money to benefit their site owners. Expenses that typically were paid by the bar are now paid by the charitable organizations to encourage the bars to continue hosting gaming activities. The committee was informed gaming entities in the state have been involved in different forms of scams, including bars strongarming the charities, enticements to bars to acquire sites, third parties entering the market to manipulate the charities, and entities creating nonprofits to collect gaming money.

Committee Considerations

Committee members expressed concern regarding money laundering and the inability to track whether criminals are cleaning money using electronic pull-tab machines. The committee considered a bill draft relating to charitable gaming. Testimony received in support of the bill draft indicated a need to clarify the definition of a public-spirited organization by removing vague categories from the definition to better align the definition with the intended purpose for allowing charitable gaming. Testimony received in opposition to the bill draft contended charitable gaming is an important funding mechanism for the Bismarck-Mandan Convention and Visitors Bureau and removing tourism from the definition of a public-spirited organization would have a devastating effect on the organization.

Conclusion

The committee recommends Senate Bill No. 2035 relating to the definition of a public-spirited organization.

CUSTODIAL INTERROGATIONS STUDY

Senate Bill No. 2376 (2023) directed a study of the recording practices of local and state law enforcement during custodial interrogations to determine the feasibility and desirability of uniform implementation of recording practices. The study required an assessment of the number of law enforcement agencies recording custodial interrogations and policies regarding how the recording of interrogations is conducted; the storage and retention practices associated with recording interrogations; the types of equipment used to record interrogations; the types of locations at which interrogations are recorded; the types of criminal investigations in which interrogations are recorded and the frequency at which those interrogations are recorded; the current disclosure of recorded interrogations in criminal discovery; best practices and current requirements for the recording of interrogations, including adoption of the Uniform Electronic Recordation of Custodial Interrogations Act; the financial costs associated with the recording of custodial interrogations and implementation of uniform practices; and barriers to uniform implementation of the recording of custodial interrogations.

Background

In 2010, the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission (ULC), approved and recommended the Uniform Electronic Recording of Custodial Interrogations Act for enactment in all states. This Act addresses issues that accompany interrogations conducted by law enforcement officials. The Act, which requires law enforcement to electronically record custodial interrogations, is intended to promote truth finding and judicial efficiency and to further protect the rights of law enforcement and those under investigation.

In summarizing the Act, the ULC notes false confessions may occur no matter how well-meaning the interrogating officer or how strong the officer's belief in the suspect's guilt. Conflicting testimony sometimes results in judges or jurors believing the wrong tale, and other times allows for frivolous suppression motions wasting the court's time and impugning careful, professional, and honest police officers. A wrongful conviction or acquittal means an innocent person may be sent to prison and the guilty offender may go free, perhaps to offend again. The ULC's primary justification for recommending the Act is to promote truth finding.

The Act mandates the electronic recording of the entire custodial interrogation process by law enforcement. However, the Act provides individual states discretion regarding the locations and the types of crimes to which the mandate applies, as well as the means by which the interrogation must be recorded. The Act allows states to vary the scope of the mandate based upon local variations in cost, perceived degree of need for different categories of criminal or delinquent wrongdoing, or other pressing local considerations. The ULC contends combined audio and video recording remains the ideal, and the advantages of recording exist wherever custodial interrogation occurs and for whatever criminal or delinquent wrong is involved. The Uniform Electronic Recording of Custodial Interrogations Act was among the 2010 recommendations of the North Dakota Commission on Uniform State Laws for introduction in the 2011 legislative session. The Act was introduced as Senate Bill No. 2125 (2011).

In response to the mixed testimony received for Senate Bill No. 2125 during the 2011 legislative session, an amendment was adopted to conduct a study of the Uniform Electronic Recording of Custodial Interrogations Act during the 2011-12 interim. The study was assigned to the interim Judiciary Committee. The interim Judiciary Committee made no recommendation to the 63rd Legislative Assembly regarding the adoption of the Uniform Electronic Recording of Custodial Interrogations Act.

As of January 2018, over 50 percent of the country has passed legislation or voluntarily committed to recording custodial police interviews; however, when and why the recordings are made varies significantly by state. Of the 27 states that record, only 4 (Alaska, Arkansas, Minnesota, and Montana) require all interviews for all offenses be recorded, while Indiana, New Mexico, Utah, and Wisconsin require recording only for felony charges. The majority of the remaining states (Colorado, Connecticut, Illinois, Kansas, Maine, Maryland, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Texas, Vermont, and Washington, D.C.) reserve recording requirements for specific, major offenses, such as capital murder and rape charges, as well as certain other sex crimes, aggravated crimes, and other serious or violent offenses. California and Oregon have limited their legal requirements with extreme specificity. California mandates recording only if a juvenile is suspected of murder. Oregon mandates recording only when an individual is suspected of aggravated murder, is facing a mandatory minimum offense, or is a juvenile who will be processed in adult criminal court.

In states that have voluntarily committed to recording, Rhode Island records for all capital offenses and Hawaii records for all serious crimes. Idaho, which has no formal statewide recording commitment, reports 22 percent of its law enforcement agencies record. A Supreme Court ruling in Massachusetts, expressing a preference for all interrogations to be recorded, has led to an unofficial statewide mandate. As of 2014, the United States Department of Justice requires interview recording by many of its law enforcement agencies.

Testimony

The committee received testimony from representatives of the Bureau of Criminal Investigation, the Attorney General's office, the North Dakota State's Attorneys' Association, the North Dakota Association of Counties, the North Dakota League of Cities, and the Burleigh County Sheriff's Department. Some testimony contended the Uniform Electronic Recordation of Custodial Interrogations Act addresses a problem that does not exist in North Dakota. The committee was informed if legislation mandating recorded interviews in all circumstances is enacted, it will undermine the credibility of sworn law enforcement officers' testimony and could create a number of unintended consequences.

The testimony indicated many law enforcement agencies are headquartered in buildings without space for a separate interview room or lack the funds to build or outfit an interview room with recording equipment. The committee was informed costs will be a concern regarding the mandatory retention of recorded interrogations. Server space, hard drive space, and cloud space are at a premium, and costs may increase significantly when more storage is required. Testimony indicated the Act is unnecessary because there are remedies to law enforcement failing to record an interview. For instance, a prosecutor may decline to pursue charges. If charges are sought, the defense may subject the officer to a robust cross-examination.

The testimony contended a legislative mandate to record all custodial interrogations is not needed. The Uniform Electronic Recordation of Custodial Interrogations Act would be superfluous to law enforcement agencies that use body cameras. According to the testimony, the estimated cost of implementing the Act on a statewide basis would be about $7.5 million, plus maintenance and updating costs. The cost estimate assumed no law enforcement agency has any of the required equipment. It was noted in addition to the cost of equipment, law enforcement agencies may not have sufficient physical space to meet the requirements of the Act.

The committee received testimony from representatives of the Commission on Legal Counsel for Indigents and the Great North Innocence Project. The committee was informed nearly a third of individuals wrongfully convicted but later exonerated by DNA evidence made a false confession or incriminating statement. Testimony indicated this may be caused by factors, including perceived intimidation or the compromised reasoning ability by the accused. Testimony contended the recording of custodial interrogations would serve to protect the accused by allowing their counsel to review a confession in its entirety.

The testimony contended the adoption of the Uniform Electronic Recordation of Custodial Interrogations Act would promote fundamental fairness in the criminal justice system and would make the criminal justice system better. The testimony indicated the Act is not unfair to law enforcement if a recording is not made. The Act does not punish officers for equipment failures or if officers believed the Act did not apply at the time. Violations of the Act do not automatically result in excluded evidence but would become a factor for the court to consider. Testimony contended the Act promotes cost-savings to the state. When an interview is recorded, prosecutors and defense attorneys accurately can assess the facts of the case and give clients the best advice based on accurate information. It was argued the number of pretrial motions and trials before the court will be reduced which would lead to a cost-savings.

Committee Considerations

The committee noted most law enforcement agencies record custodial interrogations and, based on the testimony received from law enforcement agencies, the North Dakota League of Cities, and the North Dakota Association of Counties, for those law enforcement agencies that do not record custodial interrogations because of cost issues, grants may be available to help defer some of the initial investment in equipment, facilities, and electronic storage. The committee determined recording custodial interrogations does not appear to be a problem in the state.

Conclusion

The committee makes no recommendation regarding its study of the recording practices of local and state law enforcement during custodial interrogations to determine the feasibility and desirability for uniform implementation of recording practices.

MUNICIPAL COURT STUDY

Senate Bill No. 2278 (2023) directed a study of the laws and procedures relating to courts established under Chapter 40-18. The study required an examination of the number and geographic location of existing municipal courts; access to municipal court ordinances; jurisdiction of the municipal courts; municipal court judge qualifications and training; transfer of cases to district court; appeal of cases to district court; Supreme Court general oversight of municipal courts; applicability of judicial administrative rules to municipal courts; requirements for recording proceedings in municipal court; and requirements to report information to the Supreme Court on the establishment or abolition of a court, the election, appointment and removal of municipal court judges and clerks, and annual caseload data and annual financial information on the imposition, collection, and disposition of fines and fees.

Background

The establishment, requirements, jurisdiction, and procedures of municipal courts and judges are codified in Chapter 40-18.

Number of Municipal Courts

Eighty-seven of the 355 incorporated cities in North Dakota have established a municipal court. The 87 municipal courts are served by 63 municipal judges, 22 of whom are law-trained. A city that did not establish a municipal court when it was first incorporated may create a municipal court by resolution of the governing body.

Jurisdiction, Training, and Qualifications of a Municipal Judge

A municipal judge within a city having a population of 5,000 or more must be licensed to practice law in this state unless a licensed individual is not available in the city. In a city with a population of less than 5,000, the municipal judge need not be licensed to practice law in this state, nor may the judge be required to be a resident of the city. The municipal judge has jurisdiction to hear, try, and determine offenses against the ordinances of the city except certain violations involving juveniles. The municipal court lacks jurisdiction over juveniles because Section 27-20.2-03 vests exclusive original jurisdiction over children under the age of 18 who are alleged to be delinquent, unruly, or deprived with the juvenile court. Violations of state law are not within the jurisdiction of the municipal courts.

A municipal judge is elected for a 4-year term. Section 40-18-03 provides a vacancy occurring between elections is filled by the executive officer of the municipality with the consent of the governing body of the municipality. North Dakota Supreme Court Administrative Rule 36 requires each new municipal judge to complete a judicial orientation program within 3 months of taking office. All municipal court judges and alternate judges must complete 18 hours of continuing education during each 3-year reporting period. If a municipal judge fails to meet this requirement without an excused absence from the Continuing Judicial Branch Education Commission, the judge's name is referred to the Judicial Conduct Commission for disciplinary action.

Transfer of Municipal Ordinance Cases to District Court

Section 40-18-06.2 requires a city to obtain the agreement of the governing body of the county, the presiding judge of the district court, and the State Court Administrator before a city may transfer some or all municipal ordinance cases to the district court. A city may obtain the template for the contract to transfer municipal ordinances to district court by calling or emailing the State Court Administrator's office. The template includes transfer of cases to the district court for jury trial so there is no need to execute two contracts. These cases are deemed district court cases for purposes of appeal.

Section 40-18-15.1 provides a municipal matter may be transferred to district court for trial if, within 28 days after arraignment, the defendant has requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial. After a transfer to district court, if the defendant waives a jury trial, the matter must be remanded to the municipal court for disposition if the defendant and prosecuting attorney agree to the remand. Unless remanded to the municipal court by agreement of the parties, the district court retains jurisdiction for sentencing. The city must provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. The city, county, and state may agree in the contract to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred, which must be paid to the city and county treasury and state general fund at least once each quarter. At the time of payment, the clerk of district court shall account under oath to the city auditor, county, and State Treasurer for all money collected. The city, county, and state also may agree in the contract to a division of expenses, including jury and witness expenses, related to cases transferred under this section. In the absence of a contract, all fees, fines, costs, forfeitures, and any other monetary consideration collected from transferred cases must be deposited in the state general fund.

Appeal from Municipal Court to District Court

Section 40-18-19 provides a judgment of conviction or order deferring imposition of sentence in a municipal court may be appealed to the district court in accordance with the North Dakota Rules of Criminal Procedure. An appeal is perfected by notice of appeal. A perfected appeal to the district court transfers the action to the district court for a new trial. The district court takes judicial notice of the ordinances of the city in an appeal from a determination in a municipal court. A filing fee may not be required in district court for the filing of an appeal from a judgment of conviction for the violation of a municipal ordinance. Expenses necessary for the adequate defense of a needy person in an appeal to district court from a judgment of conviction for the violation of a municipal ordinance, as approved by the presiding district judge, must be paid by the city wherein the alleged offense took place.

Supreme Court Oversight

Section 1 of Article VI of the Constitution of North Dakota provides the judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court, and other courts as may be provided by law. The Chief Justice of the Supreme Court is the administrative head of the unified judicial system with the authority to adopt rules of procedure to be followed by all courts of the state. Municipal courts are statutorily created courts and as such are part of the unified judicial system.

Testimony

The committee received testimony indicating all municipal court judges are required to complete 18 hours of approved continuing education during each 3-year reporting period. To assist the judges in meeting this requirement, the court system offers an annual municipal court conference consisting of 6 hours of continuing education. The Conference of State Court Administrators has identified four essential elements to strengthen and protect the delivery of court services in limited jurisdiction courts. The elements include requiring municipal judges be members of the state bar in good standing and requiring a record of all municipal proceedings.

The committee was informed 67 percent of all municipal court cases involve traffic citations, 27 percent involve misdemeanor offenses, and 5 percent involve infractions.

The testimony contended municipal courts are efficient and effective. They are a vital component of the state's justice system and are integral in maintaining order, fairness, and accessibility. The committee was informed, in 2022, the Williston Municipal Court adjudicated 5,357 cases, sometimes hearing as many as 650 cases per month.

Testimony received from prosecutors indicated some issues include municipal courts not being eligible for Odyssey and therefore, all files are paper files. In addition, municipal judges who are not law-trained may not be able to interpret city ordinances and may not know or understand the rules of criminal procedure and a defendant's rights.

Committee Considerations

The committee expressed a need for municipal courts to be updated and reorganized to better serve the state and its rural communities in a more cost-effective manner and considered a bill draft relating to municipal courts. Testimony received in support of the bill draft indicated the bill draft would provide explicit authority for the district court to hear ordinance cases for cities of fewer than 5,000 people; allow two or more cities to create a joint municipal court and share the operating costs; allow two or more cities to have separate municipal courts, but share resources such as the courtroom and staff; and implement two options when a defendant's fitness to proceed is questioned. If the defendant's fitness to proceed is questioned, the municipal judge may either transfer the case to the district court or, if the prosecutor moves to dismiss, the case may be dismissed.

Testimony received in opposition to the bill draft indicated the bill draft does not address the need for municipal judges to be licensed to practice law in the state and the municipal court is granted excessive authority to sentence an individual to jail for up to 30 days for nonpayment of fines.

Recommendation

The committee recommends House Bill No. 1032 to provide authority for the district court to hear city ordinance cases for cities of fewer than 5,000 people; allow two or more cities to create a joint municipal court and share the operating costs; allow two or more cities to have separate municipal courts, but share resources such as the courtroom and staff; and implement two options when a defendant's fitness to proceed is questioned.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of 11 members. The primary function of the commission is to represent North Dakota in the ULC, also known as the National Conference of Commissioners on Uniform State Laws. The ULC 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:

- The Uniform Child Abduction Prevention Act (UCAPA), which the ULC approved in 2006, provides states with mechanisms to deter domestic and international child abductions by parents and agents of parents. Under UCAPA, courts must analyze several factors to determine whether a child is at risk for abduction, including previous abductions, previous attempts to abduct the child, threats of abduction, domestic violence, negligence, refusal to obey a court-ordered child custody determination, the abandonment of employment, the liquidation of assets, the purchase of travel tickets or travel documents, or the desire to obtain the child's school or medical records. Under UCAPA, if a court determines a child is at risk of abduction, the court may enter an order aimed to prevent abduction. If abduction appears imminent, a court may issue a warrant to take physical custody of the child, direct law enforcement officers to attempt to locate and return the child or exercise police powers under state law. An individual served with a warrant must be afforded a hearing no later than the next judicial day or the next possible judicial day if the next day is impossible.
- The Uniform Commercial Real Estate Receivership Act (UCRERA), which the ULC approved in 2015, provides uniform provisions to provide predictable transactions for lenders and borrowers. The UCRERA provides guidance to trial courts on the receivership process while preserving the court's discretion when determining an appropriate remedy. For receiverships involving commercial property, the UCRERA offers a consistent set of rules relating to due process; receiver appointment; receiver identity and independence; powers and duties of appointed receivers; use or sale of receivership property; existing contracts, leases, and creditor claims; and reporting requirements.
- The Uniform Electronic Estate Planning Documents Act (UEEPDA), which the ULC approved in 2022, authorizes using electronic signatures and documents in an individual's estate plan. The UEEPDA applies to nontestamentary documents only and is designed to supplement the Uniform Electronic Wills Act. An estate planning document executed under the UEEPDA is effective despite being electronically executed or in an electronic medium.
- The Uniform Special Deposits Act (USDA), which the ULC approved in 2023, addresses special deposit transactions. The Act clarifies the definition of "special deposit," the treatment of a special deposit in the event of a depositor's bankruptcy, the applicability of creditor process to a special deposit, and the legality of the bank exercising a set-off or right of recoupment against a special deposit unrelated to a payment to a beneficiary or the special deposit. The Act creates a definite and clear right to payment when a contingency is satisfied and upon notice to the bank. The USDA provides a low-cost mechanism to return earnest money to its rightful owner.

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 merges 14 definitions contained in individual definition sections in Chapter 1-01 into the list of definitions provided in Section 1-01-49.
- Section 2 of the bill draft removes an outdated reference to Section 12.1-22-03.1(2), which was repealed in 2001.
- Section 3 of the bill draft corrects an inaccurate cross-reference to Chapter 12.1-32.2, resulting from a typographical error. No such chapter exists. The reference is corrected to reference Chapter 12.1-31.2, related to disorderly conduct restraining orders.
- Section 4 of the bill draft changes an outdated cross-reference to Chapter 23-37 to Chapter 23.1-12, relating to the petroleum tank release compensation fund. Provisions related to the petroleum tank release compensation fund were moved from Chapter 23-37 to Chapter 23.1-12 when the Department of Environmental Quality was created and certain duties and responsibilities of the State Department of Health relating to environmental quality were transferred to the Department of Environmental Quality following the enactment of Senate Bill No. 2327 (2017).
- Section 5 of the bill draft corrects an inaccurate cross-reference to Section 27-20.3-36, resulting from a typographical error. No such section exists. The reference is corrected to reference the appropriate section related to permanency hearing limitations in Section 27-20.3-26.
- Section 6 of the bill draft corrects a minor drafting error that omitted the word "of" in Section 45-13-01(19), regarding the definition of "partnership."
- Section 7 of the bill draft changes a reference to the "midwest independent system operator" to reflect the updated name of the electric grid operator. The electric grid operator changed its name to the "midcontinent independent system operator" in 2013 when the operator expanded its region to include states outside of the Midwest.
- Section 8 of the bill draft corrects the reference to the senate industry, business and labor standing committee to instead refer to the senate industry and business standing committee, which is the correct name of this standing committee beginning in the 2023 legislative session.
- Section 9 of the bill draft removes an obsolete reference to the "state information technology advisory committee." The committee was repealed in 2023 following the enactment of House Bill No. 1159 (2023).
- Section 10 of the bill draft corrects an inaccurate cross-reference to Chapter 54-42, resulting from a typographical error. The reference is corrected to reference the appropriate chapter related to the Public Employees Retirement System in Chapter 54-52.
- Section 11 of the bill draft removes the word "unremarried" as it relates to a surviving spouse claiming the disabled veterans' credit. House Bill No. 1212 (2023), in part, made the disabled veterans' property tax credit available to a surviving spouse of a qualifying veteran who receives United States Department of Veterans Affairs dependency and indemnity compensation, including when eligibility for dependency and indemnity compensation is determined after the qualifying veteran's death. As part of this change, references to "unremarried" surviving spouses were removed in House Bill No. 1212. The reference to "unremarried" in Section 57-02-08.8(3) was inadvertently left in this section and is therefore removed in the bill draft.
- Section 12 of the bill draft removes an outdated reference to Chapter 11-37, which was repealed in 2015.
- Section 13 of the bill draft corrects a reference to a federal law that has been renumbered. In 1991, Public Law 102-83 renumbered 38 U.S.C. 1901 to 38 U.S.C. 3901.
- Section 14 of the bill draft accompanies the changes in Section 1 of the bill draft. This section of the bill draft repeals the 14 individual definition sections in Chapter 1-01 which were merged into the definition list in Section 1-01-49.
- Section 15 of the bill draft provides Sections 11 and 12 of the bill draft are effective for taxable years beginning after December 31, 2024.

Recommendation

The committee recommends House Bill No. 1031 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 April 2022 and April 2024.

Conclusion

The committee makes no recommendation regarding the executive orders issued between April 2022 and April 2024.

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 from July 1, 2022, through June 30, 2023, was $204,169. In addition, four motorized vehicles were seized with gross proceeds of sales totaling $50,334 and three firearms were held, sold, or disposed of with a value totaling $725.

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.

The report indicated in fiscal year 2023, the commission provided legal counsel services in over 16,200 case assignments. The commission's 2021-23 biennium budget consisted of $19,294,363 from the general fund and $1,994,850 from the commission's special fund, for a total of $21,289,213. 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 last fiscal year 72 percent of case assignments were adult criminal, 13 percent were juvenile cases (delinquency, child in need of protection, guardianship) and 15 percent were appeals, postconviction, or other.

The report indicated the commission has a 22 percent vacancy rate and an insufficient number of attorneys to cover the South Central Judicial District. Some of the commission's attorneys have taken 148 percent of a normal caseload to try bridge the workforce gap but the commission is unable to pay enough in salary to attract new candidates or to retain existing public defenders; therefore, the commission is experiencing high turnover. Many public defenders choose to leave the commission to become prosecutors, often receiving yearly salaries $20,000 more than the commission is able to offer.

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.

The report indicated the commission established an internship program in 2020 and has employed eight college students over the past 4 summers. The commission made direct contributions to the state's equine industry totaling over $2 million during the 2021-23 biennium, which includes grants and payments to Chippewa Downs and Horse Race North Dakota, North Dakota Thoroughbred Association, North Dakota Quarter Horse Racing Association, salaries, and dozens of North Dakota horsemen, including owners and breeders. The report stated the commission helps support over 500 full- and part-time jobs annually throughout the state. Many of these jobs are located at Chippewa Downs on the Turtle Mountain Band of Chippewa Indians lands.

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 2023-25 biennium, the lottery had a fixed appropriation of $2.4 million for salaries and fringe benefits for 10 full-time equivalent (FTE) positions and $3.2 million for operating expenses, totaling $5.6 million. The lottery has a continuing appropriation for variable expenses of prizes, retailer commissions, online gaming system vendor fees, and Multi-State Lottery Association group dues which have a direct incremental relationship with sales but are unable to be budgeted. The appropriation funds 8 FTE positions in the Attorney General's office Lottery Division, 1 FTE position in the Information Technology Division, and 1 FTE position in the Finance and Administration Division. Also, the appropriation funds 2 part-time draw operators.

Projected lottery sales for the 2023-25 biennium are $63.7 million, anticipating transfers of $16.2 million with $13.6 million to the general fund; $640,000 to the compulsive gambling prevention and treatment fund; and $2 million to the multijurisdictional drug task force grant fund. Unaudited ticket sales through December 2023 are $22.8 million. This reflects a $289,567 decrease in sales compared to the same period the previous year. The report indicated the lottery is slightly below projections because there is an ebb and flow of jackpot runs that drive sales. The lottery will maintain projected sales of $32 million and transfers of $8.1 million with $6.8 million to the state general fund; $320,000 to the compulsive gambling prevention and treatment fund; and $1 million to the multijurisdictional drug task force grant fund for the first year of the biennium. Through December 31, 2023, $6.38 million was payable to North Dakota players and $5.7 million was paid to the Multi-State Lottery Association to fund national prizes.

STATE HOSPITAL REPORT ON SEXUALLY DANGEROUS INDIVIDUALS TREATMENT PROGRAM

The committee received a report from DHHS, pursuant to Section 50-06-31, regarding the State Hospital's program for the evaluation and treatment of sexually dangerous individuals. The report indicated the evaluation and treatment program for sexually dangerous individuals has operated at the State Hospital since 1997. The State Hospital has 62 residential beds for this purpose, including transitional home beds for patients who are in the late stages of treatment and scheduled for discharge from the program. The program is designed as a psychiatric rehabilitation program with special programming for patients with sex offense histories. The program includes a multidisciplinary team that uses both cognitive behavioral and rehabilitation approaches in providing group and individual therapy. The annual program cost per patient is $229,212. There are 67.5 FTE positions assigned to the program, including treatment, direct care, and security personnel.

DEPARTMENT OF HEALTH AND HUMAN SERVICES REPORT ON IMPLEMENTATION OF MEDICAL MARIJUANA

The committee received a report from DHHS, 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 that during fiscal year 2023, the number of registered qualifying patients continued to increase. As of June 30, 2021, there were approximately 5,750 registered qualifying patients. As of June 30, 2023, there were over 9,550 registered qualifying patients. In fiscal years 2021 and 2022, there were 10 and 16 registry identification cards revoked, respectively. In fiscal year 2023, there were seven registry identification cards revoked. All seven revocations were qualifying patients. The two registered manufacturing facilities are in Bismarck and Fargo with eight registered dispensaries in Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston.

In fiscal year 2023, the total dispensary sales were $21,606,000, which 66 percent were dried flowers and leaves, compared to total sales of $19,970,000 in fiscal year 2022, which 69 percent were dried flowers and leaves.

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 with an incentive payment of $45,000 paid in equal installments over 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 there are seven eligible attorneys on the program roster and nine eligible communities on the community roster. As of June 30, 2024, there are five contracts in place with three additional contracts pending. The state's cost for the program for fiscal year 2024 is $9,000. To date, the program has paid out a total of $36,000 in incentive payments. The state has paid $18,000, contracted communities have paid $12,600, and the State Bar Association of North Dakota has paid $5,400. There have been no other direct costs to the program.

REPORT ON DRUG COURT TO WELLNESS COURT

The committee received a report from the Supreme Court regarding the Supreme Court's findings and recommendation and any legislation required to implement the statutory change of drug court to wellness court, pursuant to Section 55 of Senate Bill No. 2012 (2023). The report indicated the name "wellness court" was soundly rejected by stakeholders and participants in the adult drug courts. "Treatment court" is the preferred alternate name because it will match the change to the national best practice standards for drug courts. The Department of Corrections and Rehabilitation also favored term "treatment court" over "wellness court." Stakeholders in the juvenile drug courts were more open to the term "wellness court" but also were open to the term "treatment court." The Department of Health and Human Services favored the term "wellness court" and the Attorney General’s office did not raise any objections to the term "wellness court."

The report indicated the term "treatment court" is consistent with recent changes made by the National Drug Court Institute and the National Drug Court Resource Center that recently changed their respective names to the Treatment Court Institute and the National Treatment Court Resource Center. The emphasis derived from the term "drug court" is a focus on what is wrong with the individual who is enrolled in the program. A less-stigmatizing name that focuses on the intended positive outcome of drug courts would be "wellness court," "treatment court," or "recovery court."

Recommendation

The committee recommends House Bill No. 1030 relating to changing the term drug court to treatment court throughout the Century Code. The bill draft does not implement any substantive changes to law.

UNIFORM BAIL SCHEDULE REPORT

The committee received a report from the Supreme Court regarding the implementation of a uniform bail schedule and the standard amount of bail for each state offense. The report indicated the purpose of bail is not for punishment but to ensure a defendant will appear for court proceedings. A workgroup was created to establish and implement a uniform bail schedule in accordance with Section 29-08-03.1, which concluded the arresting officer should determine whether to arrest or hold an individual. The final rule sent to the Supreme Court by the workgroup provided for release of an individual on a promise to appear, excluding exceptions such as having a felony or active warrant, in which case the individual may be held until the individual can be seen by a judicial officer.

ETHICS COMMISSION REPORT

The committee received a report from the Ethics Commission on the activities and operations of the commission, including information regarding the number of complaints received by the commission, education and outreach efforts, and the status of the commission's budget pursuant to Section 4 of Senate Bill No. 2024 (2023). The report indicated the commission was created in 2018 by passage of an initiated measure which created Article XIV of the Constitution of North Dakota. The commission is governed by Article XIV of the state constitution and Chapter 54-66. The commission consists of five commissioners, an executive director, a general counsel, and an operations administrator.

The report indicated the number of complaints received by the commission has increased steadily over the past 5 years. Of the 70 total complaints filed with the commission, 27 are pending, 13 are under initial review, 1 is in informal resolution, and 13 are in the investigation phase.

The commission's report indicated the appropriation for the 2023-25 biennium is $1,138,242 and as of July 30, 2024, the commission's remaining budget is $595,891. The commission's projected expenditures for August 1, 2024, through June 30, 2025, are $586,173. Based on these numbers, the commission's ending balance for the biennium is projected to be $9,718. The appropriation included one-time appropriations of $25,000 for office remodeling and $72,000 for professional fees to cover attorney's fees through the 2023-25 biennium. Of the $1,138,242 appropriation for the 2023-25 biennium, $50,000 is a contingency appropriation for professional services.

JUVENILE JUSTICE COMMITTEE

The Juvenile Justice Committee was assigned four studies:

- House Bill No. 1195 (2023) directed a study of the criminal code to ensure equitable application to youths charged with juvenile delinquencies. The study required consideration of the desirability and feasibility of a separate juvenile delinquency offense code, whether a separate and unique classification of criminal offenses for juveniles should be created, and which criminal offenses should receive a distinct classification for juvenile offenders, if any.
- Section 6 of Senate Bill No. 2080 (2023) directed a study of the laws and practices of the child welfare system. The study required a review of the implementation of the revisions in juvenile court procedures and the new model of practice; the laws, administrative rules, and practices of the foster care and adoption systems; the timeliness of termination of parental rights; the timeliness of permanency; and the availability of resources to support children and families at risk of or experiencing out-of-home placement.
- Section 1 of Senate Bill No. 2238 (2023) directed a study of the statewide criminal history record check process. The study required a comparison between the statewide and nationwide criminal history record check standards, a review of the average processing time of a requested criminal history record check, and an evaluation of methods to improve efficiency and processing times of the statewide criminal history record check process.
- House Concurrent Resolution No. 3026 (2023) directed a study of improving re-entry outcomes for incarcerated adults and youth. The study required an assessment of current public and private re-entry services, policies, practices, statutes, data, and resource allocation with the goal of identifying opportunities to implement research-based strategies proven to reduce recidivism, improve education and employment outcomes, and maximize resources for the greatest public safety and return on taxpayer dollars. The study also required an examination of re-entry services in the areas of correctional supervision, employment, job training, housing, transportation, support services, and behavioral health services; levels of collaboration across service systems; and current disparities in re-entry outcomes. The study allowed the Legislative Management to develop a working group to oversee the study.

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

- A report from the Department of Health and Human Services (DHHS) on the department's findings and recommendations on the department's study and implementation of a standard framework for youth services for children impacted or potentially impacted by human trafficking, pursuant to Senate Bill No. 2341 (2023).
- A report from the Attorney General on the status and results of the human trafficking victims grant program, pursuant to Section 7 of Senate Bill No. 2003 (2023).
- A report from DHHS on the progress of the study to review the option of reinstating parental rights that have been terminated by a court, pursuant to Section 20 of House Bill No. 1091 (2023).
- A report from each public library regarding the implementation of collection development and relocation of materials policies to ensure explicit sexual material is not maintained in the public library's children's collection inventory, pursuant to North Dakota Century Code Section 12.1-27.1-03.5.
- Annual reports from the Task Force on the Prevention of Sexual Abuse of Children with any findings and recommendations, pursuant to Senate Bill No. 2257 (2023).
- 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, pursuant to Section 50-06-43.2.

Committee members were Representatives Michelle Strinden (Chairman), Karen A. Anderson, Claire Cory, Jayme Davis, Karla Rose Hanson, Zachary Ista, Lawrence R. Klemin, Shannon Roers Jones, and Lori VanWinkle and Senators David A. Clemens, Kathy Hogan, Diane Larson, and Judy Lee.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

JUVENILE DELINQUENCY CODE STUDY

House Bill No. 1195 (2023) directed a study of the criminal code to ensure equitable application to youths charged with juvenile delinquencies. The study required consideration of whether a separate juvenile delinquency offense code is desirable and feasible, whether a separate and unique classification of criminal offenses for juveniles should be created, and which criminal offenses should receive a distinct classification for juvenile offenders, if any.

Background

House Bill No. 1195

The legislative history of House Bill No. 1195 indicates the purpose of the study stemmed from the often difficult and unintentional inequitable application of the adult criminal code to youths charged with juvenile delinquency. The focus in most criminal code sections usually is to prohibit a certain type of adult behavior. The varied manner in which those criminal sections apply in juvenile court can result in extreme consequences in some cases. Testimony received for House Bill No. 1195 indicated the historical purpose of creating the juvenile court in the United States in 1899 was to separate children from the abuses and consequences of adult criminal procedure. However, the juvenile system defers to the adult criminal offense codes and adult crime classifications as the basis for the charging document in juvenile court. The classification of offenses for adults is a daily point of discussion in charging youths, disposing of juvenile cases, assigning offender risk levels, and considering the transfer of youths into the adult system for the most serious crimes.

Juvenile Court

Section 12.1-04-01 provides the age of criminal responsibility begins at age 10. When a child aged 10 to 17 allegedly violates the criminal laws of this state, all proceedings concerning that child must be conducted in juvenile court according to the Juvenile Court Act, Chapter 27-20.2, and the companion chapter on delinquency, Chapter 27-20.4. These chapters do not contain juvenile-specific criminal offenses, but rather the definition of "delinquent act," which refers to acts "…designated a crime under law." This has been the case since the juvenile courts in North Dakota were first established.

Juvenile courts were established in North Dakota in 1911 and encompass a small subset of the district courts. The juvenile court protects the best interests of children and addresses the unique characteristics and needs of children who come before the court. The juvenile court handles cases involving:

- Proceedings for the guardianship of a child;
- Children in need of services due to behavior adverse to their own well-being;
- Children in need of protection or when termination of parental rights is sought;
- Children ages 10 to 17 accused of delinquent acts or behavior that if committed by an adult would be considered a crime;
- Children who are subject to the Interstate Compact on Juveniles or Interstate Compact on the Placement of Children; and
- Children seeking judicial consent to marriage, employment, enlistment in the armed services, or certain medical procedures, but only if consent by the court is required by law.

The mission of the juvenile court in a delinquency case is to promote public safety, hold juvenile offenders accountable, and increase the capacity of juveniles to contribute productively to their community.

The juvenile court has three options for handling or disposing of delinquent child cases. The first option, which is known as diversion, allows for the referral of the juvenile to a private agency or program. The second option, which is known as an informal adjustment, allows the child and parents to enter an informal adjustment agreement that sets conditions for the child to be accountable for the charges through informal court probation. The third option is a formal adjudication in which a petition is filed in the district court and the case proceeds through the court system. The option selected is determined based on the seriousness of the offense, the age of the juvenile, previous offense history, and reliability of evidence.

Distinct Offenses

There are criminal offenses for which the age of the victim or the location of the crime is an aggravating factor, meaning there is a heightened severity of classification for the adult defendant because of the type of victim or the place of the offense. Examples include the statutory domestic violence provisions as applied to sibling or parent-child conflicts, assault offenses, and sexual offenses in which both the offender and victim are under the age of 18. Many of the offenses carry collateral consequences, which can impact a youth well beyond the age of legal adulthood. Examples of collateral consequences include barriers to entering the military, pursuing certain types of careers, or obtaining financial aid or public housing. Collateral consequences of past juvenile adjudications impacting occupational licensing can add to workforce shortages in areas such as home health care, day care, nursing home care, and education.

When a child commits a delinquent act, the juvenile petition refers to the criminal code. The adult criminal code often focuses more on the age of the victim rather than on the person who is alleged to have committed the act. For example, the age of the alleged perpetrator is not considered in an allegation of terrorizing against a child. The only age-related consideration is whether the alleged victim is a child. An offender who is found guilty of terrorizing against a child is required to register as an offender against children under Section 12.1-32-15(1)(a). Thus, the law disregards whether it is a 10-year-old child frustrated at recess who threatens to kill a classmate, whether the 10-year-old child truly intended to kill the classmate, or an adult who threatens to kill the same child on the playground.

Offenses for which either the age of the victim is considered, but not the age of the actor, and offenses for which the actor's age may be relevant in relation to the offense committed include--gross sexual imposition; domestic violence; simple assault, assault, and aggravated assault; terrorizing; possession of child pornography; and unauthorized use of a vehicle.

Testimony

The committee received testimony from representatives of the Commission on Juvenile Justice, Juvenile Court, North Dakota Association of Counties, and Commission on Legal Counsel for Indigents indicating the juvenile court received 4,103 delinquency referrals in 2022. A total of 2,190 of the delinquency referrals were addressed by diversion to services, 525 were addressed using informal adjustment, and 862 were addressed through formal court proceedings. Juvenile court mainly focuses on two criminal philosophies--rehabilitation and restoration. According to the testimony, because the brain is not fully developed until individuals reach their mid-20's, other philosophies such as deterrence, retribution, and incapacitation, are less effective.

Testimony indicated the criminal code is overcomplicated when it comes to adjudicating juvenile offenders and practitioners require years of experience to become proficient at helping children. The testimony contended the current system of punishment is constructed to treat juvenile offenders as adults, which creates collateral consequences with devastating effects. For example, child and sex offender registration are meant for adult criminal conduct. Juvenile conduct in many circumstances meets the legal criteria for registration, but registration may not be appropriate when dealing with juvenile cases.

Testimony indicated domestic violence is an optional add-on to an underlying assault offense, but juveniles often are detained, arrested, and put in detention based on the family relationship. Domestic violence offenses typically result in many collateral consequences, including mandatory arrests and firearm restrictions. In addition, in juvenile cases, domestic violence often provides a perception of conduct that may not have occurred. Felony and misdemeanor charges and adjudications may lead to juveniles being removed from their homes and placed in a facility for longer than an adult would be for similar conduct. Also, unlike adults, juveniles are not entitled to bail.

The committee was informed the federal Juvenile Justice and Delinquency Prevention Act was established in 1974, and most recently was authorized in 2018 through the federal Juvenile Justice Reform Act. The Act is based on a broad consensus that children, youth, and families involved with the juvenile and criminal courts should be guided by federal standards for care and custody, while also upholding the interests of community safety and the prevention of victimization.

The committee received testimony from the Attorney General indicating a separate juvenile code is not needed and would introduce unnecessary complications. Laws in other states appear to have chapters on juvenile delinquency similar to the current statutory juvenile provisions in North Dakota.

The committee received testimony from the Department of Defense indicating federal prosecutors routinely decline to prosecute juvenile-on-juvenile sexual assault cases, and local prosecutors lack the legal authority to apply state laws to juvenile criminal conduct on federal lands. To address this issue, most states have ceded exclusive legislative jurisdiction to the federal government over lands on which military installations are located. The federal system lacks an effective mechanism for handling juvenile offenses. Without concurrent jurisdiction, there is a lack of juvenile justice on federal installations.

Committee Considerations

Committee members expressed concerns regarding the hardship faced by those who practice in juvenile court to refer to offense language intentionally focused on adult criminal behaviors. The committee considered a bill draft relating to juvenile court proceedings, collateral consequences the juvenile court may order, delinquent acts, and child registration requirements. Testimony received in support of the bill draft indicated the bill draft amends the statutory juvenile provisions relating to age-based sex offenses, sexual offender registration, child offender registration, domestic violence laws, and criminal responsibility to improve and simplify the adjudication of juvenile offenders. The committee did not receive any testimony in opposition to the bill draft. The committee expressed an understanding of the need to be equitable, forcing state attorneys and courts to consider reducing certain types of charges because the language does not fit or the collateral consequences would not be in the best interest of the child or the best interest of the community or victim.

The committee considered a bill draft relating to juvenile fitness to proceed and remediation of juveniles. Testimony received in support of the bill draft indicated the bill draft codifies due process rights, provides a method for juvenile competency remediation, and allows the court to deflect cases based on prior judicial findings of a lack of fitness to proceed. The committee did not receive any testimony in opposition to the bill draft. The committee expressed support for legislation to prevent adverse impacts to the health, safety, and welfare of juveniles, and the need to ensure equitable application of the criminal code to youths charged with juvenile delinquencies.

The committee considered a bill draft to establish concurrent jurisdiction on military installations to remedy the concern. Testimony received in support of the bill draft indicated the state's juvenile court can adjudicate juvenile offenses when concurrent jurisdiction is established between state and federal authorities, allowing for more appropriate sentencing and case management outcomes. The committee did not receive any testimony in opposition to the bill draft.

Recommendations

The committee recommends the following bill drafts relating to the juvenile delinquency code study:

- House Bill No. 1033 relating to establishing concurrent jurisdiction on military installations.
- Senate Bill No. 2036 relating to juvenile fitness to proceed and remediation of juveniles.
- Senate Bill No. 2037 relating to juvenile court proceedings, collateral consequences the juvenile court may order, delinquent acts, and child registration requirements.

CHILD WELFARE STUDY

Section 6 of Senate Bill No. 2080 (2023) directed a study of the laws and practices of the child welfare system. The study required a review of the implementation of the revisions in juvenile court procedures and the new model of practice; the laws, administrative rules, and practices of the foster care and adoption systems; the timeliness of termination of parental rights; the timeliness of permanency; and the availability of resources to support children and families experiencing or at risk of out-of-home placement.

Background

Juvenile Justice and Court Procedure

Juvenile courts were established in North Dakota in 1911 and encompass a small subset of the district courts. The juvenile court protects the best interests of children and addresses the unique characteristics and needs of children who come before the court. Cases handled by the juvenile court include matters involving proceedings for the guardianship of a child, children in need of services due to behavior adverse to their own well-being, children in need of protection or when termination of parental rights is sought, and children ages 10 to 17 accused of delinquent acts or behavior that, if committed by an adult, would be considered a crime. The mission of the juvenile court in a delinquency case is to promote public safety, hold juvenile offenders accountable, and increase the capacity of juveniles to contribute productively to their community.

The juvenile court has several options for handling or disposing of delinquent child cases. The first option is known as diversion and allows for the referral of the juvenile to a private agency or program. The second option, under Section 27-20.2-09, is known as an informal adjustment and allows the child and parents to enter an informal adjustment agreement that sets conditions for the child to be accountable for the charges through informal court probation. The third option is a formal adjudication in which a petition is filed in the district court and the case proceeds through the court system. The option selected is determined based on the seriousness of the offense, the age of the juvenile, previous offense history, and reliability of evidence.

Adoption System

Adoption is a civil court process in North Dakota state district court which creates the relationship of parent and child between the individual petitioning to adopt and the adopted individual. The adopted individual is considered a legitimate blood descendant for all purposes, including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from the document's operation or effect.

In North Dakota, all adoptions are facilitated through private adoption agencies. A private adoption agency is supported by private funds and must be licensed or approved by the state in which it operates. A private adoption agency also may receive public funds if the agency has a contract with the state to provide adoption services. In North Dakota, private agencies facilitate the adoption of infants and foreign-born children. Private agencies also facilitate "public agency adoptions,"…which is the adoption of children from the foster care system. North Dakota contracts with three private agencies to provide adoption services for children being adopted from the foster care system, as well as services for the families who adopt those children. This collaborative effort is called the Adults Adopting Special Kids Program.

Foster Care System

Foster care is 24-hour out-of-home care for children whose parents are unable to provide for their children's needs. Foster care includes the provision of food, clothing, shelter, security, safety, guidance, and comfort. In nearly all cases, a child in foster care has been removed from their home by court order, with custody given to a public agency, such as the Division of Juvenile Services, a human service zone, or tribal social service offices. The Department of Health and Human Services licenses foster care homes and facilities to maintain a standard of safety and well-being for children in foster care.

Termination of Parental Rights

Chapter 27-20.3 governs the termination of parental rights as it relates to child welfare. Section 27-20.3-20 provides a court may terminate the parental rights of a parent with respect to the parent's child if:

- The parent has abandoned the child;
- The child is subjected to aggravated circumstances;
- The child is in need of protection and the court finds:

  The conditions and causes of the need for protection are likely to continue or will not be remedied and for that reason the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or

  The child has been in foster care, in the care, custody, and control of the department or human service zone for at least 450 out of the previous 660 nights;
- The written consent of the parent acknowledged before the court has been given; or
- The parent has pled guilty or nolo contendere to, or has been found guilty of, engaging in a sexual act under Section 12.1-20-03 or 12.1-20-04, the sexual act led to the birth of the parent's child, and termination of the parental rights of the parent is in the best interests of the child.

Under Section 27-20.3-21, a petition for termination of parental rights must be prepared, filed, and served upon the parties by the state's attorney. Section 27-20.3-23 provides an order terminating the parental rights of a parent terminates all the parent's rights and obligations with respect to the child and of the child to or through the parent arising from the parental relationship.

Permanency Hearing

Section 27-20.3-01 defines a permanency hearing as "a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child…." The hearing includes several factors, including whether and when the child will be returned to the parent, whether and when the child will be placed for adoption and the state will file a petition for termination of parental rights, and in the case of a child who has attained age 14, the services needed to assist the child to make the transition to successful adulthood.

The overall objective of child welfare and placement is to use reasonable efforts to preserve families, reunify families, and maintain family connections before the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home, and to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings. If the court or the child's custodian determined that continuation of reasonable efforts is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete the steps necessary to finalize the permanent placement of the child.

Testimony

The committee received testimony from representatives of human service zones and several other public and private organizations involved in child welfare, protection, and advocacy. Testimony indicated the child welfare system operates with public and private sector partners, including the Division of Juvenile Services, private human service agencies, tribal social service offices, and human service zones. Safe children and strong families is the mission of the state's child welfare system. The system carries out its mission by providing home visitation, child protection, foster care, family reunification, behavioral health and substance abuse services, guardianship, and family preservation services. Nearly 1,100 cases of child abuse or neglect are confirmed in the state each year. The leading reason for removal of a child from a parental home is a parent's unaddressed mental health needs and substance use.

The committee was informed human service zones have 19 administrative hubs, 51 local service locations, and 895 team members statewide to provide safety net services and programs to support strong and healthy children, families, individuals, and communities. The human service zones provide child welfare services and economic assistance programs, including child protective services, foster care services, in-home services, food assistance, and child care assistance. Human service zones account for 77 percent of foster care placements in North Dakota.

Testimony indicated private and publicly funded organizations specializing in child welfare, protection, and advocacy provide services such as:

- Advocacy assistance, advocacy representation, and legal representation in situations involving child abuse, neglect, and exploitation.
- Investigation, intervention, forensic interviews, mental health care, and medical evaluations in cases of child abuse allegations.
- Christ-centered residential treatment and an educational center for children and their families, including in-class psychiatric therapy, trauma-informed care, and trauma-sensitive education.
- Bible clubs, Bible camps, and church youth groups.
- Improving economic and support services and cultural education and programs to Native Americans by addressing behavioral health via curriculums that are inclusive of intertribal values, beliefs, traditions, incorporating tribal kinship, and healthy lifestyles demonstrated to increase tribal identities.

Testimony received from a representative of DHHS indicated about 1 in 3 North Dakota children are eligible for Medicaid. North Dakota Medicaid covers a range of services and supports for youth who are experiencing or at risk of out-of-home placement. The services provided include community services, residential services, and transitional services. The Family Support Program consists of community-based services lasting up to 1 year to prevent out-of-home placement, including mentoring services to the household and relief care to the Medicaid-eligible child.

Testimony indicated the average time from termination of parental rights to finalization of an adoption is 14 months, ranging from a low of 6.6 months to a high of 39 months. The average time from adoptive placement to finalization is 2.2 months. The department's goal is for adoption finalization to occur within 60 days of termination of parental rights in 80 percent of cases. According to the testimony, reaching the target will require those involved in the foster care and adoption process to adhere to the new processes and protocols implemented in February 2024.

Testimony indicated the department's goals related to child welfare include reducing foster care numbers, reducing institutional placements, increasing evidence-based supports for children, and reducing the severity of school-based behaviors.

Testimony from representatives of DHHS, human service zones, and public and private organizations involved in child welfare, protection, and advocacy indicated parental substance use or abuse accounts for 34 percent of child removals. Prevention services and community-based services are lacking outside of major cities. Parents lack representation in child in need of protection cases. The testimony contended human service zones are severely understaffed, leading to high caseloads that impact the ability of staff to assess and determine safety. Human service zones also have long onboarding periods before a new employee becomes proficient in assessing and providing services to families in the community.

Committee Considerations

The committee expressed concern regarding the 1,100 confirmed cases of child abuse or neglect each year and the leading reason for removal of a child from a parental home being a parent's unaddressed mental health needs and substance use. The committee toured Pride Manchester House and the Dakota Boys and Girls Ranch and expressed appreciation for the clinical, educational, therapy, and residential services provided to children and adolescents with chronic psychiatric and behavioral health issues. The committee expressed support for human service zones partnering with other human service zones and with state partners to provide workforce stability to combat the lack of workforce.

Conclusion

The committee makes no recommendation regarding its study of the laws and practices of the child welfare system.

CRIMINAL HISTORY RECORD CHECK STUDY

Section 1 of Senate Bill No. 2238 (2023) directed a study of the statewide criminal history record check process. The study required a comparison between the statewide and nationwide criminal history record check standards, a review of the average processing time of a requested criminal history record check, and an evaluation of methods to improve efficiency and processing times of the statewide criminal history record check process.

Background

North Dakota Law

Chapter 12-60 establishes the procedure for the creation and dissemination of criminal history record information. Section 12-60-16.2 provides each criminal justice agency is required to report information to the Bureau of Criminal investigation (BCI) regarding all felonies as well as certain misdemeanors, which are known as "reportable offenses."

Section 12-60-16.5 provides criminal history record information may be disclosed and exchanged among criminal justice agencies and courts, by subpoena, and as otherwise expressly required by law.

Section 12-60-16.6 allows for the dissemination of criminal history record information to parties not described in Section 12-60-16.5 if certain requirements are met. Section 12-60-16.9 requires BCI to impose a $15 fee for each state record check, a $5 fee for record checks for certain nonprofit charitable organizations, and a $15 fee for processing fingerprints necessary for a nationwide criminal history record check. The section also requires BCI to waive the fees for any criminal justice agency or court.

Section 12-60-24 identifies the agencies and entities required to conduct criminal history record checks on certain individuals. The section requires the agencies and entities named in that section to "require each applicant, employee, or petitioner for adoption or name change to consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, registration, employment, or adoption." The section also requires the agency or entity to obtain two sets of fingerprints from each applicant, employee, or petitioner for adoption or name change. The agency or entity is required to submit the fingerprints to BCI for a nationwide criminal history record check that includes the submission of the fingerprints to the Federal Bureau of Investigation (FBI).

Senate Bill No. 2238

As introduced, Senate Bill No. 2238 sought to shorten the time to receive criminal background checks for child care providers under Section 50-11.1-06.2. Based on testimony received for Senate Bill No. 2238, the fingerprinting process and criminal background check delays arise during multiple steps in the process. First, it is difficult to schedule an appointment to get fingerprinted (with an average wait of 12 days in Fargo). When the fingerprint is returned to the provider and mailed to DHHS, the average response time is 11 days. This results in a 3- to 4-week delay from the time of initial referral for fingerprinting to the time results for an instate applicant are received. As a result of the delays, as much as 50 percent of child care applicants in some areas of the state have obtained alternate employment by the time the background checks are completed.

Senate Bill No. 2238, as introduced, attempted to streamline the criminal background check process for child care providers under Section 50-11.1-06.2 by amending the section to require DHHS to ensure access to fingerprinting is readily available for an individual required to obtain fingerprinting. The bill defined readily available as "within a fifty-mile radius and within forty-eight hours of an individual scheduling a request." The addition to Section 50-11.1-06.2 would have established a criminal background check infrastructure for child care employees which is timely and responsive to providers and applicants.

Criminal History Records

The Bureau of Criminal Investigation is the state's central repository for criminal history information. The system compiles records of arrests and prosecutions of individual offenders for use by law enforcement, the courts, and the public. Criminal history information is submitted to BCI by local law enforcement agencies, state's attorneys, the courts, and parole and probation.

A background check is a search of publicly available online records, such as court records, sex offender registries, and other sources, which cross-references records by a person's name, or name and date of birth. These public records may have data for more than one person with the same name or may be out of date. A state criminal history record check is a search of confidential law enforcement databases which cross-references the person's name, date of birth, social security number, and other specific identifiers, including fingerprints. Extensive cross-referencing ensures the result relates only to that person, even if the person has had different names or there are other individuals with the same name. By law, only BCI can supply a criminal history record check.

A North Dakota criminal history record check may be name based or fingerprint based. A name-based search will not identify records if the subject was arrested under a different name from the name or names listed on the request form. A fingerprint-based search will identify arrest records even if the subject used an unknown alias. If a fingerprint-based search is requested, fingerprints must be provided.

It takes approximately 7 to 10 business days to process and complete a criminal history record check. The Bureau of Criminal Investigation provides an option for expedited record checks, which requires the applicant to include a prepaid, self-addressed, overnight, or priority mail envelope and payment only in the form of a certified cashier's check or money order. Although BCI begins processing requests upon receipt, some boards and agencies submit requests to BCI only on a monthly basis. The Bureau of Criminal Investigation returns the record check to the board or agency as soon as the record check is completed, but the board or agency may not review the completed record checks until its next scheduled board meeting.

A request for criminal history record information only provides North Dakota records. For individuals required by state or federal law to obtain a national FBI record check, including applicants for professional licenses, foster care providers, potential adoptive parents, and others listed in Section 12-60-24, the request must be made through BCI. The FBI can provide individuals with an Identity History Summary, often referred to as a criminal history or "rap sheet," listing certain information taken from fingerprint submissions kept by the FBI and related to arrests and, in some instances, federal employment, naturalization, or military service. If the fingerprint submissions are related to an arrest, the Identity History Summary includes the name of the agency that submitted the fingerprints to the FBI, the date of the arrest, the arrest charge, and the disposition of the arrest, if known. All arrest information included in an Identity History Summary is obtained from fingerprint submissions, disposition reports, and other information submitted by authorized criminal justice agencies. If the request is received online, the current processing time for an Identity History Summary is 5 to 10 days after the FBI receives the fingerprint card. If the request is received through the mail, the processing can take up to 2 months.

Testimony

Testimony from representatives of Boys and Girls Clubs and the YMCA indicated scheduling appointments for fingerprinting may take up to 2 weeks or longer due to the limited number of appointment openings and fingerprinting systems available. The long wait time is negatively affecting North Dakota's child care industry because applicants are unable to wait that long for employment. If an applicant for a criminal history background check has lived in another or several other states, it may take up to 3 months to receive the results of a criminal history record check because the results of the criminal history record check cannot be finalized until each state the candidate has resided in responds to the request for the candidate's criminal history record.

Testimony indicated timely completion of criminal history background checks is crucial for ensuring the safety and smooth operation of child care services. According to the testimony, the wait times for processing criminal history background checks poses a challenge for staffing and scheduling, which reduces the state's workforce by limiting the number of child care openings while waiting for completion of the background check so new staff can begin work and parents can return to work.

Testimony indicated possible solutions to long wait times and staffing challenges could include establishing additional fingerprinting locations or appointment availability and implementing provisional hiring policies, including allowing staff to begin work under supervised conditions while waiting for comprehensive background check results.

Testimony from a representative of the Insurance Department indicated the department is seeking avenues to expedite the process for an insurance producer to receive the producer's insurance license. The department has required fingerprinting for resident insurance producers since 2013, which allows the department to conduct background checks on resident producers who will be representing North Dakota. Fingerprints are submitted to BCI via interoffice mail for the applicant's background check to be completed by the state. Most background checks with results indicating there is no criminal record for the applicant can be completed within 3 to 5 business days. The average time from receipt of fingerprints to issuance of a North Dakota producers license is 8 days. Representatives of the department indicated the department is interested in collaborating with other state agencies using fingerprinting processes to expedite the process to get producers licensed and working in the insurance field.

Testimony received from a representative of DHHS indicated the average wait time of 11 calendar days for completion of an early childhood services criminal history background check. The department's central background check unit is in the process of selecting a vendor to automate the criminal history background check forms submittal process, allowing for greater efficiency, a significant reduction in errors on submissions, and timelier processing. In addition, the Legislative Assembly provided an appropriation to the department during the 2023 legislative session to add two live scan fingerprinting systems and the staff to support those systems. The department identified funding within the child care grant to support the addition of eight mobile live scan fingerprinting systems that will be used by the child care licensors in rural communities to expedite the fingerprinting process by eliminating the need to travel to one of the human service centers.

Testimony received from representatives of BCI indicated the reasons a criminal history record check may be delayed include fingerprints being rejected by the FBI, a missing disposition, the appearance of duplicate charges, or the need to contact a law enforcement agency or a state's attorney to clarify charges or dates on a record.

The testimony indicated the criminal history record check process could be improved or streamlined by creating an online bill pay mechanism, establishing an automated system for criminal history record check requests and responses, which is under the control of BCI, and expanding the number of live scan fingerprinting systems.

Committee Considerations

Committee members expressed concern regarding the wait times to schedule fingerprinting due to the limited number of appointment openings and fingerprinting systems available in the state. Background check delays are having a negative impact on the child care industry and limiting workforce opportunities. The committee acknowledged the allocation of funds for additional and automated equipment and additional staff has shortened the wait time for scheduling fingerprints. Committee members expressed support for legislation to provide additional solutions but concluded legislation addressing the issue goes beyond the scope of the study. Although the committee determined any legislation related to the study should not be in the form of an interim committee bill draft, some committee members expressed interest in pursuing a comprehensive solution independently to improve the statewide criminal history record check process.

Conclusion

The committee makes no recommendation regarding its study of the statewide criminal history record check process.

RE-ENTRY OUTCOMES STUDY

House Concurrent Resolution No. 3026 (2023) directed a study of improving re-entry outcomes for incarcerated adults and youth. The study allowed the Legislative Management to develop a working group to oversee the study. The study required an assessment and examination of the efforts, strategies, and programs implemented in other states to reduce recidivism; current public and private re-entry services, policies, practices, statutes, data, and resource allocation; re-entry services in the areas of correctional supervision, employment, job training, housing, transportation, support services, and behavioral health services; levels of collaboration across service systems; and current disparities in re-entry outcomes.

Background

Justice Reinvestment

Since 2015, the Legislative Assembly has attempted to reform the state criminal justice system with the objective of maximizing public safety, using taxpayer dollars more efficiently, and helping people who are justice involved become more productive citizens. In 2017, the Legislative Assembly passed House Bill No. 1041, which aimed to temper the state's rapidly growing spending on correctional facilities and reinvest a portion of the savings into strategies to reduce recidivism and increase public safety. The bill reduced penalties for certain low-level, nonviolent offenses, and created Free Through Recovery, an outcomes-driven program to address the fact that a large majority of incarcerated individuals have addiction and mental health issues.

Following the passage of House Bill No. 1041, the Legislative Assembly shifted its focus to the juvenile system. The newly created Juvenile Justice Commission partnered with the Council of State Governments' Justice Center to conduct an in-depth analysis of practices and policies related to North Dakota youth who were justice involved. The group reviewed data, statutes, and policies, and worked with a broad group of stakeholders, including states attorneys, public defenders, court staff, law enforcement, educators, tribal representatives, behavioral health professionals, and child welfare officials. These efforts resulted in House Bill No. 1035 (2021), which modernized state laws related to juvenile justice. The bill created distinct categories for juvenile delinquency, deprivation, and child welfare to clearly delineate between these populations to allow each type of case to be handled more consistently and to better enable youth to access social services without formal involvement in the justice system.

House Concurrent Resolution No. 3026 (2023) continues efforts to achieve reform by directing a study of improving re-entry outcomes for incarcerated adults and youth. Re-entry outcomes refer to a wide variety of services to help individuals successfully transition back to society, including education and job training, the removal of barriers to employment and stable housing, transportation, mental health services, recovery support, parenting, and other personal skill building. In North Dakota, about 1,400 prisoners are released each year from state prisons and thousands more are released from county jails. Formerly incarcerated individuals have access to a range of public and private programs to assist in their transition back to society, including services related to employment, housing, and behavioral health. According to testimony related to the study, House Concurrent Resolution No. 3026 seeks to review these services and identify needed improvements in re-entry services which could reduce North Dakota's 40.3 percent recidivism rate to save taxpayer dollars and improve lives.

Department of Corrections and Rehabilitation

Section 54-23.3-01 provides for the creation, duties, and programs of the Department of Corrections and Rehabilitation (DOCR). The section provides the department is responsible for the direction, guidance, and planning of adult and juvenile correctional facilities and programs within the state. Included within the purview of the department are the state penitentiary and any of its affiliated facilities, parole and probation for adult offenders, the Youth Correctional Center, community programs and services for juvenile offenders under the Division of Juvenile Services, and any other programs developed by the department.

Section 54-23.3-02 establishes the purpose of DOCR which includes:

- Providing for the care, custody, discipline, training, and treatment of persons committed to state correctional facilities and programs.
- Coordinating and providing a continuum of correctional services to both adult and juvenile clients.
- Working with local and state entities to develop alternatives to conventional incarceration for those offenders who can be handled more effectively in less-restrictive, community-based facilities and programs.

In 2003, DOCR applied to the National Institute of Corrections for technical assistance to implement the Transition from Prison to Community Initiative. Formal assistance from the National Institute of Corrections ended in 2009. The Department of Corrections and Rehabilitation and other stakeholders involved in the Transition from Prison to Community Initiative adopted the philosophy of recidivism reduction and focused efforts on implementing research-based strategies to reduce recidivism. Recidivism was defined as reducing the number of people released from prison who return to prison within 12, 24, and 36 months following their release.

In 2007, DOCR invited federal, state, local, and community-based agency leaders to work on re-entry issues. These leaders studied several issues and commissioned a steering committee to develop strategies to address barriers to successful re-entry. North Dakota also adopted the Transition from Prison to Community Initiative model, focusing on different decision points spanning the period of a person's incarceration and community supervision to make system improvements. Re-entry planning starts upon an individual's arrival in prison where assessments, treatment, and education services are offered to incarcerated individuals. Release planning starts approximately 6 months before an individual's release date. Individuals are released from prison to parole supervision for those eligible and granted, probation supervision for those ordered by the district court, or to expiration of sentence where no community supervision will take place.

As of February 27, 2023, of the 95 individuals incarcerated in DOCR with a life sentence, 52 were incarcerated with a life without parole sentence and 43 were incarcerated with a life with the possibility of parole sentence. The remaining 96 percent of DOCR's prison population who are not serving a life sentence, a total of 1,754 individuals, will be released back into their local communities.

From 2013 to 2022, the United States adult prison population fell by more than 21 percent, but the adult prison population in North Dakota grew by over 15 percent. Prison admissions in North Dakota increased 24 percent from 2020 to 2023 and the prison population grew by 45 percent.

Testimony

Efforts in Other States to Reduce Recidivism

The committee received testimony indicating employment is a key factor in avoiding recidivism. Reducing recidivism increases community safety, decreases victimization rates, reduces criminal justice costs, and fosters family preservation. Twenty-one states have laws aimed at helping previous offenders receive identification either at release or immediately following. Seventeen states provide permanent identification cards to those being released, while Utah and New York both provide temporary identification cards. Mississippi, North Carolina, Nevada, and Wisconsin explicitly provide for driver's licenses, allowing those who receive them to drive immediately. Ten states (Alabama, Alaska, Arizona, California, Florida, Georgia, Hawaii, Illinois, Texas, and Washington) provide state identification cards. Testimony indicated other efforts to reduce recidivism enacted in other states included:

- Alabama requiring its department of corrections to provide an inmate with a social security card and birth certificate upon release from incarceration.
- Louisiana removing eligibility restrictions for participation in the workforce development sentencing program. Those who have been deemed "habitual offenders" and those with sentences longer than 10 years can now participate in the program.
- Illinois providing that, during the first 180 days following an individual's release from a penal institution, the court may not order the individual to pay any outstanding fines, taxes, or costs arising from a criminal proceeding involving the individual.
- Tennessee providing an incarcerated individual who is ordered to pay child maintenance and is unable to pay with up to 1 year after the release from incarceration to begin payment, including entering a payment plan to address any arrearage.

Behavioral Health

The committee was informed DHHS offers direct services for behavioral health needs through the department's eight regional human services centers. In addition, services are provided through the department's Free Through Recovery

Program. The program, created in 2017, has served nearly 5,000 people over 5 years and has reduced recidivism for those at higher criminogenic risk.

The Free Through Recovery Program is a community-based behavioral health program designed to increase recovery support services to individuals involved with the criminal justice system who have behavioral health concerns. The mission of Free Through Recovery is to improve health care outcomes and reduce recidivism by delivering high-quality community behavioral health services linked with community supervision. Free Through Recovery participants work with local providers to receive care coordination, recovery services, and peer support.

Working Group

A working group, consisting of legislators, representatives from nonprofit organizations that assist with re-entry, community members with re-entry experience, and representatives from DOCR, county jails, the Behavioral Health Division of DHHS, the North Dakota Supreme Court, Job Service North Dakota and the business community, adult and postsecondary education institutions, and tribal nations, reported to the committee regarding its deliberations. The testimony indicated the purpose of the re-entry study workgroup was to facilitate assessment of current re-entry practices and community resources available for adults and youth transitioning from incarceration into communities throughout the state and provide essential information to the committee to assist the 69th Legislative Assembly with decisionmaking regarding criminal justice reform and reducing recidivism in the state. The goal of the workgroup was to gain a comprehensive understanding of re-entry services in North Dakota and provide evidence-based recommendations to the committee.

The workgroup's first meeting was September 20, 2023, which focused on the history of criminal justice reform in North Dakota and workgroup charter development. Crime and Justice Institute x(CJI) staff met with the workgroup to gain more knowledge about North Dakota's correctional system and the status of re-entry in the state. Crime and Justice Institute staff also met with DOCR business analysts to discuss the data sharing that will be requested for the study to provide a venue for CJI staff to review in detail how they will be conducting the study of re-entry in the state. Several members of the workgroup attended the National Summit to Advance States' Criminal Justice Priorities in Atlanta, Georgia. The experience provided a comprehensive understanding of how other states are addressing re-entry, key data findings related to national re-entry services, and important methods to improve re-entry outcomes and reduce recidivism.

Testimony indicated the workgroup, in conjunction with CJI, focused on defining re-entry and exploring the intersection of behavioral health and criminal legal systems through a review of trends, research, and best practices. The committee was informed reducing recidivism is not linear and takes many different forms of preparation to accomplish, including front-end diversion, treatment while in custody, release and re-entry planning, community supervision, family support, housing, and employment. Continuing treatment after release also is vital because an unaddressed behavioral health condition such as mental illness, persistent substance abuse, and unaddressed trauma complicate re-entry and increase the likelihood of recidivism.

Testimony indicated the workgroup's key data findings led to five overall goals to reduce recidivism and improve re-entry outcomes in the state. The first goal is expanding pathways to alternatives to incarceration through community-based interventions by authorizing citations in lieu of arrest for nontraffic offenses, expanding presumptive probation, establishing court-led pre-adjudicatory diversion programs and incentivizing counties to establish prosecution-led diversion programs, and limiting use of cash bail for cases released to pretrial supervision and evaluating savings from pretrial supervision.

The second goal is decreasing the number of individuals entering prison due to a drug or alcohol offense, or revocation from supervision, by including second-time possession offenses within the misdemeanor offense class, establishing clear definitions for absconding and technical violations in statute, updating data collection practices relating to revocations, and limiting or eliminating imposition of fines and fees for probation.

The third goal is reducing racial disparities in the criminal justice system by employing a Native American liaison or liaisons within parole and probation, identifying culturally responsive training opportunities for officers through consultation with tribal system partners, and designing a re-entry program in conjunction with tribal partners which is responsive to the specific needs of the Native American population.

The fourth goal is increasing cross-agency collaboration between system partners by creating regional coordinating councils comprised of re-entry partners and agencies, partnering with the Department of Transportation to provide access to driver's licenses for incarcerated individuals, convening a council or commission to develop solutions to data-sharing challenges, including the collection and dissemination of court, prison, community supervision, and Free Through Recovery data, and developing a standard practice of coordination between probation or parole officers, care coordinators, and peer supporters to support people on supervision and respond to supervision challenges.

The fifth goal is to further support a successful transition back into the community by increasing access to housing and health care by providing vouchers for people being released from incarceration to pay for housing, reducing liability for landlords to lease dwellings to people with criminal convictions, expanding access to expungement, and applying for the Medicaid Section 1115 waiver.

Committee Considerations

Although committee members acknowledged legislation may be needed to improve recidivism rates and re-entry outcomes, the committee determined any legislation on the topic should not be in the form of an interim committee bill draft because several committee members showed interest in collaborating with CJI and introducing legislation addressing recidivism and improving re-entry outcomes. The committee also was supportive of the continued work of the workgroup and the continuous efforts of DOCR, DHHS, Job Service North Dakota, and several private organizations in their mission to improve re-entry outcomes.

Conclusion

The committee makes no recommendation regarding its study of improving re-entry outcomes for incarcerated adults and youth.

HUMAN TRAFFICKING REPORT

The committee received a report from DHHS regarding the department's study and implementation of a standard framework for youth services for children impacted or potentially impacted by human trafficking, pursuant to Senate Bill No. 2341 (2023). According to the report, trafficking cases often are not prosecuted due to the difficulty of proving the offense. In many circumstances, traffickers are not charged with human trafficking but may be charged with a drug-related or other crime that is easier to prove. The report indicated the state has an inconsistent understanding of how often human trafficking is occurring and needs consistent data to inform decisionmaking. Data collection has been a long-standing issue with discrepancies among agencies and definitions used. There is disparity in documenting whether a child or adult is determined "at-risk" or "of concern" versus a child being "suspected" or "confirmed" as a victim of human trafficking. There is no statewide consistency in data collection or reporting, and each service provider or agency tracks data independently and differently.

The report indicated the state should continue to build sustainable, statewide human trafficking prevention and community-based services for children and families, identify a consistent data tracking mechanism to monitor needs, and make informed, data-driven decisions while continuing to locate an evidence-based model that supports child placement in long-term residential treatment settings. The creation of a new residential level of foster care should be considered only after North Dakota identifies how to consistently track data and build community-based services, including ongoing training and prevention strategies for victims of human trafficking.

The North Dakota Human Trafficking Task Force recommended training and education to ensure all state agencies are aware of the intricacies of human trafficking cases. The report also recommended the Attorney General and the North Dakota Human Trafficking Task Force provide initial and ongoing training and technical assistance to local, state, and federal law enforcement officials and the North Dakota court system.

HUMAN TRAFFICKING VICTIMS GRANT PROGRAM REPORT

The committee received a report from the Attorney General regarding the status and results of the human trafficking victims grant program pursuant to Section 7 of Senate Bill No. 2003 (2023). According to the report, Section 7 of Senate Bill No. 2003 appropriated $1,105,404 to the Attorney General from the general fund for the purpose of providing grants to organizations involved in providing prevention and treatment services related to human trafficking victims and related administrative costs. The report indicated the grants may be used for the development and implementation of direct care emergency or long-term crisis services, residential care, training for law enforcement, support of advocacy services, and programs promoting positive outcomes for victims.

According to the report, grant applications were reviewed by the Drug and Violent Crime Policy Board and award recommendations were submitted to the Attorney General for final approval. At the end of the grant period, 11 grant applicants were awarded a total of $1,101,879 and $185 was returned to the general fund.

REINSTATEMENT OF PARENTAL RIGHTS REPORT

Background

The committee received a report from DHHS regarding the progress of the study being conducted to review the option of reinstating parental rights that have been terminated by a court pursuant to Section 20 of House Bill No. 1091 (2023). According to the report, the department's study included input from the Supreme Court, human service zone directors, and the North Dakota Association of Counties. As of May 31, 2024, of the 1,028 children in foster care, 244 did not have a legal connection to their biological parents due to a termination of parental rights.

The department reviewed a publication by the National Conference of State Legislatures that summarized legislation enacted in 22 states establishing a court process for reinstating parental rights that have been terminated. The department concluded a similar statutory procedure for reinstatement of parental rights was warranted in North Dakota because 80 of the 244 children in human service zone custody potentially would be eligible to have a court consider reinstating parental rights under such a procedural framework. The department proposed a bill draft relating to reinstating parental rights that have been terminated by a court which specified the interested parties entitled to petition the court for reinstatement of parental rights; included consideration by the court of the child's preference regarding the re-establishment of parental rights and the child's age, maturity, and ability to express a preference; required the appointment of counsel for the child regardless of income; imposed as the burden of proof a "clear and convincing" evidence standard for the petitioner; and allowed the court to issue a written order barring the filing of subsequent petitions by the genetic parent if the court denies a petition after a hearing.

Committee Considerations

The committee expressed a concern regarding 24 percent of children in foster care not having any legal connection to their biological parents due to terminated parental rights with no means of reinstating the parental rights. Testimony in support of the bill draft proposed by the department indicated the bill draft could make 33 percent of children in the custody of the human service zones eligible for reinstating their parent's terminated parental rights. The committee did not receive any testimony in opposition to the bill draft.

Recommendation

The committee recommends House Bill No. 1034 relating to reinstating parental rights that have been terminated by a court.

PUBLIC LIBRARY REPORT

The committee received an aggregate report from the State Library on the implementation of collection development and relocation of materials policies to ensure explicit sexual material is not maintained in the children's collection inventory of each public library in the state pursuant to Section 12.1-27.1-03.5. The report indicated there are 83 public libraries in North Dakota and all 83 libraries provided their updated policies to the State Library to ensure compliance with Section 12.1-27.1-03.5, regarding the state's prohibition on public libraries having in their children's collection inventory books that contain explicit sexual material. The updated policies provided to the State Library include the public libraries' updated selection criteria, collection maintenance, and librarian guidelines for selection, management, and maintenance of the resources offered by the library.

The report indicated five public libraries have moved books within the collection, two public libraries have created a separate young adult collection, and some libraries have different sections within the collection which include children's, young adult, and adult, while a few libraries also have a separate section for grades 4 through 6.

TASK FORCE ON THE PREVENTION OF SEXUAL ABUSE OF CHILDREN REPORT

The committee received a report from the Task Force on the Prevention of Sexual Abuse of Children pursuant to Senate Bill No. 2257 (2023). According to the 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. According to the report, 1 in 10 children in North Dakota will be a victim of sexual abuse by age 18 and approximately 65 percent will be female victims. Children are sexually abused by someone they know in 90 percent of cases.

The report indicated the North Dakota Child Sexual Abuse Task Force's primary prevention subcommittee initiated an environmental scan in 2022, regarding the processes and perspectives of the prevention of child sexual abuse for the state. The 13-question scan polled the importance of providing child sexual abuse prevention education. Among those surveyed, there was a strong desire to provide child sexual abuse education to all stakeholder groups. Sixty-four to 95 percent (depending on the child age group that would be receiving the child sexual abuse education) of respondents indicated providing child sexual abuse education to children is very important; 93 percent of respondents indicated providing child sexual abuse education to teachers and coaches is very important; and 90 percent of respondents indicated providing child sexual abuse education to parents and caregivers is very important.

According to the report, 60 percent of respondents identified a lack of established curriculum as the greatest barrier to providing child sexual abuse prevention education to children, youth, and adults in their local community. Additionally, the respondents reported other barriers as including the social implications of providing the training due to the topic being uncomfortable or sensitive in nature. Less than a quarter of institutions surveyed indicated they are providing child sexual abuse education to children.

In January 2023, the Otto Bremer Trust Foundation awarded $130,000 to Prevent Child Abuse North Dakota to conduct a year-long, multilevel child sexual abuse prevention pilot project in Richland County.

COMMISSION ON JUVENILE JUSTICE REPORT

The committee received 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, pursuant to Section 50-06-43.2. According to the report, the Commission on Juvenile Justice is a time limited, 16-member working group tasked with gathering information, receiving reports, and making recommendations regarding effective interventions, resources, and services for children involved in the juvenile justice system.

The report indicated the 2019-2020 interim Judiciary Committee was assigned a study related to juvenile justice, and that committee and the Commission on Juvenile Justice worked in collaboration. Neither the commission nor the committee were appropriated funds to support their work. A request was made to the Justice State Advisory Group for funding to secure a preliminary assessment of North Dakota's juvenile justice system. The Juvenile Justice State Advisory Group approved the request, and that group completed a procurement process to select a consultant. The Council of State Governments' Justice Center was selected to complete the assessment. The Justice Center completed a review of the Century Code and held interviews with various stakeholders in late 2019 and early 2020. The Council of State Governments' Justice Center delivered a summary of recommendations to the commission in June 2020. Many of the recommendations involved modernizing the Uniform Juvenile Court Act, which had been adopted in 1969 and had not since been substantially updated.

The report indicated the 2019-20 interim Judiciary Committee worked closely with the Commission on Juvenile Justice to craft House Bill No. 1035 to ensure youths at a low risk of reoffending can 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.

The report indicated the commission has had the flexibility to organize work groups in a way that was not available to the interim Judiciary and Juvenile Justice committees, and therefore could address a large task and devote sufficient time to complete the work product. Frequent reporting between the commission, interim Judiciary and Juvenile Justice committees, Children's Cabinet, and Juvenile Justice State Advisory Group, as well as the development of online meeting formats, allowed diverse groups of stakeholders to stay informed about the work of the commission.

According to the report, another critical support to the infrastructure was the large federal grant that allowed the commission to retain the expertise of the Council of State Governments. The committee was informed the grant proved to be an effective, productive approach to a complex set of issues, and this model should be replicable if the Juvenile Justice Committee should choose to apply these strategies to a different topic, such as child welfare.

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 responsible for 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 Representatives Emily O'Brien (Chairman), Bert Anderson, Dick Anderson, Josh Boschee, Scott Louser, Mike Nathe, Dan Ruby, Austen Schauer, and Scott Wagner and Senators David A. Clemens, Jerry Klein, Judy Lee, Jeffery J. Magrum, Scott Meyer, and Shawn Vedaa.

Representative Cole Christensen served on the committee until his resignation from the Legislative Assembly in February 2024.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

During the 2023-24 interim, the State Auditor's office (SAO) and independent accounting firms presented 32 operational audits conducted using performance auditing standards, 1 performance audit report, and 68 financial audit reports. An additional 13 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 2023-24 interim:

1. Receive the annual audit report for the State Fair Association (Section 4.1-45-17).
2. Receive annual audit reports 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).
3. Receive annual reports on the writeoffs of accounts receivable at the Department of Health and Human Services and Life Skills and Transition Center (Sections 50-06.3-08 and 25-04-17).
4. Receive the annual audited financial statements and economic impact reports from the North Dakota low-risk incentive fund. (Section 26.1-50-05 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the committee.)
5. Receive an electronic copy of the audit report from the North Dakota Stockmen's Association at least once every 2 years. (Section 4.1-72-08 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the committee.)
6. Receive a 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 Legislative Assembly 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 when the State Auditor is to perform audits of political subdivisions (Section 54-10-13).

10. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (Section 54-10-15).
11. 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).
12. Review updates to government auditing standards and develop guidelines for the contents of state agency audit reports. The 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 (Section 54-35-02.10).
13. Receive a biennial report from the State Auditor regarding final report distribution policies and practices and any final audit reports prior to distribution of the final audit report to all individuals charged with the governance of the audit client (Section 54-10-01).
14. Receive a quarterly report from the State Auditor regarding communication processes with audited entities and any changes to the processes, billing practices and procedures, information on audits completed, and audit schedules (Section 54-10-01).

GUIDELINES FOR AUDITS OF STATE AGENCIES

The committee received information on and reviewed guidelines developed by prior Legislative Audit and Fiscal Review Committees relating to state agency and institution audits performed by the SAO and independent certified public accountants. For audit periods on or after June 30, 2022:

1. Auditors conducting financial statement audits of state agencies are to prepare an 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 is to expand the audit summary to identify the areas reviewed and testing conducted even if there are no related findings or recommendations.

The committee received summary reports for operational audits of state agencies completed by the State Auditor. The summary reports highlight 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.

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, 2022*, and the *State of North Dakota Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2023*. 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, 2022. An unmodified opinion was issued on the financial statements. As of June 30, 2022, the University System had total assets of \$2.77 billion and total liabilities of \$1.11 billion, resulting in total net assets of \$1.66 billion. The total net assets increased \$130 million during fiscal year 2022.

The committee received the University System's annual financial report for the fiscal year ended June 30, 2023. An unmodified opinion was issued on the financial statements. As of June 30, 2023, the University System had total assets of \$2.94 billion and total liabilities of \$1.22 billion, resulting in total net assets of \$1.72 billion. The total net assets increased \$60 million during fiscal year 2023.

PRESCRIPTION DRUG COVERAGE PERFORMANCE AUDIT

During the 2023 legislative session, the committee met, received, and accepted the performance audit report on the prescription drug coverage of the main Public Employees Retirement System health benefit plan. The State Auditor's office contracted with Myers and Stauffer, LC, to conduct the performance audit, which reviewed the prescription drug coverage benefit offered to Public Employees Retirement System members by Sanford Health Plan and OptumRx. The performance audit included an analysis of prescription drug claims data from January 1, 2019, through December 31, 2021, to identify potential improvements to the plan. The contract for the performance audit allowed for payment for actual hours worked, not to exceed $334,222.

The committee was informed Sanford Health Plan and OptumRx failed to provide sufficient documentation to support all required analyses. The auditors were unable to obtain original remittance advices for 2019 and 2020, limiting the ability to validate administrative fees, reconcile drug costs reimbursed to pharmacies, and perform a comprehensive analysis of spread pricing. Further, insufficient data was available for specialty pharmacy claims in all 3 years, limiting the ability of the auditor to analyze the cost of specialty drugs.

Recommendations included adjusting the Sanford Health Plan contract to have a more conservative retained dollar amount (currently the lesser of 50% of shared savings or $1.5 million to be retained by Sanford Health Plan) and adjusting monthly premiums to reduce the likelihood of significant overfunding of the plan.

ATTORNEY GENERAL LEASED FACILITY INVESTIGATIVE REPORT

The committee received an investigative report from the Montana Department of Justice on the lease agreement and the remodeling and construction of facilities leased by the Attorney General located at 1720 Burlington Drive, Bismarck. The committee received background information and the timeline relating to the lease agreement and cost overruns from the Attorney General; and the fact-finding investigative final report from representatives of the Montana Department of Justice; and a response to the investigative report from representatives of Vogel Law Firm representing Stealth Properties LLC, and D&S LLC, the owners and managers of the property.

STATE AUDITOR QUARTERLY REPORTS

The committee received quarterly reports from the State Auditor regarding its communication processes with audited entities and any changes to the processes, billing practices and procedures, information on audits completed, and audit schedules pursuant to section 54-10-01.

In addition, the committee received information regarding State Auditor fees and the impact to state agencies and other public entities. Section 54-10-01 requires the SAO to charge certain agencies an amount that covers the cost of the audit.

PERFORMANCE AUDIT OF THE STATE AUDITOR'S OFFICE

Section 3 of House Bill No. 1541 (2023 special session) provided an appropriation to the Legislative Council to contract for a performance audit of the SAO. Forvis, LLP, was contracted to conduct the performance audit at a cost not to exceed $285,000. The firm began the performance audit in August 2024, and the audit is expected to be completed in November 2024. The performance audit includes an evaluation of the efficiency and effectiveness of the SAO relative to industry best practices, and includes a review of the hours required to complete audits, methods used to monitor staff time, billing processes, and quality assurance processes. The audit also includes an assessment of the adequacy and timeliness of communications with audited entities, governing boards, and the public.

OTHER INFORMATION

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.

Pursuant to Sections 25-04-17 and 50-06.3-08, the Department of Health and Human Services is required to report to the committee regarding accounts receivable writeoffs at the State Hospital, Life Skills and Transition Center, and human service centers as of June 30 of each fiscal year. Accounts receivable writeoffs as of June 30, 2023, were $7,207,642 at the State Hospital, $3,795 at the Life Skills and Transition Center, and $300,338 at the human service centers.

AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2023-24 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Addiction counselor internship loan program	June 30, 2021 and 2022	July 26, 2023
Addiction counselor internship loan program	June 30, 2022 and 2023	December 19, 2023
Aeronautics Commission	June 30, 2022 and 2023	June 20, 2024
Ag partnership in assisting community expansion (PACE) Fund	June 30, 2021 and 2022	July 26, 2023
Ag PACE Fund	June 30, 2022 and 2023	December 19, 2023
Annual Comprehensive Financial Report	June 30, 2022	July 26, 2023
Annual Comprehensive Financial Report	June 30, 2023	March 21, 2024
Bank of North Dakota	December 31, 2021 and 2022	July 26, 2023
Bank of North Dakota College Save Program	December 31, 2020 and 2021	July 26, 2023
Bank of North Dakota College Save Program	December 31, 2021 and 2022	July 26, 2023
Beginning farmer revolving loan fund	December 31, 2021 and 2022	July 26, 2023
Bismarck State College	June 30, 2021 and 2022	December 19, 2023
Clean Sustainable Energy Authority	June 30, 2022	July 26, 2023
Clean Sustainable Energy Authority	June 30, 2022 and 2023	December 19, 2023
Comprehensive Health Association	December 31, 2020 and 2021	July 26, 2023
Comprehensive Health Association	December 31, 2021 and 2022	December 19, 2023
COVID-19 PACE loan program	June 30, 2021 and 2022	July 26, 2023
COVID-19 PACE loan program	June 30, 2022 and 2023	December 19, 2023
Dakota College at Bottineau	June 30, 2021 and 2022	December 19, 2023
Department of Agriculture	June 30, 2022 and 2023	June 20, 2024
Department of Environmental Quality	June 30, 2022 and 2023	March 21, 2024
Department of Financial Institutions	June 30, 2021 and 2022	July 26, 2023
Department of Health	June 30, 2021	February 16, 2023
Department of Public Instruction	June 30, 2022 and 2023	March 21, 2024
Department of Transportation	June 30, 2020 and 2021	February 16, 2023
Department of Trust Lands	June 30, 2021 and 2022	July 26, 2023
Department of Trust Lands	June 30, 2022 and 2023	December 19, 2023
Department of Veterans Affairs	June 30, 2021 and 2022	July 26, 2023
Dickinson State University	June 30, 2021 and 2022	December 19, 2023
Game and Fish Department	June 30, 2021 and 2022	December 19, 2023
Housing Finance Agency	June 30, 2022	July 26, 2023
Housing Incentive Fund	June 30, 2021 and 2022	July 26, 2023
Indian Affairs Commission	June 30, 2021 and 2022	July 26, 2023
Industrial Commission	June 30, 2022 and 2023	March 21, 2024
Information Technology Department	June 30, 2021 and 2022	December 19, 2023
Infrastructure revolving loan fund	June 30, 2021 and 2022	July 26, 2023
Infrastructure revolving loan fund	June 30, 2022 and 2023	December 19, 2023
Innovation technology loan fund (Bank of North Dakota)	June 30, 2021 and 2022	July 26, 2023
Innovation technology loan fund (Bank of North Dakota)	June 30, 2022 and 2023	December 19, 2023
Insurance Department	June 30, 2022 and 2023	Future
Job Service North Dakota	June 30, 2023	December 19, 2023
Legislative Assembly	June 30, 2022 and 2023	March 21, 2024
Legislative Council	June 30, 2022 and 2023	March 21, 2024
Medical Facility Infrastructure Loan Fund	June 30, 2021 and 2022	July 26, 2023
Medical Facility Infrastructure Loan Fund	June 30, 2022 and 2023	December 19, 2023
Mill and Elevator Association	June 30, 2022	July 26, 2023
Mill and Elevator Association	June 30, 2022 and 2023	December 19, 2023
Minot State University	June 30, 2021 and 2022	December 19, 2023
North Dakota Annual Comprehensive Financial Report	June 30, 2022	July 26, 2023
North Dakota Barley Council	June 30, 2021 and 2022	March 21, 2024
North Dakota Beef Commission	June 30, 2021 and 2022	July 26, 2023
North Dakota Beef Commission	June 30, 2022 and 2023	March 21, 2024
North Dakota Building Authority	June 30, 2021 and 2022	July 26, 2023
North Dakota Building Authority	June 30, 2022 and 2023	December 19, 2023
North Dakota Corn Utilization Council	June 30, 2022	July 26, 2023
North Dakota Dairy Promotion Commission	June 30, 2021 and 2022	July 26, 2023
North Dakota Development Fund	June 30, 2022 and 2023	March 21, 2024
North Dakota Dry Bean Council	June 30, 2021 and 2022	July 26, 2023
North Dakota Dry Pea and Lentil Council	June 30, 2021 and 2022	July 26, 2023
North Dakota Ethanol Council	June 30, 2021 and 2022	July 26, 2023
North Dakota Guaranteed Student Loan Program	December 31, 2021 and 2022	July 26, 2023

Agency	Audit Report Date	Meeting Date Accepted
North Dakota Highway Patrol	June 30, 2021 and 2022	December 19, 2023
North Dakota Lottery	June 30, 2022	July 26, 2023
North Dakota Lottery	June 30, 2022 and 2023	December 19, 2023
North Dakota Milk Marketing Board	June 30, 2021 and 2022	July 26, 2023
North Dakota Oilseed Council	June 30, 2021 and 2022	July 26, 2023
North Dakota Potato Council	June 30, 2021 and 2022	July 26, 2023
North Dakota Protection and Advocacy Project	June 30, 2021 and 2022	July 26, 2023
North Dakota Single Audit	June 30, 2021 and 2022	December 19, 2023
North Dakota Single Audit	June 30, 2019 and 2020	December 19, 2023
North Dakota Soybean Council	June 30, 2022	July 26, 2023
North Dakota Soybean Council	June 30, 2023	March 21, 2024
North Dakota State College of Science	June 30, 2022 and 2023	June 20, 2024
North Dakota State Fair Association	September 30, 2021	July 26, 2023
North Dakota State Fair Association	September 30, 2022	December 19, 2023
North Dakota University System	June 30, 2022	July 26, 2023
North Dakota University System	June 30, 2022 and 2023	March 21, 2024
North Dakota Student Loan Trust	June 30, 2021 and 2022	July 26, 2023
North Dakota Student Loan Trust	June 30, 2022 and 2023	December 19, 2023
North Dakota University System office	June 30, 2021 and 2022	December 19, 2023
North Dakota Vision Services - School for the Blind	June 30, 2022 and 2023	March 21, 2024
North Dakota Wheat Commission	June 30, 2021 and 2022	July 26, 2023
Office of the Adjutant General	June 30, 2021 and 2022	December 19, 2023
Office of the Attorney General	June 30, 2021 and 2022	March 21, 2024
Office of the Governor	June 30, 2022 and 2023	June 20, 2024
Office of the State Auditor	June 30, 2022 and 2023	March 21, 2024
PACE Fund	June 30, 2021 and 2022	July 26, 2023
PACE Fund	June 30, 2022 and 2023	December 19, 2023
Public Employees Retirement System	June 30, 2021 and 2022	July 26, 2023
Public Employees Retirement System	June 30, 2022 and 2023	March 21, 2024
Public Employees Retirement System - Other Postemployment Benefits	June 30, 2022	July 26, 2023
Public Employees Retirement System - Other Postemployment Benefits	June 30, 2023	March 21, 2024
Public Employees Retirement System - Pension	June 30, 2022	July 26, 2023
Public Employees Retirement System - Pension	June 30, 2023	March 21, 2024
Public Employees Retirement System - Prescription Drug Coverage	December 31, 2019, 2020, and 2021	February 16, 2023
Public Finance Authority	December 31, 2020 and 2021	July 26, 2023
Public Finance Authority	December 31, 2021 and 2022	December 19, 2023
Public Finance Authority	December 31, 2022 and 2023	June 20, 2024
Rebuilders Permanent Loan Fund	June 30, 2021 and 2022	July 26, 2023
Rebuilders Permanent Loan Fund	June 30, 2022 and 2023	December 19, 2023
Retirement and Investment Office	June 30, 2021 and 2022	July 26, 2023
Retirement and Investment Office	June 30, 2022 and 2023	March 21, 2024
School construction assistance revolving loan fund	June 30, 2021 and 2022	July 26, 2023
School construction assistance revolving loan fund	June 30, 2022 and 2023	December 19, 2023
School for the Deaf	June 30, 2022 and 2023	June 20, 2024
Secretary of State	June 30, 2021 and 2022	December 19, 2023
Securities Department	June 30, 2021 and 2022	July 26, 2023
State Historical Society	June 30, 2021 and 2022	December 19, 2023
State Library	June 30, 2020 and 2021	December 19, 2023
State Library	June 30, 2022 and 2023	March 21, 2024
State Seed Department	June 30, 2021 and 2022	July 26, 2023
Teachers' Fund for Retirement Employment Schedules	June 30, 2023	March 21, 2024
University of North Dakota	June 30, 2021 and 2022	December 19, 2023
Water Infrastructure Revolving Loan Fund	June 30, 2022	July 26, 2023
Water Infrastructure Revolving Loan Fund	June 30, 2022 and 2023	December 19, 2023
Workforce Safety & Insurance	June 30, 2022 and 2023	December 19, 2023

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Legislative Management assigned 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 2025 legislative session, and the authority to review and update legislative rules.

The Legislative Management also assigned to the committee the Legislative Management's power and responsibility to:

- Establish guidelines for the use of legislative chambers and displays in Memorial Hall, pursuant to Section 54-35-02;
- Make recommendations to adjust legislative compensation amounts and establish guidelines on maximum reimbursement for legislators sharing lodging during a legislative session, pursuant to Section 54-03-20;
- 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, pursuant to Section 54-03-26;
- Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents, pursuant to Section 54-35-02;
- Determine the contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws, pursuant to Section 46-02-05;
- Determine when agricultural commodity promotion groups must report to the standing Agriculture Committees, pursuant to Section 4.1-44-04;
- Determine when the Agriculture Commissioner must report to the Agriculture Committees on the status of the pesticide container disposal program, pursuant to Section 4.1-36-04;
- Determine which standing committees will receive a report from the Commissioner of Commerce on the goals and objectives of the Department of Commerce, pursuant to Section 54-60-03; and
- Establish guidelines for the use of state telephones by legislative branch personnel, pursuant to Section 54-06-26.

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.

The committee also was assigned the study provided under Senate Bill No. 2192 (2023), which directed a study of the impact of term limits on the manner in which the Legislative Assembly conducts business. The study required an assessment of the desirability of providing increased educational opportunities for legislative members due to shortened tenures in the Legislative Assembly, increasing the number of Legislative Council policy staff available to assist new members, and holding legislative sessions on an annual basis.

Committee members were Senators Jerry Klein (Chairman), Kathy Hogan, David Hogue, Merrill Piepkorn, Kristin Roers, and Ronald Sorvaag and Representatives Glenn Bosch, Josh Boschee, Zachary Ista, Dennis Johnson, Mike Lefor, Emily O'Brien, and Austen Schauer.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

LEGISLATIVE SPACE AND FACILITIES IMPROVEMENTS

Legislative Chambers and Memorial Hall

Requests to Use Legislative Space

Since 1981, the Legislative Management has assigned 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 the North Dakota High School Activities Association to use both legislative chambers for the 2024 North Dakota High School State Student Congress on November 7-8, 2024, and both legislative chambers and committee rooms for the 2025 North Dakota High School State Student Congress on November 6-7, 2025. The committee also approved a request from the North Dakota Supreme Court to use the House Chamber for the new lawyer bar admission ceremony on September 25, 2024.

The committee received a request from a representative of the North Dakota Lobbyist Association for a dedicated space for lobbyists for use during the legislative session. The Legislative Council staff worked with the Facility Management Division of the Office of Management and Budget to determine whether any options existed for a dedicated space. The committee was informed all legislative space is being used to capacity.

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 the 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 the 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 the policy governing the use of the chambers.

Facilities Improvements

Chamber Renovations

The 2021-22 interim Legislative Procedure and Arrangements Committee recommended the Legislative Management include in the Legislative Assembly's 2023-25 biennium budget funds to purchase new carpeting and chairs for the legislative chambers and to refinish the woodwork in the chambers. The committee viewed sample chairs and discussed desirable features for replacement chamber chairs. The committee requested the Legislative Council staff to solicit bids for chairs in either a cloth or leather material with adjustable arm rests and a pneumatic lift to allow members to comfortably work on a laptop. The committee reviewed bids from three bidders and selected the lowest bid of $729 per chair for the Nightingale EC3 335D Series chair from InterOffice. The total cost for 168 replacement chamber chairs was $122,472. Committee members elected to continue the color scheme of red chairs in the Senate and blue chairs in the House of Representatives and selected a leather look finishing, rather than cloth. Committee members recommended any existing chamber chairs still in good working order be allocated first to committee rooms in need of additional or replacement chairs before being considered for surplus.

The committee received updates throughout the interim on the status of the carpeting replacement and woodwork refinishing in the chambers, both of which were completed during the 2023-24 interim. The committee also was informed of heating, ventilation, and air conditioning projects in the legislative chambers and Brynhild Haugland Room. The maintenance and improvement work in the ceilings of both legislative chambers was completed during the 2023-24 interim and both ceilings were repainted. The committee was informed the data and electrical ports on the desks in the chambers were replaced.

Lighting Study

The committee was informed discussions with the Facility Management Division indicated the lighting in the chambers and Legislative Hall is original to the building and parts such as dimming and relay switches are becoming extremely difficult to replace when the parts fail. There are concerns that if future replacement parts are needed, options may be limited to leaving lights on around the clock or leaving areas partially in the dark. The committee was informed the Facilities Management Division requested consideration of a study of the options and estimated costs to repair or update lighting to give the Legislative Assembly a clearer view of the scope of the project if the Legislative Assembly chooses to incorporate the costs of lighting improvements in the 2025-27 biennium budget.

The committee approved the Legislative Council to expend $22,000 of existing funds to secure a study of the options for, and estimated costs of, lighting improvements in the legislative chambers and Legislative Hall. The committee recommends funding be included in the Legislative Assembly's 2025-27 biennium budget for completion of the lighting improvements based upon the results of the study.

Accessibility Improvements

The committee discussed the need for accessibility improvements in the chambers, including the feasibility of constructing permanent ramps to better comply with the federal Americans with Disabilities Act (ADA). The committee was informed the temporary ramps placed in the chambers on an as-needed basis have been deemed a reasonable accommodation under the ADA; however, a temporary ramp option is not available to make the area occupied by the President of the Senate or the Speaker of the House accessible. The committee was informed the services of an architect would be required to receive options for permanent compliance with the ADA. Committee members approved the Legislative Council to expend $35,000 of existing funds for architectural services to determine the accessibility options for the legislative chambers.

The committee considered options provided by Michael J. Burns Architects, Ltd., for accessibility improvements. The accessibility options differed between the chambers due to the shorter distance from the front to the back of the chamber in the Senate. In the House Chamber, the accessibility options included adding ramps on the far right and left sides of the chamber, raising the area in front of the rostrum by 5 inches and adding ramps in four of the five aisles, or demolishing and rebuilding the entire floor area to create a 2 percent slope. In the Senate Chamber, the accessibility options included raising the area in front of the rostrum by 5 inches and adding ramps on the far right and left sides of the chamber or demolishing the entire floor area to create a 2 percent slope. For the options that did not involve demolishing the entire floor, smaller ramps also would need to be added in each location where the main ramps meet the entrances to the seating areas. Each option also included adding a floor lift to access the area occupied by the Speaker of the House and the President of the Senate. The costs estimates ranged from roughly $3 million to $4 million depending on the accessibility design option selected.

The committee did not express a preference among the accessibility options but agreed on the value of making the legislative chambers, which is the people's house, accessible to all individuals. The committee recommends $4 million be included in the Legislative Assembly's 2025-27 biennium budget for purposes of making accessibility improvements to the chambers.

Legislative Council Carpeting

The committee was informed the carpeting in the Legislative Council office area is about 15 years old and showing signs of wear. Two estimates were received for the cost of replacing carpeting, one estimate at $63,000 and one at $100,000. The committee approved the Legislative Council to proceed with using existing funds to replace the carpeting in the Legislative Council office areas.

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 recommends the 2025-27 biennium budget of the Legislative Assembly include funding for changes to legislative compensation to provide for adjustments of 3 percent for the 1st year and 3 percent for the 2nd year of the 2025-27 biennium, subject to revision if necessary during the 2025 legislative session to the appropriate level as compared to state employee salary increases, and the necessary related statutory changes.

Committee members discussed the additional daily statutory compensation amounts of $10 and $15 provided to legislative leaders and committee chairman during a legislative session and noted these amounts have been increased only once since the 1980s. Some committee members saw value in considering an increase to these amounts given the additional responsibilities assumed by legislative leaders and committee chairmen during the legislative session. The committee recommends for inclusion in the 2025-27 biennium budget of the Legislative Assembly the statutory changes and funding to increase by $5 per day the legislative compensation provided in Section 54-03-10 for legislative leaders and standing committee chairmen.

Expense Reimbursement Policy

Section 26 of Article XI of the Constitution of North Dakota provides payment for necessary expenses of legislators may not exceed the payment 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 $2,022 per month as reimbursement for lodging for the 2025 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, with the legislator's data costs associated with the legislator's plan 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 and identified the cost inefficiencies and cumbersome administration requirements associated with the policy. The committee approved discontinuation 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.

Changes made by House Bill No. 1001 (2023) increased the monthly stipend from $90 per month to $200 per month, effective July 1, 2023. Legislators are required to submit to the Legislative Council a signed Information Technology Stipend Authorization Agreement Form to receive payment. The committee was informed the stipend amount may be taxable and is intended to be used for paying broadband data and mobile phone costs, as well as other technology-related costs, including printers, ink and accessories.

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 the use of privately owned personal and tablet computers while in the chambers or committee rooms and governs the use of state-owned personal and tablet computers assigned to legislators to access legislative information systems. The policy also 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. With the purchase of new computers and tablets for legislators during the interim, the committee set the fee for a legislator seeking to acquire a computer or tablet being replaced at $250 per device, and specified a legislator may purchase only one of each device if the $10 computer use fee was paid by the legislator during the previous 12 months.

Cybersecurity Awareness

The committee received information 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 2, 2024, and at 12:30 p.m. and 2:45 p.m. on Tuesday, December 3, 2024. The agenda also provides for laptop computer and tablet distribution and training session for new legislators at 3:15 p.m. on Monday, December 2, 2024, and 12:00 noon and 2:15 p.m. on Wednesday, December 4, 2024.

Legislative Drafting System Upgrade

The committee received an update on the progress of the Legislative Council's drafting system upgrade and a proposed new format for amendment instructions. The new amendment instruction format proposed replacing antiquated page and line number amendment instructions with an abbreviated version of the markup document to show the proposed changes. Committee members expressed interest in hyperlinking the new amendment document in the journal to replace the practice of printing the amendment instructions in the journal and authorized the Legislative Council staff to pursue alternative format options for amendments. Followup by the Legislative Council staff confirmed the ability to hyperlink amendments in the journal to allow what currently is referred to as the markup document to be linked and designated as the official amendment document, without the need to continue producing a separate amendment instruction document. The committee was informed the use of the markup document in place of the amendment instruction document would eliminate the risk of discrepancies between the two documents, be more user friendly for new legislators to interpret, decrease the turnaround time for amendments during the legislative session, and reduce staff overtime costs.

LEGISLATIVE DOCUMENT PRINTING AND SERVICES

Bill and Journal Room Staff and Services

The Bill and Journal Room historically has served as a main access point for receiving legislative documents. Bill and Journal Room services were provided by Legislative Assembly staff through the 1995 legislative session. Beginning in 1997, the Legislative Assembly began inviting outside employment contractors to submit bids for the provision of secretarial services, telephone message services, and Bill and Journal Room services. The contracted Bill and Journal Room staff were responsible for receiving copies of bills, resolutions, daily journals, daily calendars, committee hearing schedules, and bill status reports from a separately contracted printing provider. Staff would stock copies of these documents in the Bill and Journal Room, provide copies of documents to individuals at the walkup window of the Bill and Journal Room, maintain a document subscription list, assemble subscription materials, and receive subscription fees. Contracted staff operated the Bill and Journal Room through the 2019 legislative session.

Beginning with the 2021 legislative session, Legislative Assembly staff began operating the Bill and Journal Room. The number of staff devoted to the Bill and Journal Room has since decreased due to the reduced need for printed copies as a result of documents being readily available online. For the 2025 legislative session, documents will be printed and distributed by pages and other Legislative Assembly staff, eliminating the need for the Bill and Journal Room. Members of the public may request copies of legislative documents from the information desk staff.

Printing Policy and Subscription Services

Beginning with the 1985-86 interim, the committee has reviewed the cost of providing various printed documents to individuals outside the legislative branch, including the subscription fee for members of the public wishing to receive a complete set of certain types of legislative documents.

Photocopy Fee

Pursuant to Joint Rule 603, Bill and Journal Room staff may distribute legislative documents to legislators, House and Senate employees, and Legislative Council staff free of charge. Members of the public may request House and Senate daily journals, House and Senate calendars, House and Senate committee hearing schedules, and up to five copies of a limited number of bills and resolutions free of charge. For other documents or requesters, a printing fee of 25 cents per page is charged and remitted to the Legislative Council office for deposit in the legislative services fund, pursuant to Section 54-35-19. Fifty-three dollars in printing fees were collected during the 2023 legislative session.

The committee recommends eliminating the 25-cent per page photocopy fee due to the minimal amount collected from printing fees.

Subscription Services

Due to the dwindling number of subscribers, the 2021-22 interim Legislative Procedure and Arrangements Committee elected to suspend for the 2023 legislative session the subscription program that allowed individuals to receive a complete set of certain legislative documents. The committee questioned whether continuation of the subscription services is warranted due to the ease of accessing legislative documents on the legislative branch website and increased paper costs.

The committee recommends amendments to Joint Rule 603 to eliminate the document subscription program.

Committee Hearing Schedules and Daily Calendars

During the 2021 legislative session, no entities subscribed to receive daily calendars or weekly committee hearing schedules; however, copies were preprinted and made available in the Bill and Journal Room for pickup. 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 2021-22 interim Legislative Procedure and Arrangements Committee elected to reduce the number of daily calendars and committee hearing schedules provided to each house during the 2023 legislative session to half of the amount provided in the previous session, for a total cost of $33,984.

Committee members noted many legislators throw away the copies of daily calendars and weekly hearing schedules left on their desks because both documents are available online and printed hearing schedules quickly become outdated due to frequent changes. Committee members noted the benefits of reduced waste and the elimination of excess expenditures by moving to on-demand printing services. The committee determined committee hearing schedules and daily calendars would be printed on demand by Legislative Assembly staff for the 2025 legislative session, rather than using a contract printer to print a set number of copies in advance. The committee noted those legislators who wish to receive paper copies of daily calendars and weekly hearing schedules could opt-in to a distribution list at the beginning of the legislative session.

The committee recommends amendments to Joint Rule 603 to clarify legislative employees may provide copies of daily calendars and committee hearing schedules to legislators, legislative employees, and members of the Legislative Council staff upon request.

Bills, Resolutions, and Journals

The 2021-22 interim Legislative Procedure and Arrangements Committee determined for the 2023 legislative session, bills, resolutions, daily journals, the journal index, and bill status reports would be printed only upon request, except the number of journal copies required by House and Senate Rules 204. The committee was informed the practice of printing bills and resolutions, daily journals, and bill status reports on-demand worked well during the 2023 legislative session and resulted in substantial cost savings. The committee approved continuing the print-on-demand practice for these documents for the 2025 legislative session. The committee was informed the Legislative Council has considered the use of fee-based, on-demand printing kiosks for the public as a possibility for printing legislative documents in future sessions.

The committee recommends amendments to House and Senate Rules 204 and Joint Rule 603 to remove the requirement that a copy of the daily journal be placed on the desk of each member and two sets be provided to the Secretary of State to distribute to public officials, and to clarify legislative employees may provide copies of bills, resolutions, and daily journals to legislators, legislative employees, and members of the Legislative Council staff upon request.

Contract Printing Services

A contracted printer has been used to preprint a set number of copies of legislative documents for the Bill and Journal Room for distribution to House and Senate staff, legislators, and the public. Copies in addition to those provided by the contract printer are printed on-demand by the Bill and Journal Room staff. Before the 2021 legislative session, Section 46-02-05 required the Office of Management and Budget to issue an invitation for printing bids before each legislative session. Two requests for printing bids were issued before the 2021 legislative session, but no bids were received. As a result, the 2021-22 interim Legislative Procedure and Arrangements Committee recommended a bill draft to allow the Legislative Assembly to enter an agreement with Central Duplicating Services of the Office of Management and Budget to print legislative documents. Senate Bill No. 2347, passed during the 2021 special legislative session, allowed the Legislative Assembly to have legislative materials printed by Central Duplicating Services or solicit bids from a private printing vendor for printing services. Central Duplicating Services served as the contracted printing provider during the 2021 and 2023 legislative sessions. The committee was informed 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.

Incoming Wide Area Telephone Service

Beginning with the 1985 legislative session, incoming Wide Area Telephone Service (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 the option to stay on the line or leave a message for the caller's local legislators or for a specifically named legislator. This message feature is available 24 hours a day, 7 days a week during regular legislative sessions.

The committee was informed use of the WATS line has decreased dramatically, from 19,500 calls in 2001, to 325 calls in 2023, due to an individual's ability to submit comments to legislators online through the use of the constituent views application. Call volume also has decreased due to an individual's ability to submit digital testimony online, which during the 2023 legislative session included the submission of 14,527 pieces of digital testimony. The cost to maintain the line is $25 per line per month, plus long-distance costs.

Some committee members expressed interest in retaining the WATS line, due to its negligible cost, while others expressed support for eliminating the line due to the alternative contact methods that are available, including dialing the Legislative Council's main office number. The committee determined the WATS line should be eliminated due to the low volume of use and other available contact methods.

SESSION ARRANGEMENTS

Organizational Session

Tentative Agenda

The committee approved a tentative agenda for the 2024 legislative organizational session, subject to any required changes by the Legislative Council. The House and Senate will convene in their respective chambers for the organizational session at 1:00 p.m. on Monday, December 2, 2024. The 2024 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 2, 2024. 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 legislative organizational session ethics presentation. These training topics are included in the 2024 tentative agenda, in addition to a presentation by a representative of the National Conference of State Legislatures (NCSL) on workplace harassment and legislative ethics and a targeted 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 an informational session on human resource applications and benefits for new legislators, a session for committee chairmen to review the committee room desk manual, and a mentorship opportunity session for new committee chairmen to pose questions to returning committee chairmen. The committee was informed additional materials also would be included in the legislator packets distributed during the organizational session, including a Legislative Council staff directory and guide, a summary of training resources available through NCSL, and more detailed guidance on the allowable use of legislator photographs.

Proposed Rules

The committee reviewed a proposed rule amendment for recommendation during the organizational session to revert a rule change that inadvertently was not designated as a temporary rule change during the 2023 legislative session. The committee recommends an amendment to Senate Rule 329 to revert the deadline by which Senate bills in the Senate must be referred to the Appropriations Committee from the 26th legislative day to the 23rd legislative day to align with the deadline House bills in the House must be rereferred to the Appropriations Committee.

Photography Services

Historically, the Legislative Procedure and Arrangements Committee has invited photographers to submit bids for the provision of photography services; however, the number of bids submitted in recent years has decreased and the cost quoted in bids has increased. Due to the low volume of bids received and increased costs, the 2021-22 interim Legislative Procedure and Arrangements Committee reviewed the option of providing Legislative Council staff with the equipment necessary to move photography services in house. The committee ultimately recommended the use of in-house photography services for the 68th Legislative Assembly.

The committee reviewed the one-time costs incurred for in-house photography services for the 2023 legislative session and committee members were informed legislators generally had expressed satisfaction with the quality of the photographs taken and appreciation for the ability to view and choose their preferred photograph immediately after it was taken, rather than waiting to receive proofs. The committee also reviewed information regarding the allowable use of legislator photographs and expressed interest in receiving additional guidance on the allowable use of legislator photographs during the organizational session. The committee approved the use of Legislative Council staff to provide in-house photography services to the 69th Legislative Assembly.

Legislator Supplies

Electronic Letterhead

Before 2013, every legislator was given the option of receiving a set amount of stationery and envelopes, with the ability 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 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, and the purchase of computer bags to replace lost or damaged bags.

Desk Phones

The committee considered whether legislator desk phones should be retained in the legislative chambers. The committee was informed the cost to receive service for desk phones is $25 per month per line and the phones are active only during the legislative session. The committee also was informed the Information Technology Department intended to end desk phone service as state agencies have been transitioned to using Microsoft Teams calling. Committee members indicated desk phones are used occasionally, but for the most part, legislators have other options for communicating from the floor. The committee approved the elimination of desk phones in the legislative chambers, effective January 1, 2024.

As a result of the elimination of desk phones, and the limited use by legislators of phones other than personal phones, the committee made no recommendations for guidelines defining reasonable and appropriate use of state telephones for essential personal purposes. 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. Section 54-06-26 allows an agency to establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

Legislative Session Employees

Positions

The committee reviewed the number of legislative employee positions during the 2023 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 2021-22 interim, the committee recommended 79 employment positions for the 2023 legislative session, 35 of which were Senate positions and 44 of which were House positions. The actual number of Legislative Assembly employees employed during the 2023 legislative session was 80 employees, 35 of which were employed in the Senate and 45 of which were employed in the House.

The committee reviewed the 86 employment positions recommended for the 2025 legislative session, which included 41 employment positions for the Senate and 45 employment positions for the House. The seven additional positions, as compared to the 79 positions proposed for the 2023 legislative session, included one additional quality assurance clerk for each house; and two additional procedural assistant appropriations committee clerks and three additional technological appropriations committee clerks for the Senate to account for the formation of Senate Appropriations Committee divisions resulting from the rule change approved during the 2023 legislative session. The committee approved the proposed 86 employment positions recommended for the 2025 legislative session, in addition to a parking lot attendant position for a total of 87 employment positions.

Compensation

The committee reviewed legislative session employee compensation levels during the 2023 legislative session. In 2023, employee compensation was increased generally across the board by 1.5 percent and 2 percent, which reflected the 1.5 percent and 2 percent average pay increases authorized for state employees in 2021 and 2022 by the 67th Legislative Assembly. The committee reviewed 2025 proposed salaries, which represent an increase of 6 percent and 4 percent, each of which was authorized for state employees by the 68th Legislative Assembly. The committee recommends compensation increases consistent with state employee compensation increases of 6 percent for the 1st year of the 2023-25 biennium and 4 percent for the 2nd year of the biennium.

The committee recommends the concurrent resolution establishing employee positions continue the practice of not including specific names or identifying specific individuals. This type of resolution was first adopted in 1997 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.

Orientation and Training

The Legislative Council staff will provide orientation and training for legislative session employees. The training will be similar to the training provided before the 2023 legislative session, with the addition of cross training between procedural clerks, technological clerks, and quality assurance clerks and additional simulation and practice sessions to allow clerks to test their knowledge before the legislative session. 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 Programs

Legislative Internship Program - Legal Interns

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 69th 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 staff on various projects. 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 Internship Program - Legislative Assembly Interns

Committee members expressed interest in expanding internship opportunities by creating a new program to provide internships related to certain Legislative Assembly positions. The desire to expand the pool of individuals available to assist the Legislative Assembly in completing its duties during the legislative session arose due to difficulties in filling Legislative Assembly employment positions in recent sessions. The committee reviewed information regarding the creation of internship opportunities for the roles of procedural committee clerk, technological committee clerk, quality assurance clerk, bill and recording clerk, and sergeant-at-arms. Committee members acknowledged the difficulties encountered in past sessions to hire and retain enough session staff to cover the number of Legislative Assembly positions required during the legislative session. The committee approved the Legislative Council staff to advertise for up to 32 internship positions of the types listed and provide a stipend of up to $3,500 per month per internship.

The Legislative Council staff contacted colleges and universities in the state and distributed promotional materials regarding the internships and successfully retained two interns from the University of Mary for the 2025 legislative session.

Legislative Tour Guide Program

During 23 of the past 24 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, the program was suspended due to the COVID-19 pandemic. 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 developed revisions to the program before the 2023 legislative session to provide an enhanced tour experience. The committee approved the continuation of the tour guide program for the 2025 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 2025 legislative session under the same arrangements as in the past. The association plans to rely on physicians and medical 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 2025 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 2025 legislative session. The Legislative Council staff will notify all legislators they have until December 31, 2024, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2025 legislative session.

Legislative Addresses

State of the State Address

During the 2023 legislative session, the House and Senate convened in joint session at 1:00 p.m. on the 1st 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 to arrange for the presentation of the State of the State address at 1:00 p.m. on the 1st legislative day of the 2025 legislative session.

State of the Judiciary Address

The committee authorized the Legislative Council staff to contact the Chief Justice of the Supreme Court to arrange for the presentation of the State of the Judiciary address at 11:00 a.m. on the 1st legislative day.

Tribal-State Relationship Message

The committee authorized the Legislative Council staff to extend an invitation to a representative of the Indian tribes to address the 69th Legislative Assembly at 10:00 a.m. on the 1st 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 16, 2025, 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 at 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 16, 2025.

Commissioner of Commerce Report

The committee reviewed Section 54-60-03, which requires the Commissioner of the Department of Commerce to report on the department's goals, objectives, and activities to a standing committee of each house. The committee determined the report should be made to the Industry and Business Committees on Wednesday, January 15, 2025.

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.

CONFLICT OF INTEREST RULES

Section 54-66-18, enacted by House Bill No 1485 (2023), requires each Legislative Assembly to adopt conflict of interest rules that require disclosure of a potential conflict by a member and ensure a mechanism is in place to record each disclosure and make the disclosure readily available to the public. If the Legislative Assembly adopts rules that are at least as restrictive as the rules adopted by the Ethics Commission, the separate ethics disclosure process adopted by the Ethics Commission will not apply to members of the Legislative Assembly.

The committee reviewed a proposed rule to create Joint Rule 1005, which would have required disclosure by a committee member of a personal or private interest in a bill or measure and required the committee member to receive permission from the committee before voting. The committee was informed the proposed rule for committee conflict disclosures was structured in a similar fashion to the rule for floor conflict disclosures. The committee was informed the general rule regarding floor votes requires all members who are present to vote on a question. When a member announces a conflict during a floor session, the body votes on whether the member should be allowed to vote despite the conflict. Generally, the floor vote does not pertain to whether the member is allowed not to vote if a conflict is announced. Some committee members expressed concern regarding whether a legislator may decline to vote due to a potential conflict of interest and the interplay between the proposed rule and the Ethics Commission rules governing conflicts of interest.

The committee reviewed an alternative proposed rule to amend House and Senate Rules 321 and 322 and create Joint Rule 1005. The rule amendments require disclosure by a committee member of a personal or private interest in a bill or measure, but rather than seeking the committee's permission to vote on a measure for which the member believes the member has a conflict, the committee member would seek permission to abstain from voting on a measure for which the member believes they have a conflict. The proposed rule amendment makes similar changes to the House and Senate rules relating to a member declaring a conflict during a floor session. The rule amendments modify the process on the floor from one in which the member declares a conflict and then seeks the body's approval to vote despite the conflict, to one in which the member declares a conflict and then seeks the body's approval to abstain from voting due to the conflict.

The committee recommends proposed amendments to House and Senate Rules 321 and 322 and the creation of Joint Rule 1005, regarding declarations of conflicts of interest both in committee meetings and during floor sessions and the use of a procedure by members to request permission to be excused from voting after declaring a conflict of interest.

The committee was informed the Ethics Commission provided an opinion during the 2023 legislative session indicating the act of a member declaring on the record a conflict of interest satisfies the disclosure requirements imposed by the Ethics Commission, regardless of whether that member ultimately receives approval to vote despite the conflict. However, the committee discussed a recent news article that noted the Ethics Commission believes additional items should be added to the Legislative Assembly's conflict of interest rules. Some committee members expressed frustration noting the Ethics Commission's rules are inconsistent and poorly drafted and the threat of criminal prosecution for casting a vote will make it difficult to find individuals willing to run for public office. Committee members agreed there must be clarity in the rules before the 2025 legislative session. The Legislative Council staff was requested to continue to work with the Ethics Commission to pursue a workable solution.

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 took a fresh look at the policy considering the recent uptick in complaints received by the Ethics Commission and some of the difficulties the Ethics Commission was encountering.

The committee considered improvements to the policy and revisions to the corresponding checklist. The committee reviewed revisions to the policy including revisions to the definition of "sexual harassment" to ensure the definition does not depend on the conduct impacting an individual's work environment because some individuals may be participating in the legislative process in a manner unrelated to a work capacity; clarification of the definition of "workplace harassment" to indicate the term includes sexual harassment, harassment directed at a protected class, and harassment that has the purpose or effect of substantially interfering with an individual's work performance or creating a hostile environment; the provision of a clear process for intaking complaints, including the creation of an online workplace harassment complaint form; a requirement for legislative leaders to receive a completed intake checklist within 24 hours of a complaint being submitted; a process for a complaint to be summarily dismissed upon the unanimous consent of the four legislative leaders; a requirement for the review panel to convene within 72 hours; the opportunity to use informal negotiation or mediation to resolve a complaint; clarification of the application of a reasonable person standard when determining if the policy has been violated; clarification regarding the open nature of complaint and investigation documents upon the completion of the investigation or 75 days, whichever period is shorter; and a requirement to forward all documents relating to a complaint to the Director of the Legislative Council to ensure documents are retained in a secure, permanent file.

The committee also reviewed revisions to the checklist associated with the policy. The revisions split the checklist into two checklists, one related to intake duties and the other to investigation duties. The committee was informed the checklists provide contact individuals, panel members, and investigators a document on which the completion of required actions can be tracked and to which additional documents can be attached for purposes of maintaining a complete record of complaints in a uniform manner.

Committee members contended the revisions provided clarity, flexibility, more realistic timelines to complete required actions, and better recordkeeping practices. The committee approved the revisions to the policy, the revisions to separate the previous checklist into a separate intake and investigation checklist, and the standardized form created for use by individuals wishing to submit a complaint of harassment in writing.

IMPACT OF TERM LIMITS STUDY

Section 1 of Senate Bill No. 2192 (2023) directed a study of the impact of term limits on the manner in which the Legislative Assembly conducts business. The study required an assessment of the desirability of providing increased educational opportunities for legislative members due to shortened tenures in the Legislative Assembly, increasing the number of Legislative Council policy staff available to assist new members, and holding legislative sessions on an annual basis.

Background

Measure No. 1 in the 2022 general election, which passed by a vote of 150,363 to 86,674, created Article XV of the Constitution of North Dakota and became effective on January 1, 2023. Article XV prohibits an individual from serving as the Governor for more than 2 terms and prohibits an individual from serving more than a cumulative period of 8 years as a member of the House of Representatives and a cumulative period of 8 years as a member of the Senate. An individual's service in the House of Representatives or the Senate or election to the office of the Governor before January 1, 2023, does not count against the term limits provided in Article XV. Amendments to the term limits for legislators only may be proposed by citizens through an initiated constitutional measure. Article XV prohibits the Legislative Assembly from proposing amendments to alter or repeal legislator term limits.

The majority of state legislative term limits were enacted in the early 1990s. North Dakota is the 16th state to adopt legislative term limits. In most states in which term limits are imposed, including Arizona, Arkansas, Colorado, Florida, Louisiana, Maine, Montana, Nebraska, Ohio, and South Dakota, limits are imposed on the consecutive number of years a legislator may serve before a break in service is required. In a minority of states, including California, Michigan, Missouri, Nevada, North Dakota, and Oklahoma, term limits serve to place a lifetime limit on the total number of years a legislator may serve.

States in which term limits are imposed experienced dramatic turnover at the end of the first term limit cycle. Following the "Eight is Enough" campaign and the 1992 enactment of term limits in Florida, that state saw the highest number of new members elected in 2000 since the state's legislature first convened in 1845, with the forced retirement of 68 representatives and senators. In 1998, turnover at the end of the first cycle of term limits in Michigan was even more pronounced, with 64 of the state's 110 members of the House of Representatives barred from running for re-election. The impact of North Dakota's term limits initially will be felt in 2028, when up to 69 members will have termed out (assuming all existing members run for re-election), and again in 2030, when up to an additional 72 members will term out (assuming all existing members run for re-election).

Addressing Term Limit Impacts

States in which term limits are imposed have relied on outside organizations, legislative leaders, and legislative staff to lessen the negative impacts of term limits, which can include the loss of institutional and subject matter knowledge and knowledge of the workings of the legislature and the political process.

Role of Outside Organizations

The training and educational opportunities provided by outside organizations are a valuable resource for new members in states in which term limits are imposed. National organizations provide comprehensive resources in topic-specific areas as well as information specific to the role of legislating. Resources for new and returning legislators are available from organizations such as NCSL, the Council of State Governments, and the State Legislative Leaders Foundation.

Role of Legislative Leaders

The role of legislative leaders takes on a new dynamic in states that have enacted term limits. Legislative leaders and committee chairmen serve a vital role in keeping members in their respective houses on task to ensure the work of the legislative body is completed in the limited time allotted. This becomes more difficult in states in which term limits are imposed because members are sometimes less inclined to comply with directives from leaders or chairmen who members know will not be returning after a set time frame.

Legislative leaders and committee chairmen serve a more pronounced educational and mentorship role in states that impose term limits. Generally, members holding leadership and chairmanship positions are the more senior members of the legislature. These members have the greatest level of institutional knowledge and knowledge on legislative procedure and rules of decorum. Various methods have been used to transfer knowledge and orient new members in other states. In Ohio, a recent speaker held daily meetings with freshman members to explain the procedural aspects of what occurred during the day's floor session and respond to questions. In Arkansas and Florida, "speaker designates" are chosen the year before they will assume the role of Speaker to allow them to participate in leadership meetings and serve in an apprenticeship role.

One challenge to establishing an apprenticeship approach in North Dakota is the length of time between legislative sessions. North Dakota is one of four states that meet biennially. Of the remaining states that convene for annual sessions, seven states limit the scope of sessions held in the 2nd year of the biennium to fiscal or budgetary matters. Numerous attempts have been made over the previous 20 years to institute either special or reconvened sessions in even-numbered years in North Dakota.

Role of Legislative Staff

In states that impose term limits, increased reliance is placed on legislative staff to provide new members with research on subject-specific items and educational materials on the budgetary process and the procedural workings of the legislature. State legislative staff generally consists of legal and library staff, policy and research staff, fiscal analyst and auditor staff, administrative and clerical staff, and information technology staff. The structure and organization of legislative service agencies vary widely from state to state. In North Dakota, a relatively small fiscal, legal, library, information technology, and administrative services staff are housed at the same location under one legislative service agency. The North Dakota Legislative Council is comprised of 45 staff members and serves 141 legislators.

Data collected by NCSL in 2021 during its most recently completed legislative staff census indicated North Dakota had the smallest number of permanent legislative staff. The 2021 data indicated the number of legislators served by legislative staff varies drastically from state to state, from a low of 49 legislators in Nebraska to a high of 424 legislators in New Hampshire, as does the number of permanent legislative staff, with North Dakota on the low end and New York on the high end with 2,850 legislative staff.

Testimony and Committee Considerations

Training, Education, and Resources

The committee received information from representatives of NCSL regarding training, resources, and services available to legislators. Testimony indicated NCSL encourages legislators and legislative staff to reach out to NCSL for assistance with trusted research and analysis, innovative policy approaches, bipartisan conversations, advocacy on behalf of state legislatures in Washington, D.C., information regarding professional staff associations and networks, and legislative skills development. Legislators can engage with NCSL by contacting their NCSL state liaison, creating an online member account, signing up to receive policy newsletters, connecting with NCSL on social media, or registering for a training or policy webinar. Committee members were informed the NCSL Training Institute is a tool to help legislators increase skill development and ignite thinking and reflection by providing educational content and experiences that are long-lasting and transferable to any legislative career path. Testimony indicated the NCSL Center for Legislative Strengthening also is a good resource for questions and information regarding term limits, legislator turnover, and new member orientation.

Committee members offered suggestions for helpful resources for both new and returning legislators, including a list of agency contacts and contact information; opportunities to receive general background information from various state agencies; recordings of the in-person training provided before the legislative session; trainings, question and answer sessions, and opportunities to discuss issues specific for new legislators; implementation of a legislator survey to allow legislators to identify areas in which additional materials are desired; and implementation of a mentorship program for new legislators.

The committee received information regarding a proposal to establish Budget Section divisions to address potential issues related to term limits to better inform and educate legislators tasked with developing the state budget. The committee was informed the proposed divisions would include a Leadership Division, Education and Environment Division, Government Operations Division, and Human Resources Division.

Procedural Controls

The committee reviewed various procedural controls that could be implemented to lessen the impact of term limits and help manage workflow during the legislative session.

The committee reviewed drafting statistics regarding the number of bill drafts, resolution drafts, amendments, and memorandums prepared by the Legislative Council staff over the past seven legislative sessions. Data for the 2023 legislative session indicated staff drafted 1,407 bill drafts, 108 resolution drafts, 1,471 amendments, and 158 memorandums, for a combined total of 3,144 documents, excluding any documents drafted for interim committees. The committee reviewed trends in the volume of certain types of documents requested over the past seven sessions, as well as trends regarding the average number of documents drafted per legislator per document type and the highest count of bill and amendment drafts prepared for a single legislator each session. Data indicated a 64 percent passage rate for bills introduced during the 2023 legislative session.

The committee reviewed data regarding the volume of bill and resolution drafting requests received by the Legislative Council staff for the 2025 legislative session. Data indicated, as of September 13, 2024, 392 bill and resolution drafting requests had been submitted to the Legislative Council staff. The committee was informed this drafting count was far ahead of similar drafting counts from the previous legislative session, which did not reach the 400 mark until the end of November in the previous interim. The committee was informed current drafting counts are approximately double the drafting counts on the same date in the previous interim and the heaviest drafting periods generally do not occur until November and December prior to the legislative session.

The committee reviewed information regarding the imposition of bill introduction limits as an approach to reducing the volume of legislation considered during the legislative session. The committee was informed, in North Dakota, bill introduction limits are imposed on the number of bills that may be introduced per member after a certain date; however, overall bill introduction limits per member are not imposed. The committee was informed bill introduction limits vary from state to state, with some states imposing no bill introduction limitations, and other states imposing limits ranging from 5 bills per member to 50 bills per member. Other states, such as Montana, place limits on the number of drafting requests that may be submitted after a certain date to reduce bill drafting volumes. In Montana, a legislator may request an unlimited number of bill and resolution drafts through December 5th of the year before a legislative session, and after December 5th, a legislator may request up to seven additional bills or resolutions be drafted, five of which must be requested before the 1st day of the legislative session.

The committee reviewed information tallying the 392 bill and resolution draft requests received for the 2025 legislative session by primary subject matter category to determine whether higher bill draft counts were the result of duplicative bill drafts being prepared on the same topic. The committee also received information regarding the number of duplicative or substantially similar bills introduced during the 2023 legislative session. The committee was informed Montana has robust sunshine laws and both the main subject description and text of bill and resolution drafts prepared in Montana are posted online. The committee was informed, absent a statutory change regarding the confidential nature of legislator communications and work product, an effort to reduce duplicative bill drafts may need to occur at the caucus level by encouraging legislators to work together and share ideas when seeking to accomplish similar policy goals. Committee members expressed support for more transparency regarding the topics on which bill drafts have been requested.

The committee also reviewed information regarding the number of states that require a hearing to be held on every bill. Data indicated, subject to certain exceptions, 21 states require a hearing on every bill and 29 states do not require a hearing on every bill.

Staff Services

The committee reviewed staff ratios between legislators and legislative staff in other states and noted other states appear to have as high as a 10:1 ratio between staff and legislators. Committee members noted the Legislative Council is staffed substantially leaner than other states considering the number of legislators served, even when comparing only to states that meet on a biennial basis. The committee reviewed information regarding workforce trends and demographics within the Legislative Council. Data indicated the loss of several senior staff members over the past several years and the loss of staff to other employment opportunities has resulted in 44 percent of the Legislative Council staff having less than 3 years of experience at the agency.

The committee was informed the dwindling number of senior staff makes it challenging to onboard a large number of new staff members, and staff members with 20 or more years of experience are not easily replaced on a 1:1 ratio. The committee was informed the current size of the agency's staff makes the agency vulnerable in terms of meaningful succession planning and cross-training, as well as operational consistency. The potential loss of senior legislative staff due to retirements, and the impending loss of senior legislators due to term limits, sets up a scenario of less experienced legislators relying on less experienced legislative staff. Testimony indicated the combination of a thinly staffed legislative service agency and legislative turnover resulting from term limits might have a detrimental impact on the power balance of the legislative branch as compared to the two other co-equal branches of government. The committee was informed the anticipated increase in turnover among legislators due to term limits likely will result in increased reliance on Legislative Council staff for education and assistance. At current staffing levels, workload demands are beginning to exceed workload capacity, making it difficult for the Legislative Council staff to keep up.

Committee members noted it is not an enviable position to have one of the most sparsely staffed legislative service agencies in the nation. Committee members noted legislators in the state already are in the position of having no dedicated office space onsite and no personal legislative staff outside of the staff employed by the Legislative Council. Additionally, the part-time nature of the legislature results in many legislators holding employment positions outside of their role as legislators. Committee members noted it is unrealistic to expect legislators to become subject matter experts in all areas in which they are proposing legislation, bolstering the need for a strong Legislative Council staff. The committee requested the Legislative Council staff work to develop a 5-year plan for expanding staffing. Committee members expressed interest in the addition of communications positions and policy positions. Committee members noted legislators routinely approve policy positions for the executive branch, but have not approved any dedicated policy positions within the legislative branch. As the policy making arm of government, the committee expressed support for adding policy positions to the legislative branch staff.

Committee members noted the legislative branch also needs to be more proactive in communicating its activities to the public, rather than relying on the media or the executive branch to inform the public of the work of the legislative branch. Committee members also expressed interest in program evaluator positions to evaluate the programs passed and funded by the Legislative Assembly to allow legislators to determine if the policies they put in place are having the desired impact. The committee was informed the legislative branch has statutory authority to conduct audits and evaluations through the Legislative Audit and Fiscal Review Committee; however, the Legislative Council does not have adequate staff to conduct those evaluations. Committee members expressed strong support for adding program evaluator positions, noting program evaluation is a function the legislative branch lacks, and one that should become a routine practice.

The committee reviewed a 5-year plan to expand the Legislative Council staff. The committee was informed the Legislative Council staff looked to Montana as a comparable state when formulating a staff expansion plan. The following data points were reviewed when comparing the legislative staff counts in Montana to the staff counts in North Dakota:

Comparable Data Points	Montana	North Dakota
Frequency of legislative sessions	Biennial	Biennial
Maximum days allowed per regular legislative session	90	80
Term limits imposed	Yes	Yes
Population (2020 Census)	1,085,407	779,702
Gross domestic product (2023)	$67.1 billion	$72.7 billion
Enacted budget (FY 2024 and 2025)	$19.3 billion	$19.6 billion
Legislators	150	141
Permanent legislative staff	**152**	**45**
Bills and resolutions drafted (2011-23 average)	2,988	1,294
Bills and resolutions introduced (2011-23 average)	1,296	929
Bills and resolutions passed (2011-23 average)	659	558
Interim committees (2023-24 interim)	33	27

The committee was informed despite both states having a similar number of legislators, term limits, and biennial sessions, Montana has more than three times the number of permanent legislative staff.

The committee was informed the proposed staff expansion plan included the addition of 25 staff members in 2025 and 25 staff members in 2027, for a total estimated cost of $6 million each biennium. For the 2025-27 biennium, the 25 staff proposed to be added include an attorney, six policy analysts, two legislative editors, a human resources specialist, a fiscal analyst, four program evaluators, a website platform administrator, a cybersecurity specialist, two application support specialists, an assistant information technology manager, an information technology specialist, a legislative information technology developer, a front desk specialist, an administrative specialist, and a communications specialist. For the 2027-29 biennium, the 25 staff proposed to be added including an attorney, four policy analysts, a policy director, a legislative editor, a human resources manager, a fiscal analyst, a program evaluator, a program evaluation director, two accounting specialists, an information technology specialist, three legislative information technology developers, a business analyst, two server administrators, an information technology trainer, two administrative specialists, a communications specialist - graphic designer, and a webmaster. The committee was informed the proposed staff expansion would increase the size of the Legislative Council to a total of 95 full-time positions by 2027. The committee also received information on space needs for the Legislative Council and was informed only three vacant office spaces remain in the Legislative Council office area.

Committee members noted the proposed staff expansion may appear significant, but it is long overdue. Additionally, not all the proposed full-time positions need to be additional positions in state government. Committee members indicated some positions could be reallocated from existing full-time positions in other agencies. The committee recommends the proposed 25 Legislative Council staff positions, at an estimated cost of $6 million, be included in the legislative branch budget for the 2025-27 biennium.

Conclusion

The committee makes no additional recommendations regarding its study of the impact of term limits.

REDISTRICTING COMMITTEE

The Redistricting Committee was created on December 5, 2023, and assigned the responsibility to develop an alternative remedial map in response to the order of the United States District Court in *Turtle Mountain Band of Chippewa Indians et al. v. Howe,* No. 3:22-CV-22, 2023 WL 8004576 (D.N.D. Nov. 17, 2023), directing the Secretary of State and Legislative Assembly to "adopt a plan to remedy the violation of Section 2" by December 22, 2023.

Committee members were Senators Ron Sorvaag (Chairman), Brad Bekkedahl, Dick Dever, Robert Erbele, and Kathy Hogan and Representatives Josh Boschee, Craig Headland, Mike Lefor, Mike Nathe, and Austen Schauer.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

BACKGROUND

Legislative Assembly's Redistricting Plan - 2021

Every 10 years, the Legislative Assembly undertakes redistricting following the federal decennial census, as mandated by the Constitution of North Dakota. The resultant map remains in effect "until the adjournment of the first regular session after each federal decennial census, or until changed by law" pursuant to Section 2 of Article IV of the Constitution of North Dakota. After the 2020 Census, a Redistricting Committee was formed pursuant to House Bill No. 1397 (2021) to create a legislative plan for use in the upcoming 2022 primary election and future elections.

The 2021 Redistricting Committee met six times between July and September 2021 and addressed legal requirements, including compliance with the federal Voting Rights Act of 1965 (VRA). In an effort to comply with Section 2 of the VRA, the 2021 Redistricting Committee created subdistricts in Districts 4 and 9, placing the Turtle Mountain and Fort Berthold Reservations each within a subdistrict. According to the 2020 Census population data, the Turtle Mountain and Fort Berthold Reservations were the only reservations in the state with the requisite population for a single-member district under the VRA.

The 2021 Redistricting Committee's proposed map was submitted to the Legislative Management for approval on September 29, 2021. The Legislative Management approved the committee's proposed map for introduction during the special session as House Bill No. 1504 (2021). The Legislative Assembly approved House Bill No. 1504 and the resulting map on November 10, 2021.

Resulting Litigation

Walen v. Burgum

On February 16, 2022, plaintiffs Charles Walen and Paul Henderson filed a complaint against Governor Doug Burgum and Secretary of State Alvin Jaeger, claiming the division of legislative Districts 4 and 9 constituted unconstitutional racial gerrymandering. They sought a preliminary injunction to eliminate the subdistrict lines for upcoming elections, but the court denied this motion on May 26, 2022, citing insufficient evidence and the proximity of the elections.

On February 28, 2023, the plaintiffs moved for summary judgment, arguing race was the predominant factor in the legislative decision to create subdistricts. To prevail on their motion, the plaintiffs were required to show race was the predominant factor in the Legislative Assembly's decision to group together a significant number of voters and the Legislative Assembly's actions fail to meet strict scrutiny. A special panel of three federal judges found the committee had good reasons to believe the subdistricts drawn around the Turtle Mountain and Fort Berthold Reservations were required by the VRA because the committee carefully considered the likelihood of success of voter dilution claims under Section 2 by Native American voters if the committee did not draw the subdistricts. Therefore, the panel held the subdistricts are narrowly tailored to the state's compelling interest in complying with the VRA, satisfying the strict scrutiny required if race is a predominant motivating factor.

The panel did not determine whether race was a predominant factor. The panel also noted the relief the plaintiffs sought - eliminating the subdistricts - would itself be a violation of the VRA and federal law, based on the state's unrefuted evidence. The court denied the plaintiff's motion for summary judgment and granted the state and the Mandan, Hidatsa, and Arikara Nation's motion for summary judgment.

Turtle Mountain Band of Chippewa Indians v. Howe

On February 7, 2022, the Turtle Mountain Band of Chippewa Indians, the Spirit Lake Tribe, and several individuals filed a complaint against Secretary of State Alvin Jaeger, claiming the redistricting plan diluted Native American voting power on the Turtle Mountain and Spirit Lake Reservations in violation of Section 2 of the VRA. They alleged Subdistrict 9A was unlawfully "packed" with a supermajority of Native American voters while other Native American voters were "cracked" or dispersed across different districts, including District 15. After the Secretary of State's motion to dismiss was denied, a 4-day bench trial was held in June 2023.

On November 17, 2023, the United States District Court held the redistricting plan approved by the Legislative Assembly prevented Native American voters from electing candidates of their choice, in violation of Section 2 of the VRA, and permanently enjoined the Secretary of State from administering, enforcing, preparing for, or in any way permitting the nomination or election of members of the Legislative Assembly from Districts 9 and 15 and Subdistricts 9A and 9B. The district court gave the Secretary of State and Legislative Assembly until December 22, 2023, to adopt a plan to remedy the violation of Section 2.

On December 5, 2023, the Chairman of the Legislative Management appointed the Redistricting Committee in response to the order of the district court. On December 8, 2023, the Secretary of State filed an appeal and the Legislative Assembly, not yet a party to the suit, filed a motion to intervene. The Legislative Assembly also requested a reasonable amount of time to comply with the district court's order and proposed a deadline of February 9, 2024, to replace the district court's December 22, 2023, deadline. On December 12, 2023, the district court denied these requests and concluded it lacked jurisdiction due to the pending appeal.

TESTIMONY AND COMMITTEE CONSIDERATIONS

Committee's Directive

The committee was informed that, in response to the district court's order requiring the Legislative Assembly to adopt a compliant plan by December 22, 2023, the Redistricting Committee was to evaluate Districts 9 and 15 and Subdistricts 9A and 9B. It was emphasized the sole objective of the committee was to recommend a plan to the Legislative Management, that in turn must approve the plan for introduction during a special or reconvened legislative session.

The committee received an update from a representative of the Legislative Management indicating outside counsel was retained to represent the position of the Legislative Assembly, including moving to intervene in the case, and a request for proposals to seek an expert's assistance in drawing a plan was approved.

Legislative Council

The committee received information from the Legislative Council staff regarding the legal requirements the committee must consider to comply with the VRA and remedy a violation of Section 2. The committee was informed the remedial plan must satisfy the requirements of the VRA, whether by adopting one of the plaintiffs' maps or creating a new map. The committee was advised to consider traditional districting principles, including respecting political subdivision boundaries and communities of interests. The committee was advised to ensure members of the minority group do not have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice and, in doing so, consider traditional districting principles. The committee reviewed the plaintiff's proposed maps and received additional testimony related to redistricting data, county-by-county data, and reservation populations.

The committee received information regarding whether a member of the Legislative Assembly is precluded from serving in a district in which the member no longer resides due to legislative redistricting. The testimony indicated a member of the Legislative Assembly residing outside a district in which the member was elected to serve likely is disqualified from continuing to serve regardless of the reason the member no longer resides in the district. However, historically, the member has been allowed to serve until December 1 after the next general election at which a new member may be elected to serve the district.

Turtle Mountain Band of Chippewa Indians

The committee received oral testimony from a representative of the Turtle Mountain Band of Chippewa Indians who expressed the tribe's preference against combining the Turtle Mountain and Spirit Lake Reservations into a single voting district. The testimony indicated the representative's preference for creating a more compact District 9 without a subdistrict. According to the testimony, during the initial redistricting process in 2021, representatives from the Spirit Lake Tribe requested the Spirit Lake Reservation be included within a subdistrict of District 15.

Turtle Mountain Band of Chippewa Indians and Spirit Lake Nation

The committee received written testimony on behalf of the Turtle Mountain Band of Chippewa Indians and Spirit Lake Nation encouraging the Legislative Assembly to rectify the map to ensure fair representation for Native American voters in Legislative Districts 9 and 15. The testimony indicated the tribes' disappointment over the Secretary of State's decision to appeal the ruling. According to the testimony, the tribes had cautioned the Redistricting Committee about the plan's legality and submitted a detailed VRA analysis, including proposed maps. The testimony encouraged the Legislative Assembly to correct this violation and protect Native American voting rights before the 2024 elections.

According to the testimony, and in contrast to the oral testimony received from a representative of the Turtle Mountain Band of Chippewa Indians, the tribes advocated for a single, unsubdivided legislative district that encompasses both reservations, asserting their tribes' official position against unauthorized testimony on their behalf. The testimony attributed the legal challenges stemming from the 2021 redistricting process to the Redistricting Committee's failures, including the lack of a redistricting expert and dismissal of the tribes' analysis. The testimony argued the district court's recent ruling confirmed the previous redistricting plan unlawfully diluted Native American voting strength and the tribes' proposed maps were found compliant with the VRA, potentially leading to the election of three legislators instead of just one. The tribes encouraged the Redistricting Committee to adopt one of their proposed maps and abandon any suggestions that would further violate the VRA, emphasizing the need for fair representation for Native American voters.

Secretary of State

The committee received testimony from a representative of the Secretary of State's office emphasizing April 8 was the critical deadline for successfully administering the election. Testimony indicated many important preparations, including assigning precincts, proofing ballots, and training election workers, must be completed before the start of voting under the federal Uniformed and Overseas Citizens Absentee Voting Act. The testimony explained adoption of a different map would require affected districts to reorganize.

Interested Persons

The committee received testimony demonstrating a potential error in the proposed maps related to the city of Judson, which was not present in the Legislative Assembly's 2021 redistricting plan.

Comparison of Proposed Maps

The committee reviewed a document comparing several proposed maps for legislative districts. In reviewing "Plaintiff's Proposed Map #1," the committee expressed concerns regarding a lack of explanation for adjustments, such as moving the city of Rolla from District 9 to District 15, which would separate 515 Native Americans from their community. Committee discussion revealed additional concerns regarding the removal of parts of Ramsey and Pierce Counties containing very few Native American residents, potentially affecting existing representatives. The committee discussed the need for clear information regarding the rationale behind these boundary changes, particularly because "Plaintiff's Proposed Map #1" had not been presented during the 2021 special legislative session.

"Plaintiff's Proposed Map #2," which placed the Turtle Mountain and Spirit Lake Reservations in one district, had been presented in 2021. The committee acknowledged the potential differences in the communities of interest among the tribal nations.

A review of "Plaintiff's Proposed Map #3" indicated the map was similar to "Plaintiff's Proposed Map #2" but would not impact District 14 and aimed to align with the district court's opinions.

A member of the Legislative Assembly indicated a preference for further revisions to "Plaintiff's Proposed Map #4," such as restoring the subdistricts in District 9 to better represent community interests. Testimony indicated, dividing proposed District 15 into subdistricts, each to include a portion of the city of Devils Lake, would be more representative of a community of interest than the districts proposed in the other maps that include the Turtle Mountain and Spirit Lake Reservations in one district.

Committee Discussion

The committee emphasized the importance of including tribal nations in discussions about redistricting plans. A committee member suggested focusing on "Proposed Map #3" and "Proposed Map #4" for further discussion. Acknowledging differing opinions within the Legislative Assembly regarding the district court's decision, members agreed the Legislative Assembly should respect the court's role as a check on legislative power while proceeding carefully in the best interest of the legislative branch.

Chairman Sorvaag noted the committee would reconvene at his discretion, with a clear intention to engage with tribal leadership in future discussions. On January 4, 2024, Chairman Sorvaag called a meeting of the Redistricting Committee to be held on January 9, 2024. However, on January 8, 2024, the district court denied the Legislative Assembly's request for an extension and imposed "Plaintiff's Map #2." Chairman Sorvaag postponed the meeting and the Redistricting Committee did not reconvene.

RETIREMENT COMMITTEE

The Retirement Committee was assigned two studies:

- Section 33 of House Bill No. 1040 (2023) directed a study of the Public Employees Retirement System (PERS) main system plan, including funding options and contributions by political subdivisions.
- Section 34 of House Bill No. 1040 directed a study of best practices for public employee retirement plans, including defined benefit (DB), defined contribution (DC), and hybrid plans, such as side-by-side hybrid plans, cash benefit plans, and stacked hybrid plans; and development of legislation to implement the retirement plan best suited to meet the needs of the state, political subdivisions, and public employees.

Committee members were Representatives Jason Dockter (Chairman), Jorin Johnson, Mike Lefor, Scott Louser, SuAnn Olson, Mitch Ostlie, Brandy Pyle, Bernie Satrom, Austen Schauer, and Greg Stemen and Senators Randy A. Burckhard, Dick Dever, Karen K. Krebsbach, Dean Rummel, Shawn Vedaa, and Mark F. Weber.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

BACKGROUND

Public Employees Retirement System

Senate Bill No. 154 (1965) created PERS, effective July 1, 1966, as a DC retirement plan. Senate Bill No. 2068 (1977) converted the PERS main system retirement plan to a DB retirement plan. The main system DB retirement plan is funded from employer contributions, employee contributions, and investment earnings. A history of the rates of employer and employee contributions, calculated as a percentage of gross pay, is shown below.

1989 Through December 31, 2011		Effective January 1, 2012		Effective January 1, 2013		Effective January 1, 2014		Effective January 1, 2024	
Employer	**Employee**	**Employer**	**Employee**	**Employer**	**Employee**	**Employer**	**Employee**	**Employer**	**Employee**
4.12%	4.00%[1]	5.12%	5.00%[1]	6.12%	6.00%[1]	7.12%[2]	7.00%[1]	8.12%	7.00%[1]

[1]The state pays 4 percent of the employee share of retirement contributions.

[2]Senate Bill No. 2046 (2019) reallocated the 1.14 percent employer contribution for the retiree health insurance credit to the main system DB 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, and 9.26 percent for employees hired after December 31, 2023.

Benefit Levels and Calculations

Members of the main system DB retirement plan are eligible for a normal service retirement benefit at age 65. Employees hired before January 1, 2016, are eligible for retirement when age plus years of service is equal to 85 (commonly known as the "Rule of 85"). Employees hired after December 31, 2015, are eligible for retirement when age plus years of service is equal to 90 (commonly known as the "Rule of 90") and the member attains a minimum age of 60.

Retirement benefits under the main system DB retirement plan are calculated using the following mathematical formula provided in North Dakota Century Code Section 54-52-17(4):

Final average salary[1] x benefit multiplier[2] x years of service credit[3] = monthly single life retirement benefit

[1]For employees who retired before August 1, 2010, the final average salary was the average of an employee's highest salaries in 36 of the last 120 months worked. For employees who terminated employment after July 31, 2010, but before January 1, 2020, it is the average of the employee's highest salaries in 36 of the last 180 months worked. For employees who terminated employment after December 31, 2019, it is the average of the employee's highest three 12 consecutive month periods of the last 180 months worked.

[2]The benefit multiplier is the rate at which benefits are earned. For main system DB retirement plan members enrolled before January 1, 2020, the benefit multiplier is 2 percent. For members enrolled after December 31, 2019, the benefit multiplier is 1.75 percent.

[3]The service credit is the amount of public service an employee has accumulated under PERS for retirement purposes.

The following schedule is a summary of benefit changes approved by the Legislative Assembly since 1977:

Year	Benefit Multiplier	Change in Retirement Rule Levels
July 1977	1.04%	
July 1983	1.20%	
July 1985	1.30%	Rule of 90 established as an alternative for retirement eligibility
July 1987	1.50%	
July 1989	1.65%	
July 1991	1.69%	
August 1993	1.725%	Rule of 90 changed to Rule of 88
January 1994	1.74%	
August 1997	1.77%	Rule of 88 changed to Rule of 85
August 1999	1.89%	
August 2001	2.00%	
January 2016	2.00%	Rule of 85 changed to Rule of 90 for employees hired after December 31, 2015
January 2020	1.75%	Benefit multiplier of 1.75 percent for members enrolled after December 31, 2019, but remains 2 percent for members enrolled before January 1, 2020
January 2025	1.75%	Closure of the main system DB retirement plan to new hires

Membership

The following schedule is a summary of membership of the main system DB retirement 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
2023	10,038	14,304	12,910	16,188	53,440
2024	10,090	14,443	13,665	17,074	55,272

Participation of Political Subdivisions

The following schedule shows the number of state agencies and political subdivisions participating in the main system DB retirement plan since 2015:

PERS Retirement Participating Employers[1]										
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Counties	49	50	50	50	50	52	52	52	51	51
Cities	85	86	87	87	89	92	90	90	98	100
School districts	119	119	121	121	123	127	128	129	131	133
Other[2]	76	77	78	82	83	81	83	90	93	95
Subdivision subtotal	329	332	336	340	345	352	350	361	373	379
State agencies	94	95	95	95	94	95	96	97	98	100
Total	423	427	431	435	439	447	449	458	471	479

[1]Data presented in this table is as of January of each year.

[2]Other participating political subdivisions include water districts, park districts, and other similar entities.

Assets, Liabilities, and Funded Ratio

The actuarial funded ratio is the percentage of the PERS 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 the changes in market value over 5 years. The following schedule shows the actuarial assets and liabilities of the main system DB retirement 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[1]	Actuarial Rate of Return[2]	Rate of Return Variance[3]
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%
2023	$3,683,545,963	$5,559,270,755	($1,875,724,792)	66.3%	6.50%	6.00%	(0.50%)

[1]Section 2 of House Bill No. 1547 (2023) provides during the 2023-25 biennium, the PERS Board may not reduce the actuarial rate of return assumption for the main system DB retirement plan below 6.5 percent.

[2]The average actuarial rate of return during fiscal years 2000 through 2023 was 6.91 percent.

[3]The average actuarial rate of return during fiscal years 2000 through 2023 was 0.85 percent below the average assumed rate of return.

Defined Benefit Retirement Plan Closure and Contribution Rate Increases

House Bill No. 1040 closes the main system DB retirement plan to new hires effective January 1, 2025. The bill increased the employer contribution rate by 1 percent effective January 1, 2024, resulting in total state and political subdivision employer contributions of 8.12 percent for employees hired before January 1, 2020, and 9.26 percent for employees hired after December 31, 2019, which includes the 1.14 percent that was reallocated from the retiree health insurance credit beginning in the 2019-21 biennium. The employer contribution rate for state agencies will increase again to the actuarially determined employer contribution (ADEC) rate beginning January 1, 2026, to begin paying the unfunded liability of the plan over a closed period of 31.5 years. The employer contribution rate for political subdivisions will remain at 8.12 percent.

Section 3 of House Bill No. 1547 (2023) required PERS to conduct an informational campaign during the 2023-25 biennium to educate current and prospective state employees of the transition from the main system DB retirement plan to the new DC retirement plan.

Defined Contribution Retirement Plan

House Bill No. 1040 provides employees who are hired after December 31, 2024, will be enrolled in the new DC retirement plan. The default employee contribution rate under the new DC retirement plan is 4 percent, but employees may elect to contribute an additional 3 percent. Employers are required to match the employee contribution up to 7 percent. If a state employee in the new DC retirement plan contributes less than 7 percent but participates in the PERS deferred compensation plan, the state employer is required to match contributions from the deferred compensation plan up to a total of 7 percent. The deferred compensation plan option is not available for political subdivision employees. For employees participating in the existing DC retirement plan before January 1, 2025, the employee contribution rate remains at 7 percent and the employer contribution rate remains at 7.12 percent.

The new DC retirement plan has an investment option that must include one or more annuity products as part of the investment menu. The existing DC retirement plan has an investment menu but does not provide for annuity products.

Section 17 of House Bill No. 1040 provided state employees with less than 5 years of experience, who are enrolled in the main system DB retirement plan, the option to transfer to the new DC retirement plan between January 1, 2025, and March 31, 2025. Employees who opt to transfer are eligible for an additional $3,333 state annual contribution each January in 2026, 2027, and 2028.

Contingent Effective Date

Sections 1 through 27 and 29 of House Bill No. 1548 (2023) provide the main system DB retirement plan must close to new hires on a date before January 1, 2025. Section 29 of House Bill No. 1548 provides these sections are effective only if the PERS Board certifies to the Legislative Council on the day before the date identified by the board that PERS is prepared to close the main system DB retirement plan and open the new DC retirement plan.

Funding

Section 31 of House Bill No. 1040 amended Section 57-51.1-07.5 to provide $65 million of the state share of oil and gas tax revenues will be deposited in the PERS fund for the main system DB retirement plan beginning in the 2023-25 biennium. Section 35 of the bill provided for a $135 million transfer from the strategic investment and improvements fund to the PERS fund for the purpose of reducing the unfunded liability of the main system DB retirement plan during the 2023-25 biennium.

During the 2023 legislative session, PERS estimated the cost-to-continue reducing the unfunded liability based on the estimated ADEC rate of 30.5 percent during the 2025-27 biennium was approximately $402 million, of which $154 million was from the general fund and $248 million was from other funds. This total included $65 million of ongoing funding provided from oil and gas tax revenues and other funding necessary for 6 months of the 1 percent employer retirement contribution increase through December 31, 2025, after which the ADEC rate would be applied.

Section 1 of Senate Bill No. 2393 (2023) appropriated $12.5 million, of which $5.5 million was from the general fund and $7 million was from other funds, for an employer retirement contribution pool, related to the increased cost of employer contribution increases for executive branch agencies in House Bill No. 1040, House Bill No. 1183 (2023), and House Bill No. 1309 (2023). Section 17 of Senate Bill No. 2393 identified the additional contributions for each agency. Of the total, $10 million, including $4.2 million from the general fund and $5.8 million from other funds, related to House Bill No. 1040.

Section 1 of House Bill No. 1542 (2023) appropriated $347,518, of which $343,245 was from the general fund and $4,273 was from other funds, to the judicial branch for the cost of the 1 percent employer retirement contribution increase in House Bill No. 1040. Section 4 of House Bill No. 1541 (2023) appropriated $58,283 from the general fund to the Legislative Council for the cost of the 1 percent employer retirement contribution increase in House Bill No. 1040.

Senate Bill No. 2023 (2023) appropriated $372,027 in a newly created DB retirement plan closure line item. Of this amount, $47,027 was for a portion of salaries and wages and related operating expenses for 2 full-time equivalent (FTE) positions that were contingent on the Legislative Assembly closing the main system DB retirement plan, $200,000 was for temporary salaries, and $125,000 was for modification of the PERSLink business system. Of the total, $327,000 was considered one-time funding. In addition, PERS may request the Office of Management and Budget transfer up to $479,660 of additional funding from the new and vacant FTE funding pool to this line item for salaries and wages of the contingent FTE positions.

Public Employees Retirement System Board Membership

Section 1 of House Bill No. 1547 (2023), changed the membership of the PERS Board from 9 members, including 2 members of the Legislative Assembly and 1 member appointed by the Governor, to 11 members, including 4 members of the Legislative Assembly and 4 members appointed by the Governor. The Majority Leader of each house must choose two members to serve on the board. The Governor is required to select one citizen member of the board to serve as chairman. The remaining three members continue to be elected by and from active participating members of PERS retirement plans. The State Health Officer, an individual from the Attorney General's legal staff, and an individual receiving retirement benefits from PERS retirement plans are no longer members. Section 1 of the bill became effective October 25, 2023.

Hybrid Retirement Plans

Cash Benefit Plans

A cash benefit plan is similar to a DB retirement plan but includes hypothetical employee accounts that do not reflect actual contributions or gains and losses. The plan receives yearly contribution credits that can be broken down into a pay credit, typically based on compensation and service, and an interest credit. Similar to a DB retirement plan, the investment risks are borne by the employer. Unlike traditional DB retirement plans, employees have the option to receive their account balance in one lump sum at retirement, or to convert the plan to an annuity.

Side-by-Side Hybrid Plans

A side-by-side hybrid plan combines a DB retirement plan with a DC retirement plan to work in tandem as one plan. The model combines a modest DB retirement plan based upon the employee's final average salary and a separate DC retirement account that run parallel to each other. Side-by-side plans expose employees to greater investment risk than DB retirement plans; however, this type of model can provide better retirement savings for early and mid-career workers due to most DB retirement plan benefits being earned in the final years before retirement. Side-by-side plans require additional administrative needs compared to providing a separate DB retirement plan or DC retirement plan.

Stacked Hybrid Plans

Stacked hybrid plans also combine a DB retirement plan and DC retirement plan, but rather than running parallel as in a side-by-side plan, the DB retirement plan is capped at a certain amount and any additional contributions go into a DC retirement account. Because the annual pension benefit is capped, employees only pay into the DB retirement plan up to the maximum salary amount and once that threshold is met, the DC part of the retirement plan is triggered. This plan structure provides the full benefit of a DC retirement plan to lower earning employees and helps guarantee an average baseline of retirement benefits. Due to the cap on the defined benefit, employees earning more than the threshold will have a lower benefit compared to a traditional DB retirement plan.

TESTIMONY

Public Employees Retirement System

The committee received testimony and periodic reports from representatives of PERS regarding the status of the closure of the main system DB retirement plan and the transition to the new DC retirement plan. The committee also received testimony on the progress of the administrative rulemaking process and the importance of that process aligning with the transition to the new DC retirement plan. Testimony indicated PERS is on schedule to transition to the new DC retirement plan on January 1, 2025.

The committee was informed of the informational campaign efforts undertaken by PERS to educate stakeholders on the impacts of the transition from the DB retirement plan to the new DC retirement plan. Testimony indicated communication efforts associated with the special election window for employees with less than 5 years of service are critical. Other communication efforts included presentations with various political subdivisions, including counties, cities, and schools to ensure a successful transition.

Testimony identified eligibility concerns relating to political subdivision membership in the new DC retirement plan. Under PERS' interpretation of the new statutory language established under House Bill 1040, political subdivisions not already enrolled in the DB retirement plan are unable to enroll in the new DC retirement plan. In addition, political subdivisions participating in the new DC retirement plan on January 1, 2025, are not able to leave the plan. A representative of PERS indicated state employees of entities not subject to budget approval through the legislative process will be offered the incentive to transfer from the DB retirement plan to the new DC retirement plan during the special election window, which may cause budgetary concerns for these entities due to the potential fiscal impact of the incentive and ADEC payments.

Actuarial Reports

The committee received testimony from a representative of Gabriel, Roeder, Smith & Company Holdings, Inc., regarding the unfunded liability of the DB retirement plan. Testimony indicated the main system DB retirement plan unfunded liability as of July 1, 2023, was approximately $1.88 billion and the plan was 66.3 percent funded, compared to an unfunded liability of approximately $1.75 billion and a funded ratio of 67 percent as of July 1, 2022.

The committee was informed of the potential effect of contributing additional funding to the main system DB retirement plan and the impact of closing the plan on a different date and changing the plan's amortization period. Testimony indicated a transfer of $200 million per biennium for 10 bienniums to the main system DB retirement plan would offset the loss of employee contributions on a present value basis and potentially fully fund the plan by approximately 2044 instead of 2056, resulting in cost-savings for the state. Closing the plan on June 30, 2024, would have had an estimated actuarial impact of less than 1 percent of the 30-year total cost. Testimony indicated more active and inactive members are employed by political subdivisions than the state; however, the state has a greater liability because the average pay and years of service of state employees are significantly higher.

Vendor Update

The committee received testimony from a representative of Sagitec Solutions, LLC, regarding PERS system upgrades, programming changes necessary to transition to the new DC retirement plan, the completion date of programming, and ongoing programming needs for the PERS system once the transition is complete.

The committee was informed Empower replaced TIAA as the new recordkeeping vendor for the retirement plans on July 1, 2024. The committee received testimony from a representative of Empower regarding services provided, experience with government DC retirement plans, the conversion strategy from TIAA to Empower, member engagement through education, and administration of the new DC retirement plan.

Political Subdivisions

North Dakota Association of Counties

The committee received testimony from a representative of the North Dakota Association of Counties regarding concerns related to the unfunded liability of the main system DB retirement plan and the responsibility counties will incur as a result. Testimony indicated concerns related to local control and whether counties are permitted to select a plan from the marketplace instead of the new DC retirement plan. Counties expressed concern with the inability of political subdivisions not previously enrolled in the main system DB retirement plan to join the new DC retirement plan.

North Dakota League of Cities

The committee received testimony from a representative of the North Dakota League of Cities regarding the cost of the 1 percent employer contribution increase and challenges cities may encounter while incorporating changes related to the new DC retirement plan. Testimony indicated the main challenges faced by cities relate to staffing and budgetary constraints. Testimony also echoed county concerns related to local control, the ability for cities to seek plans outside of PERS, and the ability for new political subdivisions to join the new DC retirement plan.

North Dakota School Boards Association

The committee received testimony from a representative of the North Dakota School Boards Association regarding potential challenges schools may encounter while incorporating changes related to the transition to the new DC retirement plan, including information technology and timing concerns. Testimony indicated 109 of 168 operational school districts, and 22 separate public education entities, participate in the DB retirement plan and training provided by PERS will be critical to successfully transitioning to the new DC retirement plan.

Interested Organizations

National Conference of State Legislatures

The committee received testimony from a representative of the National Conference of State Legislatures regarding other states that have closed their primary DB retirement plans, including the status of plans in those states and any shortcomings associated with alternative plan designs. Testimony contended the transition from a DB retirement plan to a DC retirement plan has a negative effect on recruitment and retention. According to the testimony, defined contribution retirement plans have better cost predictability, but DB retirement plans are more cost-effective due to longevity risk pooling, lower expenses, and a greater ability to maintain a diverse portfolio.

National Association of Government Defined Contribution Administrators

The committee received testimony from a representative of the National Association of Government Defined Contribution Administrators regarding states that have established a primary DC retirement plan and the status of the retirement plan, best practices for state government DC retirement plans, and benefits and shortcomings of alternative retirement plan designs, including cash benefit plans, side-by-side hybrid plans, and stacked hybrid plans. Testimony indicated the process to transition from a DB retirement plan to a DC retirement plan has taken at least 2 years in other states. The committee was informed options to improve the new DC retirement plan included:

- Enrolling employees in a 7 percent employee contribution rate with an option to opt-out of up to 3 percent of the contribution, rather than enrolling employees in a 4 percent rate with an option to contribute up to an additional 3 percent;
- Eliminating the requirement to provide in-plan lifetime annuities in the plan;
- Allowing employees participating in the plan to be 100 percent vested immediately, rather than having a 2- to 4-year vesting schedule; and
- Considering new ideas discussed in other states for modifying a DC retirement plan, including integrating student loan matching, emergency savings options, and financial wellness into the plan.

Public Finance Authority

The committee received testimony from a representative of the Public Finance Authority and a representative of PFM Financial Advisors, LLC, regarding bonding rates, market conditions, and funding options as a potential avenue for addressing the unfunded liability of the DB retirement plan. The committee was informed of the types of bonds issued by North Dakota, the benefits of tax-exempt and taxable bonds, and the potential risk and budget savings if pension obligation bonding is used to address the unfunded liability of the DB retirement plan. Testimony indicated pension obligation bonds may create budgetary cash flow savings by reducing the unfunded liability associated with a plan and replacing the unfunded actuarially accrued liability amortization payments with lower levels of debt service; however, pension obligation bonds carry risks, including failing to achieve the target investment rate that would create cost-savings.

Office of Management and Budget

The committee received testimony from a representative of the Human Resource Management Services Division of the Office of Management and Budget regarding the status of employee compensation, state employee needs for recruitment and retention, and the future of the main system DB retirement plan. The testimony contended a high-quality retirement plan with a steady employer contribution match is essential to recruitment and retention, and ongoing education and communication with employees will be critical during the transition to the new DC retirement plan.

COMMITTEE CONSIDERATIONS

The committee considered the information provided regarding the closure of the main system DB retirement plan and associated implications of House Bill No. 1040. The committee recognized the implementation of the new DC retirement plan will be ready for the transition on January 1, 2025; however, concerns exist relating to political subdivision eligibility and participation in the new plan.

CONCLUSION

The committee makes no recommendation related to the study of the PERS main system retirement plan.

SCHOOL FUNDING TASK FORCE

Subsection 1 of Section 1 of Senate Bill No. 2328 (2023) required the Legislative Management to establish and provide staffing and administrative services to a school funding task force facilitated by a nonpartisan leadership organization. The Chairman of Legislative Management was allowed to add additional, temporary nonvoting members to the task force, as deemed necessary by the task force chairman, to serve without compensation. The task force could include public school administrators or business managers, public school teachers, five members of the Legislative Assembly appointed by the Legislative Management, parents of public school students, representatives from the Department of Public Instruction (DPI), a representative from the Governor's office, and a representative from a regional education association.

Subsection 2 of Section 1 of the bill required the task force to:

1. Review litigation the state was a party to relating to school funding and the resulting implications for school funding models;
2. Analyze higher education funding sources to determine whether the sources may be used in whole or in part for the K-12 system;
3. Review school payment formulas to determine whether education costs can be equalized across the state;
4. Study the size, student population, and economics of school districts and the number of facilities within the district per square mile compared with student population;
5. Develop and study sliding-scale models within school districts based on size, student populations, and economics;
6. Assess the negative impacts of the current funding formula;
7. Study school funding formulas used by other states;
8. Determine the benefits of and incentives to promote school district consolidation;
9. Review school transportation costs considering location, size, and student enrollment;
10. Study high-cost student and special education student costs as those costs relate to the formula weighting factors; and
11. Analyze the cost of distance education, comparing the costs of different methods of instruction delivery, including synchronous as compared to asynchronous instruction.

Subsection 3 of Section 1 of the bill provided the task force also may study the funding of school building maintenance and repairs, considering location and whether buildings are located in a rural or urban area; review ending fund balances; and analyze how the current funding formula impacts ending fund balances.

The School Funding Task Force reviewed selected provisions of the elementary and secondary education state aid formula, including school districts not on the formula, impacts to reorganized and consolidated school districts, local contributions to the formula, and excess ending fund balance deductions. In addition to the state school aid formula, the task force reviewed transportation aid for elementary and secondary education, special education contract reimbursements, and school construction challenges and funding models.

Task force members were Senators Donald Schaible (Chairman), Jay Elkin, and David S. Rust; Representatives Pat D. Heinert, Jim Jonas, Eric James Murphy, Anna S. Novak, David Richter, Mark Sanford, and Cynthia Schreiber-Beck; and Citizen Members Levi Bachmeier, Brandt Dick, Rick Diegel, Steve Holen, Stephanie Hunter, Mike Lautenschlager, Maria Neset, Luke Schaefer, and Adam Tescher.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

ELEMENTARY AND SECONDARY EDUCATION STATE SCHOOL AID FUNDING FORMULA

Background

The task force received background information regarding applicable North Dakota constitutional directives, the history of education funding and property tax relief 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 career and technical education (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.

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 Nos. 2013 and 2150.

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 80th 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 1st year of the 2013-15 biennium and $9,092 during the 2nd 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 North Dakota Century Code 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
- Amounts equal to percentages, ranging from 75 to 100 percent of various local revenues and in lieu of property tax collections.

From this base level of support, 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 various local revenues and in lieu of taxes included in school districts' baseline funding. Base level support not provided by these local sources is provided by the state through the integrated formula payment.

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 (2013) 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 and removed the sunset clause on the K-12 integrated formula for state school aid, adopted by the 2013 Legislative Assembly.

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 2nd year of the 2015-17 biennium.

In 2019, the Legislative Assembly approved Senate Bill No. 2265, which included adjustments to phase in on-time funding for fall enrollment; reset baseline funding to the 2018-19 school year; adjust baseline funding for districts that become elementary school districts; phase out transition minimum adjustments; increase the per student payment rate by 2 percent each year of the biennium; phase in increases in local property tax deductions to transition all districts to a deduction of 60 mills; reduce the deduction for in lieu of revenue to 75 percent for all revenue types listed; exempt certain tuition payments from the formula; and reduce all in lieu of revenue types by the percentage of mills levied by the school district for sinking and interest relative to the total mills levied.

In 2021, the Legislative Assembly approved House Bill No. 1388 which included the average daily membership (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; 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; and phase out transition maximum adjustments to the state school aid formula. In 2021, the Legislative Assembly also approved bills to allow 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. 1028); phase out the deduction of tuition received through federal impact aid funds in the state school aid formula (House Bill No. 1246); suspended the ending fund balance limit through June 30, 2023 (Senate Bill No. 2165), and exclude federal impact aid from the excess ending fund balance deduction (Senate Bill No. 2165).

In 2023, the Legislative Assembly approved Senate Bill Nos. 2013, 2015, and 2284, and House Bill No. 1238 which provided various changes to the state school aid formula. Senate Bill No. 2015 was replaced by Senate Bill No. 2398 when the Legislative Assembly met in a special session in October 2023. The Legislative Assembly approved state school aid formula changes during the regular and special session to increase the special education weighting factor; fully implement on-time funding for fall enrollment; adjust the school district size weighting factor for reorganized school districts that operate multiple K-12 buildings at least 14 miles apart or multiple buildings at least 14 miles apart with no replicated grades; increase the integrated formula payment rate 4 percent each year of the biennium; eliminate transition maximum adjustments; exempt tuition for high-cost and special education students from deduction in the state aid formula; adjust the phase-out of transition minimum adjustments; and extend the moratorium on the deduction of excess unobligated general fund balances from state aid until July 1, 2027.

Foundation Aid Stabilization Fund

In 2015, the Legislative Assembly 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. 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, 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 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 2023, the Legislative Assembly provided $2,381,774,851 for integrated formula payments, transportation aid, and special education grants for the 2023-25 biennium, of which $510,860,000 is from the state tuition fund, $157,000,000 is from the foundation aid stabilization fund, $13,993,086 is from the strategic investment and improvements fund, and $1,699,921,765 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 $41,537,780 for the 2023-25 biennium. Based on this level of funding from the general fund during the 2023-25 biennium, the required foundation aid stabilization fund reserve balance for the 2025-27 biennium will be $261,218,932.

Elementary and Secondary Education State Aid Formula - Selected Provisions

The task force 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 task force 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 maximum adjustments applied to those districts that were funded below the per student payment rate in the 2012-13 base year when the formula was implemented. In 2021, the Legislative Assembly 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. In 2023, the Legislative Assembly eliminated transition maximum adjustments beginning July 1, 2023, at an estimated cost of $15 million.

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 generated 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.

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 beginning in the 2021-22 school year. Formula changes also reduce the amount by which the district's baseline funding per weighted student unit exceeds the payment provided per weighted student unit each year beginning in the 2021-22 school year. Weighted student units over the baseline weighted student units are reimbursed at the formula payment rate, instead of the baseline funding per weighted student unit rate.

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.

The task force reviewed the impact of the phase-out of transition minimum adjustments and the increased school size weighting factors. The task force was informed:

- The number of school districts receiving additional transition minimum funding decreased from 98 school districts during the 2013-14 school year to 64 school districts during the 2023-24 school year and total funding for transition minimum adjustments decreased from $42.8 million to $19.3 million over the same period. Because the transition minimum phase-out is a percent of the difference between the transition minimum and the formula, the number of districts receiving the transition minimum adjustment is not impacted by the phase-out. The decrease in the number of school districts receiving the transition minimum funding likely is due to holding transition minimum funding even while providing increases in the per student payment rate of the school districts on the formula.
- Only 16 school districts in the state do not qualify for a school size weighting factor that allows school districts with fewer than 900 students to use a sliding scale to calculate a larger than actual student enrollment. When completely phased in, the sliding scale will use varying weighting factors to generate up to a 1.72 factor for school districts with fewer than 110 students.
- During the 2022-23 school year, there were 12 school districts, not including reorganized districts, receiving transition minimum adjustments, ranging from $716,918 to $7,409,830, which will be phased out over the next 5 years, through the 2027-28 school year.

Reorganized and Consolidated School Districts

In 2021, the Legislative Assembly 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. In 2023, the Legislative Assembly allowed reorganized school districts that operate multiple K-12 buildings at least 14 miles apart or multiple buildings at least 14 miles apart with no replicated grades to determine the school size weighting factor for each building separately. The factor is not adjusted for elementary school buildings until June 30, 2028.

The task force reviewed the impact of transition minimum reductions on reorganized and consolidated school districts and weighting factors for consolidated districts that have multiple buildings in the district. The task force was informed:

- For school districts that merge, school size weighting factors are applied as if the districts continued as separate school districts for 4 years. Proportional adjustments are made in the 5th and 6th years, so beginning in the 7th year, the factor is applied as if the districts are one school district.
- There have been 31 school district reorganizations in the state since 1990. During the 2022-23 school year, 20 reorganized school districts received transition minimum funding totaling $10.9 million. Of the 20 school districts, 6 school districts are projected to be on the formula during the 2024-25 school year.
- There are six school districts funding two separate plants at least 14 miles apart and receiving transition minimum funding. These districts receive the benefit of a school size weighting factor calculated separately for each building and through June 30, 2028, there is the added benefit of no adjustment for elementary school buildings. Transition minimum funding for these districts during the 2022-23 school year, before the 30 percent reduction for the phase-out of transition minimum funding, ranged from $470,383 to $2,049,532. These transition minimum funding amounts will be phased out over the next 5 years.
- There are an additional eight school districts that operate multiple plants less than 14 miles apart, of which three school districts received transition minimum funding ranging from $609,544 to $1,071,669.
- While consolidations have brought financial benefits and expanded educational opportunities, school district consolidation challenges include the impact on community identity and local control, the distance students must

travel to attend school, the loss of extracurricular opportunities, local economic concerns, and emotional and political resistance.

- Virtual schools offer courses when a teacher is not available and have allowed some small school districts to avoid consolidation.

Property Tax and In Lieu of Revenue Deductions in the State School Aid Formula

The task force reviewed the impact of local property tax and in lieu revenue contributions on the state school aid formula.

The task force was informed effective after June 30, 2025, or beginning with the 2025-26 school year, all school districts will be deducted 60 mills in the school funding formula and there will no longer be a 12 percent limitation on deduction increases. However, Section 57-15-14.2, which provides for property tax assessments, will continue to limit the increase in assessments to 12 percent each year, potentially limiting the amount school districts can assess to less than what will be deducted in the formula. Removing the 12 percent limitation on assessments would allow all school districts to assess up to 70 mills, of which 60 mills is deducted in the formula.

The task force was informed the homestead and disabled veterans' property tax credits are deducted in the state school aid formula as local contributions from in lieu of property tax revenue. However, the property value collected by the Tax Department includes the taxable valuation of the property eligible for the homestead and disabled veterans' credits. To avoid duplication in the local contribution deducted in the state school aid formula, DPI must use a taxable valuation net of property eligible for the homestead and disabled veterans' credits. If the homestead and disabled veterans' credits were not deducted as in lieu of property tax revenue, DPI would be able to use the Tax Department's valuations to determine the 60-mill deduction in the formula without having to make adjustments for the related property values. The task force was informed because the Tax Department has tools to review valuation data that are not available to DPI, aligning the department's taxable valuation data with the information collected by the Tax Department would increase accuracy.

The task force was informed property values related to other property tax pilot programs that incentivize business may require adjustments to a school district's total property valuation before determining the 60-mill deduction and because DPI uses the valuation data to calculate state school aid projections each even-numbered year and is required to publish school district financial data each February, the timing of the data released by the Tax Department presents a challenge.

Excess Ending Fund Balance Deduction

The task force reviewed the excess ending fund balance deduction and the impact of the state school aid formula on school districts' ending fund balances. 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 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, and 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. In 2023, the Legislative Assembly, in House Bill No. 1238, extended the moratorium on the deduction of excess unobligated general fund balances from state aid formula payments until July 1, 2027.

The task force was informed in lieu of property tax revenue is deducted in the state school aid formula in the year following the receipt of the revenue. When a school district's local revenue varies widely from year to year, a large increase in revenue in one year results in a lower state school aid payment the next year. If the school district maintains the extra funding in its general fund to cover the reduction in the next year, the additional funding in the general fund may result in an excess ending general fund balance deduction in the formula. Large school districts typically are not impacted by the excess ending general fund balance deduction. School districts with oil and gas tax and federal flood revenue are more prone to irregular revenue deposits and more often subject to the excess ending general fund balance deductions. School districts may transfer excess funding to a building fund to avoid the deduction; however, building fund uses are restricted and funds cannot be transferred back to the general fund.

The task force was informed from 2013 through 2021, the number of school districts subject to the excess ending general fund balance deduction ranged from 8 to 14 school districts. Except for the 2019-20 school year, the total formula deduction averaged just over $1 million per year. The late receipt of federal flood funds by one school district increased the total deduction to $4.6 million during the 2019-20 school year. Due to increases in funding from the federal Elementary and Secondary School Emergency Education Relief (ESSER) Fund in 2020 and 2021, deductions for excess ending general fund balances were suspended in 2021. School district ending general fund balances have increased by approximately 35 percent since 2020. For the 2023-24 school year, if the general fund balance limitations were not suspended, 59 school districts would have exceeded their general fund limit. The task force was informed school districts may be carrying larger balances due to general fund savings from ESSER funding and the absence of a penalty for the larger ending general fund balances.

TRANSPORTATION AID FOR ELEMENTARY AND SECONDARY EDUCATION

The task force reviewed transportation aid for elementary and secondary education, including how the aid is determined and distributed, school district transportation costs, and reimbursements. The Department of Public Instruction reimburses school districts for a combination of miles and rides for three types of routes, including to and from school, special education, and career and technical education. Extracurricular transportation and transportation for open enrolled students or students with no-charge tuition agreements are not reimbursed. Funding is provided on a payment schedule throughout the school year, based on the prior school year miles and rides. Transportation costs include operating costs and equipment purchases amortized over 8 years. In addition to the transportation reimbursement, the state school aid formula includes a weighting factor and a minimum ADM for school districts with low enrollment in areas that cover 275 square miles and 600 square miles, respectively.

The task force was informed:

- During the 2022-23 school year, statewide reimbursement totaled approximately $24.9 million, or 31.8 percent of the total cost of $78.4 million reported statewide. Reimbursements are limited to 90 percent of expenditures. Transportation grants have increased approximately 20 percent, from $48.5 million during the 2011-13 biennium to $58.1 million during the 2023-25 biennium. Reimbursement rates are set to provide reimbursement within the funding appropriated by the Legislative Assembly.
- During the 2022-23 school year, 11 school districts received reimbursements of less than 30 percent of expenditures and 12 school districts received reimbursements in excess of 80 percent of expenditures. Statewide, the reimbursement percentage has decreased in recent years because school districts are no longer reimbursed for transporting open-enrolled students.
- Using 2023 transportation data, if the state were to increase the transportation reimbursement to 50 percent of eligible transportation expenditures, the total reimbursement would be approximately $39.2 million per year, or $14.3 million more per year than the current formula. State reimbursement of 70 percent of eligible transportation costs would require an additional $30 million per year, for a total cost per year of $54.9 million.
- While the block grant funding mechanism is easy to understand and administer and provides local control over the use of the funds, it does not include inflationary factors and is not connected to actual cost. Transportation challenges vary by school district, and increasing funding, without addressing differences in school districts, would treat all school districts the same. Reimbursing school districts across the state at the same percentage of expenses may not produce desired efficiencies.
- The department collects transportation data from two reports in the state automated reporting system, a vehicle inventory report and a transportation route report. The information reported includes vehicle inspection information, capacity, and identification numbers; route type; nonreimbursable and reimbursable miles; ridership; and maximum ride times.
- The bus driver shortage is not unique to the state or to school size and new regulations and competing jobs have contributed to shortages everywhere.

The task force was informed Senate Bill No. 2284 (2023) appropriated $5,000 from the general fund to the University of North Dakota (UND) for a school transportation study. The task force reviewed the UND transportation study and possible models to link transportation reimbursements to the state school aid per student payment rate. The task force was informed UND was commissioned to replicate a 2012 analysis on more current 2022 data. The University of North Dakota analyzed data to provide insight into practices regarding K-12 public school transportation funding in North Dakota and potential alternative models to fund transportation. The variables analyzed were based on the prior analysis and data provided by DPI. The University of North Dakota tested four models, which ranged from 79 to 93 percent accurate. The expected cost model showed some success in predicting actual costs and allowing for the establishment of prioritized levels of funding based on the predicted amounts of expenditures and demographic factors. However, expected cost models produced outliers with dramatically higher or lower than expected funding amounts and regularly overestimated expenditures. It was reported a statistical model that would reliably predict school district transportation cost may be too complicated to implement.

The task force reviewed a transportation focus group proposal to integrate transportation funding into the state school aid formula. A stakeholder group used the UND study to develop a proposal to integrate transportation funding into the state school aid formula and DPI calculated various funding scenarios. The task force was informed:

- The proposal converts factors, including large and small bus miles and runs, land area, number of schools, and family transportation, to weighted student units, which are applied to the per student payment rate to determine the reimbursement. Factors for number of schools and land area were validated in the UND analysis and are available for DPI to include in the formula and weighting factors allow for adjustments. A factor related to miles of gravel road was discussed, but it was determined that distinguishing types of roads added reporting risk.
- In the proposal, transportation and weighting factors were adjusted to generate a total reimbursement that would align with the $58.1 million appropriated for transportation grants during the 2023-25 biennium. The proposal did not decrease funding for individual school districts, but some districts reached the reimbursement limit of 90 percent of expenditures.
- Reimbursements under the current formula have been approximately $25 million per year for the 2023-25 biennium, and DPI estimates there will be unspent funding related to transportation grants. The cost of the proposal to integrate transportation funding into the state school aid formula, as presented in the analysis, would be $61.2 million, an increase of approximately $3 million per biennium compared to the 2023-25 biennium appropriation for transportation grants, or an increase of approximately $10 million per biennium compared to estimated reimbursements for the 2023-25 biennium. If the per student payment rate is increased in 2025, the fiscal impact of the proposal would be higher.
- A more comprehensive model would require additional data collection and the potential use of technology to avoid reporting and data integrity issues. GPS data collection programs are available to school districts, however the factors included in the formula would have to be identified before GPS data collection programs could be evaluated. If the funding model is adopted, reimbursable schoolbus runs would need to be more clearly defined.

The task force was informed that aside from emissions-related grants, there is no funding assistance available for the purchase of schoolbuses. The task force reviewed the ability of state procurement to bid schoolbuses. The task force was informed because statutory authority for cooperative purchasing exists in Chapter 54-44.4, related to state purchasing practices, and in Chapter 15.1-09, related to school boards, no legislation would be needed to develop a cooperative purchasing program for schoolbuses or any other school purchases. If a school board is making a cooperative purchase with the Office of Management and Budget (OMB) or making a cooperative purchase pursuant to a joint-powers agreement, the board is not required to use a competitive bidding process. The Office of Management and Budget is staffed to meet the procurement needs of state government; however, political subdivisions may benefit from some state contracts. Coordinating the needs and specifications for school district buses would require additional school district and OMB employee resources. Cooperative purchasing may also save school districts money on other commonly used items.

SPECIAL EDUCATION CONTRACT REIMBURSEMENTS

The task force reviewed DPI reimbursements for high-cost students. The task force was informed 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. 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 $56,080 for elementary students and $60,213 for secondary students during the 2023-24 school year. School districts also are reimbursed for costs exceeding 2 percent of the total school district budget. In 2023, the Legislative Assembly exempted special education tuition from deduction as local revenue in the state school aid formula.

The task force reviewed special education contract reimbursements and school district accountability related to special education funding. The task force was informed:

- While the number of special education students is increasing, funding from the state special education contract system and out of district billing has been decreasing. The decrease in funding is due to changes to the DPI student contract reference guide. Changes were made to the definitions of 1-to-1 paraprofessionals, group paraprofessionals, and teacher aides and the calculation of hours of service per year. The student contract reference guide was revised to establish a more uniform system of billing for special education across the state and to ensure districts were not billing more than actual expenditures.
- In addition to state reimbursement for excess cost students, school districts may bill resident school districts for out-of-district placements resulting from foster care, group home, or family member placements.
- The excess cost threshold of four times the state average cost of education per student may need to be adjusted to capture the 1 percent of students with a disability referenced in Section 15.1-32-18.

- Because the educating school district receives the benefit of the per student payment, reimbursement of the special education costs of an open enrolled student by the resident school district may need review.

SCHOOL CONSTRUCTION CHALLENGES AND FUNDING MODELS

The task force reviewed information regarding an overview and history of school construction finance in the state. The task force was informed:

- In 1889, the Constitution of North Dakota established a school district debt limit of 5 percent of the assessed value of the property in the district. A subsequent constitutional amendment allows districts to increase the limit from 5 to 10 percent with a majority vote. Assessed value is defined by the Legislative Assembly. Before 1981, assessed value was full and true value. A legislative change in property tax structure now defines assessed value as one-half of full and true value. The definition change effectively reduced debt limits by 50 percent.
- Because certificates of indebtedness are not paid from a property tax source, the certificates of indebtedness do not count against the debt limit. A school district election is not required because certificates of indebtedness allow school districts to borrow against any federal or state stream of revenue and there is no tax increase.
- General obligation bonds require a 60 percent super majority vote. Voters are asked to approve a bond amount in dollars. The mill levy needed to service the bonds is not limited and is approved for up to 20 years.
- The Legislative Assembly has authorized school districts to assess a building fund levy. Each mill levy increase requires a 60 percent super majority vote and the maximum levy is 20 mills. School districts may borrow against the building fund levy without a separate vote; however, there is a 60-day protest period.
- Building authorities are nonprofit corporations and may be used for lease financing. The building authority issues bonds to build the project and leases the building back to the school district. Because no new mills are assessed, a vote is not necessary. The Legislative Assembly has restricted lease financing to projects under $4 million unless the project is approved by a majority vote.
- Popular financing options that have been repealed or prohibited include bonds which could be used for certain limited improvements and bonds paid from sales tax revenues pursuant to joint powers agreements.

The task force reviewed information regarding the history and status of the Bank of North Dakota school construction assistance revolving loan fund. The task force was informed:

- In 2017, the Legislative Assembly transferred $75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund and merged the Bank interest rate buydown program loans into the revolving loan fund. The Legislative Assembly also transferred certain school construction loans held by the Department of Trust Lands into the revolving loan fund. Based on the initial goal of providing $60 million for new loans each biennium, it was determined the revolving loan fund would require approximately $500 million. In 2019, the Legislative Assembly transferred $75 million from the foundation aid stabilization fund to the revolving loan fund and a third installment of $75 million was transferred from the foundation aid stabilization fund in 2023. In addition to lower interest costs, school districts using the school construction assistance revolving loan fund save interest over the construction period and bond issue costs.
- In 2023, the Legislative Assembly amended provisions of the revolving loan fund to provide projects less than $75 million qualify for loans up to $15 million and projects totaling $75 million or more qualify for loans up to $30 million. School districts with loan approvals under the lower thresholds were allowed to apply for additional funding up to the new maximum loan amounts. In addition, the Legislative Assembly allowed school districts to use the revolving loan fund to refinance market rate loans and authorized loans of up to $5 million from the coal development trust fund for unanticipated construction inflation.
- There were 3 requests for loan increases related to the new maximum revolving loan amounts totaling $48.1 million and 3 requests for coal development trust fund loans related to the new authorization for loans related to unanticipated construction inflation totaling $8.7 million.
- As of February 1, 2024, there were $314.7 million of loans outstanding in the school construction assistance revolving loan fund and approximately $8.6 million was available for new loans. The Bank anticipated repayments through June 2024 will total $14.9 million, making approximately $23.5 million available for loan applications due in March 2024. Based on the current portfolio, the Bank estimates $29.4 million will revolve annually, making $58.7 million available for loans each biennium. Increasing the loan limits to the tiered system of $15 million and $30 million may result in fewer loans being available each biennium. Loans are prioritized by DPI.
- Additional deposits into the school construction assistance revolving loan fund in each of the next 2 bienniums of $75 million ($150 million total) or $100 million ($200 million total), would allow the fund to generate $130 million or $150 million of revolving funds for new loans each biennium, respectively.

The task force reviewed stakeholder information regarding outdated facilities, deferred maintenance, the impact of inflation on school construction projects, and the challenges of securing local funding for school construction. The task force was informed:

- Many school districts identified aging facilities and deferred maintenance as the number one challenge facing school districts. While many districts have not done a facility assessment, the districts report inadequate or obsolete facilities, including structural, plumbing, security, accessibility, and heating and cooling system deficiencies.
- Facility assessments are important to identify deferred maintenance costs across the state; however, standards for conducting and reviewing assessments have not been established. Some states require school districts to perform periodic facility assessments.
- Information from the North Dakota Insurance Reserve Fund indicates the average age of school buildings in the state is 55 years; however, some of the ages are based on the latest renovation and not the original build date. The total estimated value of school buildings was $4.8 billion and there were 343 school or education-related buildings with varying classifications and descriptions.
- Based on a stakeholder school construction survey, the success rate for bond attempts has declined from 66.8 percent in 2016 to 48.5 percent in 2021; however, the amount of funding raised by bonding has increased as inflation has impacted school construction costs. School districts with fewer than 5,000 students have a median bond success rate of 50 percent, while school districts with more than 10,000 students have a median bond success rate of 75 percent. Larger communities are able to spread the cost over more taxpayers. Bonds for new construction have a 65 percent success rate, while bonds for repairs and renovations have a 50 percent success rate. This has resulted in more deferred maintenance, especially in smaller school districts.
- Some school districts lack financial resources and do not have the property tax base to support a bond issue. The composition of taxable property varies greatly by school district and impacts the ability to raise funds for construction. Based on 2022 valuations, agricultural land made up 19.1 percent of the total statewide taxable valuation; however, in smaller rural districts, agricultural land can make up a significantly larger portion of the taxable valuation in the school district, which results in a larger tax burden for fewer taxpayers. Sales tax could be a viable source for some school districts, but others would be unable to generate enough sales tax revenue to pay for needed projects.

Funding Models

Local in Lieu of Property Tax Revenue

The task force reviewed information regarding an option to allow school districts to keep more local in lieu of property tax revenue for school construction. The task force was informed school districts are able to reduce all in lieu of property tax revenue types by the percentage of mills levied by the school district for sinking and interest relative to the total mills levied before deducting 75 percent of the revenue in the state school aid formula. The task force reviewed an alternative option that would allow school districts to choose to use a percentage of the in lieu of property tax revenue, based on the percentage in lieu of property tax revenue represents of the total local contribution deducted in the state school aid formula, for school construction. The amount allowed for school construction would be exempt from deduction in the state school aid formula in a similar manner as the funding allocated to the sinking and interest levy exemption. School districts could compare the deduction and total state aid under the current percent of sinking and interest levy exemption and the deduction under the option to use the percent of in lieu of property tax revenue exemption and elect the method that provides the lower local revenue deduction. The in lieu of property tax revenue exemption would be limited to a bond payment and the exemption would not extend beyond the life of the bond. The proposal to exempt additional in lieu of property tax revenue from deduction in the state school aid formula would cost the state approximately $8 million per year or $16 million per biennium. The task force was informed large variances in local revenue from one year to the next will make managing the exemption election a challenge for DPI and the school districts. There are no restrictions on the use of revenue currently exempted from deduction in the formula based on the sinking and interest mill levy. There also is no restriction on the use of the 25 percent of local in lieu of property tax revenue retained by school districts.

Kansas School Construction Funding Model

The task force was informed Kansas school districts may levy local property tax of up to 8 mills for capital purchases, including construction, and also may issue bonds, up to 14 percent of assessed valuation, to finance construction of school facilities. State Board of Education approval is needed to receive state aid for a capital project. Kansas uses the average valuation per pupil (AVPP) to assist in property tax equalization and determine state aid, including supplemental state aid to equalize funds available for general operating expenses, equalization aid for capital outlay from property tax assessments, and equalization aid for capital improvements or bond payments. The formula to determine a school district's equalization aid for capital outlay, ranks all districts from highest to lowest based on their AVPP. The median school district is entitled to receive 25 percent matching state aid. For school districts below the median AVPP, state aid increases. For school districts above the median AVPP, state aid decreases.

When determining equalization aid for capital improvements, Kansas uses a different formula for bonds before 2015 and bonds after 2022. State aid for bonds before 2015 is determined in a similar manner as equalization aid for capital outlay. In 2016, Kansas set limits on the state's liability for bonds. The total amount of state aid for bonded indebtedness each year is limited to the amount of the decrease in the total school bond indebtedness from the previous year adjusted for inflation. For bonds after 2022, school districts are ranked based on their AVPP and the lowest ranked district, not on federal property, is eligible for 51 percent state aid. The percent of state aid decreases as the AVPP of the school district increases. When the state's bond limit is reached, projects are prioritized based on growth, safety, accessibility, quality of instruction, and AVPP of the school district. School districts with fewer than 260 students are not eligible for state aid; however, the Kansas State Department of Education is performing a school district organization study to address the need for smaller school districts in sparsely populated areas.

Wyoming School Construction Funding Model

The task force was informed Wyoming assesses building needs and pays for the cost of new buildings. The School Facilities Division is responsible for the planning, design, construction, and major maintenance of K-12 schools in Wyoming. School finance reform in 1998 was in response to a 1995 lawsuit that found Wyoming's school finance system was failing to provide equal and adequate educational opportunities. Statutorily, the School Facilities Division is responsible for long range facility plans for each school district every 2 years; however, the division anticipates it will evaluate facilities in all 48 school districts and 8 charter schools, including land and building leases, annually and make recommendations to the schools regarding building concerns to be addressed. The School Facilities Division prioritizes the needs of each district based on the evaluations and is required annually to provide two remediation schedules for the state budget, a condition schedule and a capacity schedule. Capacity is measured based on the state's standard requirements for square footage per student and maximum number of students per room. Facility condition assessments are required periodically by a consultant. The division uses a facility condition index to determine which facilities need to address deferred maintenance. Every 4 years, the division reviews facilities based on statewide uniform adequacy standards. The review includes assessing site size, square footage of the building, capacity, technology, common areas, and athletic venues. School districts may request a review if they determine the educational space is inadequate.

In Wyoming, capital construction requests may arise from either the condition schedule, capacity schedule, or a review request that determined a building is inadequate to deliver the educational program. If a school building, based on the condition schedule, has a condition concern, or is over 100 percent capacity based on the capacity schedule, a most cost-effective remedy study is performed to determine a remedy that is in the best financial and educational interest of the state. The study may include grade configurations and the most cost-effective remedy might include nonconstruction remedies, including adjusting space usage or boundaries. The division and a consultant work with school districts to identify the most cost-effective remedy to present to the School Facilities Commission and eventually the legislature. The division is required to make a budget request each year and uses the information gathered through schedules, assessments, and most cost-effective remedy studies to prepare the request. The request may include capital construction, including large major maintenance projects; inflationary funds; unanticipated costs related to capital construction; offsite infrastructure costs related to sewer, water, and access; contingency or special costs; and major maintenance funding, which is based on a formula. Once approved by the School Facilities Commission, the budget moves through the legislative process. The cost of the most recent statewide facility condition assessment was approximately $3 million, not including an additional $1 million for more targeted facility reviews. The assessment evaluated approximately 600 buildings or 23 million square feet of space. While the state provides funding to build and maintain school facilities, the school districts own the buildings and are responsible for performing the maintenance. Routine maintenance funding is provided to school districts through the education block grant. School districts are required to use maintenance funding for priority 1 and 2 maintenance. The Wyoming legislature is considering enacting universal definitions for routine and major maintenance.

The task force was asked to consider legislative action including increasing debt limits by changing the definition of assessed value, allowing the school construction assistance revolving loan fund to be used by school districts borrowing with certificates of indebtedness, removing the bonding requirement to secure an emergency loan from the coal development trust fund, removing limitations on building authority and lease financing options, authorizing school districts to use up to 10 mills for a building fund without a vote and requiring a vote to authorize more than 10 mills, lowering the threshold for general obligation bond approval from 60 to 55 percent, allowing school districts to borrow against the 12-mill miscellaneous levy, and reviewing the general obligation and building fund statutes to simplify and repeal obsolete language.

Task Force Considerations and Recommendations

The task force considered adjustments to certain elementary and secondary state school aid formula provisions; a proposed transportation aid formula linking transportation aid to the state school aid per student payment rate; special education contract reimbursements; and various school construction funding models. The task force determined information gathered by the task force could be used by legislators as a basis for bills they may choose to introduce for consideration by the 2025 Legislative Assembly.

The task force makes no recommendation related to its review of the elementary and secondary education state aid formula, transportation aid for elementary and secondary education, special education contract reimbursements, and school construction.

OTHER REPORTS AND INFORMATION RECEIVED BY THE TASK FORCE

Status of State School Aid - 2023-25 Biennium

The task force received reports from DPI regarding student enrollment and the status of funding for state school aid for the 2023-25 biennium.

Funding provided for integrated formula payments during the 2023-25 biennium was based on projected 2023-24 school year ADM of 117,068 students and projected 2024-25 school year ADM of 118,530 students. In 2023, the department estimated state school aid integrated formula payments would total $3.072 billion during the 2023-25 biennium, of which $684 million was to be provided by local property tax contributions, $110 million was to be provided by local in lieu of taxes and revenue contributions, and $2.278 billion was to be provided by the state. In addition to the state's share of state school aid integrated formula payments, the appropriation for 2023-25 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 to total $22 million for a total of $2.3 billion included in the integrated payment line item for the 2023-25 biennium. In 2023, based on total estimated integrated formula payments, the state's share of funding for the state school aid formula was anticipated to total approximately 74 percent during the 2023-25 biennium.

The task force was informed actual state school aid for the 2023-24 school year, based on 2023-24 school year ADM of 116,551 students, will total $1.492 billion, of which $333.5 million, or 22.4 percent, is provided by local property tax, $65.5 million, or 4.4 percent, is provided by local in lieu of revenue, and $1.093 billion, or 73.2 percent, is provided by the state through integrated formula payments. State school aid for the 2024-25 school year, based on revised estimated 2024-25 school year ADM of 117,531 students is estimated to total $1.557 billion; of which $354 million, or 22.7 percent, is estimated to be provided by local property tax; $64 million, or 4.1 percent, is estimated to be provided by local in lieu of revenue; and $1.139 billion, or 73.2 percent, is estimated to be provided by the state through integrated formula payments. The local property tax contribution to 2024-25 state school aid is known because it is based on 2023 property values; however, the contribution from in lieu of revenue will not be known until September or October 2024. Lower than anticipated enrollment, higher local in lieu of revenue and property tax than anticipated in the budget, and lower than anticipated impacts from on-time enrollment resulted in budget savings of $15.5 million during the 2023-24 school year. Based on preliminary estimates, state school aid payments for the 2nd year of the biennium are anticipated to be $29.7 million less than budgeted. Based on enrollment estimates and estimated local contributions to the state school aid formula, the department estimates unspent 2023-25 biennium appropriations will total approximately $69.3 million, including $57 million related to state school aid, $8 million related to transportation, and $4.3 million related to special education contracts.

Projected State School Aid - 2025-27 Biennium

Cost to Continue

The task force reviewed a preliminary estimate of funding required to continue current state school aid integrated formula payments during the 2025-27 biennium. The report, prepared by DPI, was based on:

- Lower projected ADM growth, based on a 4-year survival routine (3 changes), 2020-21, 2021-22, 2022-23, and 2023-24.
- Taxable valuation for calendar years 2024 and 2025, calculated based on a 2-year average increase with maximum growth of 8 percent and minimum growth of 0 percent.
- In lieu of property tax revenue contributions to the formula similar to revenue contributions during the 2022-23 school year.
- Other statistical data and weighting factors based on data supporting the 2023-24 payment year.

The task force was informed enrollments are projected to be stable during the 2025-27 biennium and the cost to continue state school aid is anticipated to be approximately $27.8 million less than the 2023-25 biennium appropriation. The department noted projected enrollments beyond the next biennium are anticipated to decline.

The task force was informed, based on estimates for the 2025-27 biennium, if Initiated Constitutional Measure No. 4, related to prohibiting ad valorem property tax, is approved by voters, the state would be responsible for an additional $758 million of the state school aid formula during the 2025-27 biennium. In addition, school districts levy an estimated $200 million of additional property tax outside the formula that would become the responsibility of the state.

Other Reports

In addition to the task force's other responsibilities, the task force received reports from:

- The Education Commission of the States regarding membership and services, a state education policy tracking database, state funding models, student and district characteristics, special education, and revenue sources.
- The Center for Distance Education regarding the cost of distance education and enrollment trends, including the impact of teacher shortages and recent legislation prohibiting a resident school district from denying open enrollment to an approved virtual school.
- The North Dakota Council of Educational Leaders (NDCEL) regarding the impact of the elimination of property tax on funding for K-12 education.
- Senator Michelle Axtman, Education Committee Chairman, regarding an update on the Education Committee's school choice study.
- NDCEL regarding the fiscal impact of recent legislation on school districts, including a summary, by school district, of school district meal debt, and Center for Distance Education and mental health services costs.
- The Superintendent of Public Instruction regarding accountability and advancing student outcomes, including a budget training certification program through Georgetown University.
- DPI regarding school districts' use of federal ESSER funds for various programs and options to provide funding for some of these programs from other sources in the future, including federal funds.
- DPI regarding the uses of federal ESSER funds allocated to school districts and discretionary ESSER funds appropriated to DPI, including funds remaining unspent as of September 2024.
- The Central Regional Education Association regarding accountability measures, school improvement programs, and advancing student outcomes.
- NDCEL regarding programs school districts offer that are not measured by accountability standards.

TAX RELIEF ADVISORY COMMITTEE

Section 5 of House Bill No. 1158 (2023) directed the Legislative Management to appoint a Tax Relief Advisory Committee to study tax relief, including income and property tax relief. The study required consideration of the following information to be provided by the Tax Department:

- The estimated and actual fiscal impact of historical income and property tax relief provided by the Legislative Assembly;
- An analysis of the tax relief provided by the 68th Legislative Assembly through individual income tax rate changes, a primary residence credit, and an expansion of the homestead credit, including the estimated fiscal impact for each method of tax relief and the effect of the income tax rate changes on passthrough income related to income reported on K-1 forms and royalty income reported on 1099-MISC forms;
- Options to implement a flat individual income tax rate, including the estimated fiscal impact of the options; and
- Options to adjust the individual income tax structure, including the estimated fiscal impact of the options.

The study also required the Tax Department to provide an update on the progress of implementing the primary residence credit, including the status of information technology changes and the amount spent on advertising the credit. The study allowed the committee to consider input from local taxing districts regarding the administration of the primary residence credit and the homestead credit.

Committee members were Senators Jordan L. Kannianen (Chairman), Dale Patten, and Dean Rummel and Representatives Craig Headland, Glenn Bosch, and Jared Hagert.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

BACKGROUND

Income Tax 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 adjusted by legislation enacted in 2009, 2011, 2013, 2015, and 2023. 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 2023-25 biennium and the percentage decrease in individual income tax rates from biennium to biennium:

	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[1]	2023-25 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%	0.00% to 2.50%
Percentage increase (decrease) from prior biennium		(12.3%)	(17.9%)	(19.3%)	(9.9%)	N/A[2]

[1]The Legislative Assembly did not change the individual income tax rates for the 2017-19, 2019-21, or 2021-23 bienniums. During the November 2021 special legislative session, the Legislative Assembly provided an individual income tax credit for North Dakota residents of up to $700 for married filing jointly returns and up to $350 for all other filing types; however, the credit did not affect the income tax rates.

[2]The 2023 Legislative Assembly reduced the number of individual income tax brackets from five to three and reduced the rates in each bracket. As a result, the percentage change from the prior biennium cannot be calculated.

Individual income tax rates were adjusted most recently in 2023 following the enactment of House Bill No. 1158, which consolidated the individual income tax brackets from five brackets to three brackets and reduced the income tax rates with income in the first bracket exempt from tax. Rates in all brackets were reduced from a range of 1.1 percent to 2.9 percent to a range of 0 percent to 2.5 percent of taxable income as follows:

Individual Income Tax Brackets Following Enactment of House Bill No. 1158						
		Annual Taxable Income Over				
Tax Bracket	Tax Rate	Single Filer Return	Married Filing Jointly Return	Married Filing Separately Return	Head of Household Return	Qualifying Widow(er) Return
First	0.00%	$0	$0	$0	$0	$0
Second	1.95%	$44,725	$74,750	$37,375	$59,950	$74,750
Third	2.50%	$225,975	$275,100	$137,550	$250,550	$275,100

The following schedule provides information on the estimated fiscal effect of individual income tax rate reductions based on analysis contained in the fiscal notes associated with the corresponding legislation:

	Estimated Effect of Individual Income Tax Rate Reductions				
	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium	2023-25 Biennium
Estimated tax relief from fiscal notes	$90,000,000[1]	$120,000,000[2]	$200,000,000[3]	$87,000,000[4]	$358,297,204[5]

[1]The estimated individual income tax relief for the 2009-11 biennium reflects the fiscal note for Senate Bill No. 2199 (2009).

[2]The estimated individual income tax relief for the 2011-13 biennium reflects the fiscal note for House Bill No. 1047 (2011).

[3]The estimated individual income tax relief for the 2013-15 biennium reflects the fiscal note for Senate Bill No. 2156 (2013).

[4]The estimated individual income tax relief for the 2015-17 biennium reflects the fiscal note for Senate Bill No. 2349 (2015).

[5]The estimated individual income tax relief for the 2023-25 biennium reflects the fiscal note for House Bill No. 1158 (2023).

Individual Income Tax Deductions, Credits, and Exempt Activities

The committee reviewed the 19 individual income tax deductions and 25 individual income tax credits. The committee also reviewed individual income tax-exempt activities.

Individual Income Tax Burden

The committee was informed North Dakota individual income tax collections for fiscal year 2021 were just under $468 million and individual income tax collections for fiscal year 2022 were just under $459 million. A Census Bureau per capita comparison of individual income tax collections for fiscal year 2021 ranks North Dakota 40th out of 43 states that impose individual income tax collections. The comparison indicated 30 states have a per capita individual income tax burden of at least double North Dakota's per capita individual income tax burden. North Dakota is ranked 27th out of 50 states in the individual income tax category on the Tax Foundation's *2023 State Business Tax Climate Index*, with an overall tax climate index rank of 17th out of 50 states. However, the *2023 State Business Tax Climate Index* was published before House Bill No. 1158 (2023) was enacted.

Corporate Income Tax Rate History

The committee reviewed the history of corporate income tax rates since 1919. 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 as a Percentage of Taxable Income				
	2007-09 Biennium	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium[1]
Range of tax rates	2.60% to 6.50%	2.10% to 6.40%[2]	1.68% to 5.15%	1.48% to 4.53%	1.41% to 4.31%
Percentage increase (decrease) from prior biennium		N/A[2]	(19.5%)	(11.9%)	(4.9%)

[1]The Legislative Assembly did not change the corporate income tax rates for the 2017-19, 2019-21, 2021-23, or 2023-25 bienniums. As a result, the rates shown for the 2015-17 biennium reflect the current rates for the 2023-25 biennium.

[2]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 the estimated fiscal effect of corporate income tax rate reductions based on analysis contained in the fiscal notes associated with the corresponding legislation:

	Estimated Effect of Corporate Income Tax Rate Reductions			
	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium
Estimated effect based on fiscal notes	$10,000,000[1]	$25,000,000[2]	$50,000,000[3]	$21,000,000[4]

[1]The estimated corporate income tax relief for the 2009-11 biennium reflects the fiscal note for Senate Bill No. 2199 (2009).

[2]The estimated corporate income tax relief for the 2011-13 biennium reflects the fiscal note for House Bill No. 1047 (2011).

[3]The estimated corporate income tax relief for the 2013-15 biennium reflects the fiscal note for Senate Bill No. 2156 (2013).

[4]The estimated corporate income tax relief for the 2015-17 biennium reflects the fiscal note for Senate Bill No. 2349 (2015). The amount shown does not include the estimated impact of Senate Bill No. 2292 (2015), which provided an alternate method for apportioning income.

Corporate Income Tax Deductions, Additions, Credits, Reporting Requirements, and Methods

The committee reviewed the six corporate income tax deductions, five corporate income tax additions, and 19 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

The committee was informed North Dakota corporate income tax collections for fiscal year 2021 were just under $149 million and the corporate income tax collections for fiscal year 2022 were just under $224 million. According to the Tax Foundation, which provides a comparison of state corporate income tax rates as of January 1, 2023, 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. North Dakota was ranked 9th out of 50 states in the corporate tax category on the Tax Foundation's *2023 State Business Tax Climate Index*, with an overall tax climate index rank of 17th 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 2019-20 and 2021-22 interims.

Property Tax Relief Background

Property Tax Overview

The committee was informed property tax is levied in every state and provides a vital source of revenue for local governments. In North Dakota, just over $1.23 billion in property tax was levied in 2021 for payment in 2022. 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 an 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 the 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 $1,231,361,971 in property tax was levied in 2021 for payment in 2022. This amount represents a 4.1 percent increase over the total amount levied for payment in 2021. Additional information published by the Tax Department indicated the majority of the property tax levied in 2021 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 re-elected 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 significant property tax reform and relief legislation from 2007 through 2023, including information related to the estimated fiscal impact of property tax relief programs provided by the Legislative Assembly.

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' 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 to 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 and 1174 and Senate Bill Nos. 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 tax credit even if the benefits are excluded for purposes of calculating income tax liability. 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 Senate Bill No. 2213. The bill 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.

In 2023, the Legislative Assembly provided property tax reform or relief through the passage of House Bill Nos. 1158 and 1245 and Senate Bill No. 2006. House Bill No. 1158 created a state-paid primary residence credit of $500 against the property tax due on each primary residence for tax years 2024 and 2025, not to exceed the property tax due on the primary residence. The bill also expanded the homestead tax credit program, which is available to North Dakota residents who meet certain income limits and are at least age 65. The bill adjusted the income limits and maximum taxable valuation reduction amounts for qualifying individuals and removed the requirement that an individual's assets may not exceed $500,000 to qualify for the credit. The following table provides the adjustments made to the brackets:

Homestead Tax Credit Brackets Following Enactment of House Bill No. 1158			
Income	**Maximum Reduction in Taxable Valuation**	**Equivalent Maximum Reduction in True and Full Valuation**	**Maximum Percentage Reduction in Valuation**
$40,000 or less	$9,000	$200,000	100%
$40,001 to $70,000	$4,500	$100,000	50%

House Bill No. 1245 required taxing districts to express property tax levies in dollars rather than mills when communicating with the public and comparing the amount levied in the current taxable year to the amount levied in the previous taxable year. Senate Bill No. 2006 required assessors to include on the assessment increase notice to property owners a statement to inform the taxpayer that an assessment increase may result in a property tax increase on the parcel and allows the assessment increase notice to contain an estimate of property tax increase attributable to the assessment increase.

TESTIMONY AND COMMITTEE CONSIDERATIONS

Analysis of Tax Relief Provided in House Bill No. 1158

Individual Income Tax Rate Changes

The committee received a fiscal analysis from the Tax Commissioner regarding the tax relief provided in House Bill No. 1158 (2023). The committee was informed the fiscal note for the bill was approximately $515 million, of which approximately $358.3 million was attributable to the consolidation and reduction of the individual income tax brackets. The average savings per return attributable to the consolidation and reduction of the individual income tax brackets was estimated at $391. The committee also was informed 558,394 of the 916,116 individual income tax returns filed in the last biennium were in the first bracket before the enactment of House Bill No. 1158, which now is subject to a 0 percent tax rate.

The committee received testimony from representatives of the Tax Department regarding the estimated impact of the income tax bracket changes following the enactment of House Bill No. 1158 on passthrough income. The committee reviewed 2021 income tax return data, including the portion of North Dakota taxable income attributable to passthrough entity income, sole proprietor income, and royalty income broken down by resident and nonresident returns. Analysis of the data related to passthrough entity and royalty income indicated of the approximately $22.7 billion dollars of taxable income for North Dakota residents, approximately $4.65 billion is attributable to passthrough entity income. Approximately $3.52 billion of the $4.65 billion in resident North Dakota taxable income attributable to passthrough entities was taxed in the highest income tax bracket, and $1.02 billion of the $1.34 billion in nonresident North Dakota sourced income attributable to passthrough entities was taxed in the highest income tax bracket. A higher proportion of North Dakota resident royalty income was taxed at lower bracket levels, and a higher proportion of nonresident royalty income was taxed at higher bracket levels.

The committee reviewed 2022 income tax return data, including the portions of North Dakota taxable income attributable to passthrough entity income, sole proprietor income, interest, dividends, and capital gains, and royalty income broken down by resident and nonresident returns. The committee was informed the new data set included information regarding the estimated 2023-25 net tax liability, which was used for purposes of developing the fiscal note for House Bill No. 1158, and the percentage of taxpayer savings attributable to House Bill No. 1158.

The committee received additional information regarding royalty income, including analysis of royalty income reported on 1099-MISC forms from tax years 2020 through 2022. The data included the proportion of income tax attributable to royalty income, broken down by resident and nonresident returns, excluding passthrough entity royalty income. The committee was informed that in tax year 2022, there was about a 60/40 split between nonresident and resident tax on royalty income. The royalty percentage of total net tax liability ranged from 5 to 13 percent in taxable years 2020 through 2022; however, the committee was informed about 10 percent of income tax collections typically are attributable to royalty income.

The committee was informed that while the Tax Department had received a portion of 2023 income tax return data, the complete data set would not be available until closer to the 2025 legislative session. Representatives from the Tax Department indicated available return data is missing a significant portion of returns from taxpayers with K-1 income and larger taxpayers who often request filing extensions, so analysis using available data would not provide an accurate representation of the actual impact of the policy changes in House Bill No. 1158. The committee was provided information related to the status of income tax collections, including a review of incoming cash attributable to individual income tax in April and May of 2023, as compared to April and May of 2024, to provide the level of incoming cash from year to year and illustrate the progress of incoming cash until the Tax Department receives the outstanding income tax return data. The committee was informed that after the Tax Department receives the remaining 2023 tax return data, the Tax Department will be able to analyze the data and evaluate the actual fiscal impact of the income tax related policy changes in House Bill No. 1158.

Homestead Tax Credit Expansion

The committee received a fiscal analysis from the Tax Commissioner regarding tax relief provided in House Bill No. 1158, including the homestead tax credit expansion. The committee was informed the fiscal note for the bill was approximately $515 million, of which approximately $53.5 million was attributable to the homestead tax credit expansion.

The committee received testimony from representatives of the Tax Department regarding the expansion of the homestead tax credit following the enactment of House Bill No. 1158. Testimony indicated the number of households eligible for the homestead tax credit increased from 7,676 applicants in 2022 to 14,627 applicants in 2023 following the adjustments to the homestead tax credit in House Bill No. 1158. The committee also received information regarding the number of applications received by each county and total reimbursement due to each county for homestead tax credits. In 2022, the total payment due to the counties for reimbursement of homestead tax credits was $6,892,177. In 2023, the total payment due to the counties for reimbursement of homestead tax credits was $19,455,067, resulting in a year-over-year increase in the distribution amount of $12,562,890. The committee received analysis from a representative of the Tax Department regarding the long-term revenue impacts of the homestead tax credit.

The committee received information from a representative of the Tax Department regarding the procedure to apply adjustments to property tax credits, such as homestead tax credit expansion in House Bill No. 1158, which was effective beginning with the 2023 taxable year, to mobile homes in the first year the adjustments become effective. Because mobile home taxes are paid in advance and are payable in early January, the Tax Department advised counties to allow qualifying mobile home owners who paid their 2023 mobile home taxes to retroactively apply for the homestead tax credit for the 2023 tax year, and then complete the abatement process to receive the benefit of the credit.

Committee members expressed concerns regarding the difference in deadlines for remitting mobile home taxes versus real estate taxes and the difficulty for mobile home owners to access certain property tax credits. Committee members expressed similar concerns regarding the primary residence credit.

Primary Residence Tax Credit

The committee received a fiscal analysis from the Tax Commissioner regarding the tax relief provided in House Bill No. 1158. The committee was informed the fiscal note for the bill was approximately $515 million, of which approximately $103.2 million was attributable to the primary residence credit.

The committee received testimony from the Tax Commissioner regarding participation in the primary residence credit program. The testimony indicated 134,933 primary residence credit applications were received in 2024. Based on a comparison of the number of applications received and the estimation of eligible homes, the Tax Department estimated the participation rate for the program in tax year 2024 was 92.31 percent. The committee also received a summary of the number of primary residence credit applications received per county and the maximum anticipated allocation to each county for reimbursement of the primary residence credit for tax year 2024.

The committee received information from the Tax Department regarding the estimated fiscal impact of the primary residence credit for tax year 2025. The Tax Department estimated 147,057 homes were eligible for the primary residence credit in 2024, even though only 134,933 primary residence credit applications were received. For purposes of estimating the fiscal impact of the primary residence credit in tax year 2025, the Tax Department intends to use the number of homes eligible for the credit rather than the number of applications received in 2024. Using those estimates, and assuming the primary residence credit remains at $500, the estimated fiscal impact for the primary residence credit program for 2025 is $73,528,500.

Primary Residence Tax Credit Implementation

The committee received numerous updates regarding the implementation status of the primary residence credit throughout the interim, including updates from representatives of the Tax Department and representatives of the North Dakota Association of Counties, and a county representative.

The committee received updates from the Tax Commissioner and representatives of the Tax Department regarding implementation of the primary residence credit. The committee was informed the implementation of the primary residence credit was broken into multiple phases, including developing and executing information technology updates, marketing and promoting the credit, and developing various administrative procedures for administration of the credit. The Tax Department's priorities when developing the application process were to design an easy, quick, and user-friendly online application and to ensure the procedures for implementing the credit were workable for the Tax Department and the counties. The Tax Department created a custom online application for the primary residence credit, which is available on the Tax Department website. On average, it took taxpayers less than 5 minutes to complete the application. The Tax Department also created a file sharing process between the state and counties, and custom reports and tracking mechanisms for primary residence credit statistics.

The Tax Department's marketing for the primary residence credit included fliers; television, radio, website, and newspaper advertising; social media campaigns; and direct mailing of postcards to known individuals who did not apply for the credit. The committee received numerous updates throughout the interim regarding the number of applications and taxpayer calls received by the Tax Department. Throughout the course of the first application cycle, the Tax Department logged over 24,000 telephone calls in 3 months related to the primary residence tax credit. The committee also was informed the Tax Department received a 99 percent approval rating for services provided related to the primary residence credit.

The committee received testimony from a representative of the North Dakota Association of Counties regarding preparations to implement the primary residence credit at the county level. The testimony indicated the counties participated in marketing planning efforts, including a plan to include information from the Tax Department related to the primary residence credit in the 2023 property tax statement mailing. The testimony also indicated the counties appreciated the Legislative Assembly's decision to require the Tax Department and counties to share the workload of administering the credit to lessen the burden on the counties. Implementation of the credit will provide the Legislative Assembly data related to primary residences, which historically has been unavailable.

The committee received information from a county representative regarding the implementation of the primary residence credit after the application period closed. The committee was informed the Tax Department sent a data file to the counties which contained information regarding primary residence applications approved by the Tax Commissioner in each county. The county representative uploaded the files into the tax software system, identified duplicate parcels, reviewed parcels to identify ineligible parcels, finalized maximum mill levy calculations for all taxing districts in the county, and generated and mailed the estimated tax statements. After the estimated tax statements were received by county taxpayers, the county representatives were engaged with taxpayers to answer questions regarding the primary residence credit. The county representative intends to work collaboratively with the Tax Commissioner to effectively communicate the primary residence credit and other legislative tax relief on the final property tax statements.

The committee was informed despite some minor issues and learning opportunities, the primary residence implementation process was relatively smooth for the first year of the program. Additional steps remain to complete the first full cycle of the primary residence credit program, including stages of the state reimbursement process. However, because much of the programming for the state reimbursement process exists from the homestead tax credit and disabled veterans' credit, the county anticipates little difficulty in disbursing the state reimbursement funds.

The committee received information regarding potential adjustments to the primary residence credit for future taxable years, particularly if the program is continued beyond taxable years 2024 and 2025. The committee received testimony from a county representative regarding the application of primary residence credits against mobile home taxes. The committee was informed the primary residence credit was applied differently to real estate owners than to mobile home owners. Real estate owners will see the primary residence credit on their tax statement for tax year 2024. Mobile home owners did not see the primary residence credit on their tax statement for tax year 2024, because mobile home owners pay their 2024 mobile home taxes in advance, before the primary residence credits are applied. As a result, mobile home owners are required to use the abatement process to access the credit. A county can administratively file an abatement application for a property, but the county will have to act on every abatement application. This process includes several mailings and a public hearing, and may take between 20 and 145 days to complete.

The committee received testimony from representatives of the Tax Department regarding application of the primary residence credit to mobile home taxes. The committee was informed that because the primary residence credit is effective for the first 2 taxable years beginning after December 31, 2023, the credit applies to all primary residences for tax years 2024 and 2025, regardless of whether the primary residence is a mobile home or real estate. Adjusting the mobile home tax payment due date to align with the real estate tax due date may resolve the concerns related to the primary residence credit for primary residences taxed as mobile homes. However, adjusting the mobile home tax payment due date to align with the real estate tax due date would delay the revenues historically received by taxing districts for mobile home taxes by approximately 1 year.

The committee reviewed a bill draft to increase the primary residence credit amount from $500 to $1,000 and provide a proposed remedy to the issue related to application of the primary residence credit to mobile home taxpayers. The bill draft included an approach to resolve the concerns regarding application of the primary residence credit against mobile home taxes by providing a separate application and review period for mobile home primary residence credit applicants. This approach would allow a mobile home primary residence credit applicant to apply for the credit with sufficient time before mobile home taxes are levied. This application date also would provide sufficient time to allow the county auditor to apply the primary residence credit against the mobile home taxes owed on the mobile home tax statement rather than requiring a mobile home owner to use the abatement process to gain access to the tax relief.

The committee discussed the importance of implementing a solution to the mobile home tax issue, particularly if the Legislative Assembly decides to continue the primary residence credit beyond tax year 2025. Committee members acknowledged the proposed bill draft would provide one way to approach a solution to the mobile home tax issue. However, committee members were informed continued discussions are taking place which may result in a revision to the bill draft to address administrative concerns. As such, the committee members ultimately expressed a desire to defer to a private sponsor to introduce legislation to provide a solution to the mobile home tax issue. Committee members also expressed a desire to see the proposal split into two separate bill drafts before introduction, one to address raising the amount of the primary residence credit and another to address the timing issues related to mobile homes.

The committee received testimony from the Tax Commissioner regarding suggested improvements to the primary residence credit to implement in the 2nd year of the program. The committee was informed the Tax Department plans to simplify the primary residence credit application process by allowing applicants who applied in the previous year to confirm or update information that automatically populates from the previous year's application. The committee expressed interest in removing the application requirement in future years; however, the committee was informed removing the annual application requirement may pose challenges, including the ability to accurately track ownership changes.

Committee members commended the Tax Department and county representatives for their hard work to successfully implement the primary residence credit in a relatively short time frame. Committee members acknowledged the large amount of time, planning, and resources necessary for a smooth implementation of the primary residence credit program. Committee members also mentioned the credit appears to be well received by the public and provides targeted property tax relief to primary residences.

Income and Property Tax Relief

The committee received testimony from a representative of the Tax Foundation regarding the economics of income tax and property tax reform. The testimony provided a comparison of the economic efficiency of income tax compared to the economic efficiency of property tax. The testimony indicated property taxes are more efficient as compared to other taxes. The committee reviewed potential property tax reform recommendations, such as adopting a property tax levy limit imposed at the county level which would account for new property growth and would allow a taxing district to "bank" unused levy authority. The committee was encouraged to focus on individual income tax relief, including rate reductions or outright elimination of income tax.

The committee reviewed information regarding the state budget. The committee was informed general fund appropriations for the 2023-25 biennium total $6.10 billion, including $5.84 billion of ongoing funding and $250 million of one-time funding. Estimated oil and gas tax revenues for the 2023-25 biennium total $5.13 billion, $1.50 billion of which represents the state funds share of oil and gas tax revenues; however, fluctuating oil and gas tax revenues present challenges when preparing the state budget. General fund tax and fee revenues are 16 percent more than forecast during the 2023 legislative session through February 2024 and oil tax revenues are 14 percent more than forecast during the 2023 legislative session through February 2024. The total budget amount needed for the 2025-27 biennium is estimated at $1.49 billion. Funding for the primary residence credit program and tuition freeze program are reflected as ongoing spending.

Income Tax

The committee received testimony from the Tax Commissioner regarding historical individual and corporate income tax relief provided by the Legislative Assembly from 1919 to present. The committee reviewed the lowest and highest corporate and individual income tax rates, number of corporate and individual income tax bracket levels, and highest and lowest corporate and individual income bracket levels. The committee also reviewed the estimated and actual fiscal impact of individual and corporate income tax rate reductions from the 2009-11 biennium to present and the individual income tax credit for North Dakota residents which was available during the 2021-23 biennium.

The committee reviewed information from a representative of the Tax Department regarding individual income tax returns and income tax deductions and credits. The committee received a brief description of each credit or deduction, the dollar amount claimed and number of claimants over a period of years for each credit and deduction, and noticeable trends reflecting usage of the credit or deduction. The committee was informed 573,564 of the 916,116 individual income tax returns filed in the 2022 tax year had no net tax liability. The individual income tax bracket adjustments made in House Bill No. 1158 likely will result in a decrease in the amount of credits and deductions claimed in future tax years.

Committee members expressed concern regarding continuation of income tax credits or deductions if the sole purpose of continuing the credits or deductions is to encourage certain behavior. Committee members recognized it might take several years before the full impacts of the individual income tax bracket adjustments provided in House Bill No. 1158 are reflected in the data.

The committee received testimony from a representative of the Tax Department regarding the estimated fiscal impact of options to implement a flat individual income tax rate and options to modify the individual income tax structure. The committee received fiscal analyses of three individual income tax bracket adjustment options based on 2022 tax year data. The first scenario provided for a doubling of the amount of income exempted in the bottom tax bracket for all filing types and application of a 2.25 percent flat tax to all income over the exempt amount. The Tax Department representative estimated the fiscal impact of the first scenario as approximately $212 million, and indicated approximately 84 percent of individual income tax returns would have no net tax liability. The second scenario provided for an increase of the amount of income exempted in the bottom tax bracket by 25 percent for all filing types and application of a 1.95 percent flat tax to all income over the exempt amount. The Tax Department representative estimated the fiscal impact of the second scenario as approximately $146 million, and indicated approximately 69 percent of individual income tax returns would have no net tax liability. The third scenario provided for a reduction of the rates in each tax bracket by approximately 25 percent and application of a 0 percent rate in the first tax bracket, 1.5 percent rate in the second tax bracket, and 1.9 percent rate in the third tax bracket. The Tax Department representative estimated the fiscal impact of the third scenario as approximately $155 million, and indicated approximately 61 percent of individual income tax returns would have no net tax liability.

The committee reviewed 2022 income tax data related to taxable investment income, including taxable interest, dividends, and capital gains. The committee was informed of the 345,585 total resident returns, 144,203 resident returns included investment income. The estimated total investment income for residents was $2,758,184,122. The committee also received information regarding the potential impact of scenarios to tax investment income, including scenarios in which a 5 percent tax would be applied to the estimated total investment income for residents. The scenarios included various thresholds at which the tax would be applied, including a $10,000 per return threshold and a $50,000 per return threshold. For example, if a 5 percent tax rate were applied to the estimated total investment income above $10,000 per return for residents, the estimated net tax liability would be approximately $131,797,753.

The committee also received data comparing the progressivity of taxing investment income within the current income tax system as compared to a separate investment income tax. The analysis indicated removing investment income from the traditional income tax system and imposing a separate tax specifically on investment income would result in a more progressive taxing system. Additionally, imposing thresholds on a separate tax on investment income, such as taxing investment income over $10,000 per return, would increase the progressiveness of the tax.

The committee received testimony from a representative of the Tax Department regarding a method of taxing passthrough entities which is used in numerous other states and relates to the federal state and local tax (SALT) itemized deduction. The 2017 Tax Cuts and Jobs Act (TCJA) temporarily capped the SALT itemized deduction for state and local taxes at $10,000 for individual taxpayers only. To provide passthrough entities the opportunity to work around this cap, about 39 states have implemented, or are in the process of implementing, a type of legislation known as SALT cap workaround legislation, which allows a state to levy a tax on the passthrough entity and provide a corresponding tax credit on the owner's personal income tax return. This type of legislation provides the passthrough entity the benefit of shifting the deduction to the entity to circumvent the federal SALT itemized deduction limit. The committee was informed some states that have implemented SALT cap workaround legislation provide a dollar-for-dollar credit, and other states provide a reduced credit. The TCJA will sunset after 2025, so without legislation providing differently, most TCJA provisions, including the SALT itemized deduction cap, will revert to the provisions effective in 2017.

The committee received testimony from a representative of the Tax Department regarding the state marriage penalty credit and fiscal impact of removing the state marriage penalty. The testimony indicated the state marriage penalty credit provides marriage penalty relief to lower income taxpayers and approximately $8 million in marriage penalty credits were claimed in the current biennium. The testimony also indicated taxpayers in the lower income tax brackets would receive a greater benefit if the married filing jointly income tax brackets were adjusted to reflect a doubling of the income ranges of the single filer brackets compared to the benefit obtained from claiming the marriage penalty credit under current law. To remove the state marriage penalty, the Legislative Assembly would need to repeal the state marriage penalty credit and adjust the married filing jointly individual income tax brackets to reflect a true doubling of the single filer brackets. The estimated cost to remove the state marriage penalty for all individual income tax brackets is approximately $46.7 million based on 2022 tax year data.

The committee reviewed a bill draft to remove the marriage penalty and repeal the marriage penalty credit. The bill draft would have adjusted the income ranges for the married filing jointly tax bracket to be double the income ranges for the single filer tax bracket, adjusted the income ranges for the married filing separately tax bracket to be half of the income ranges for the new married filing jointly tax bracket, and adjusted the income ranges for the head of household tax bracket to be halfway between the income ranges for the new single filer and married filing jointly tax brackets. Committee members discussed advantages of the removal of the marriage penalty, but ultimately concluded it is prudent to wait for additional information regarding other potential tax relief proposals and the initiated proposal to eliminate ad valorem property tax before recommending a bill draft to repeal the marriage penalty credit.

Property Tax

The committee received testimony from the Tax Commissioner regarding historical property tax relief provided by the Legislative Assembly. The committee was informed the homestead tax credit has been in place since 1969, and the income requirements for the credit have been amended by 31 bills. The committee reviewed historical information regarding usage of the homestead tax credit, renter's refund, and disabled veterans' credit, including data related to the amount of claimants and the amount claimed for each incentive since enactment. The committee was informed the variation in usage of the homestead tax credit, disabled veterans' credit, and renter's refund over time is attributable to changes in qualification criteria rather than issues or concerns with the application process for the incentives. Approximately one out of five eligible renters apply for the renter's refund and four out of five eligible homestead owners apply for the homestead tax exemption. Education and outreach are important components of increasing participation in the homestead tax credit, disabled veterans' credit, and renter's refund programs.

The committee received testimony from representatives of the Tax Department related to the homestead tax credit, disabled veterans' credit, and renter's refund programs. For each program, the committee received an overview of the qualification criteria and application process, an analysis of potential ways to simplify the application process, and information regarding the demographics of applicants. The committee was informed the Tax Department is receptive to feedback from taxpayers and county officials regarding the application process for each of the programs. For example, in response to feedback from taxpayers and county officials, the deadline for the homestead tax credit was extended from February 1, 2024, to March 31, 2024, and portions of the application related to the income requirements were updated for clarity.

The committee received clarification regarding the application of the homestead tax credit, disabled veterans' credit, and the primary residence credit. The committee was informed the homestead tax credit and disabled veterans' credit reduce a property's taxable value and would therefore be applied before the primary residence credit. The primary residence credit is applied to the consolidated tax, so the credit would be applied to any remaining balance after the application of other property tax credits.

The committee received an analysis from the Tax Department regarding the long-term revenue impacts of the homestead tax credit. The committee was informed the number of households eligible for the homestead tax credit increased from approximately 10,000 to 21,000 households following the adjustments to the homestead tax credit in House Bill No. 1158. Based on available data, the estimated biennium totals for the homestead tax credit and renter's refund are $77.1 million for the 2025-27 biennium and $81.2 million for the 2027-29 biennium.

The committee received an analysis from the Tax Commissioner regarding the estimated fiscal impact of approaches to expand the eligibility criteria for the homestead tax credit. The committee reviewed a number of potential combinations to expand the eligibility criteria for the homestead tax credit, including raising the income thresholds and adjusting the taxable value percent and dollar deduction of the credit. The committee also was provided with fiscal analysis of potential modifications to the qualification criteria.

The committee received an analysis from a representative of the Tax Department of the estimated fiscal impact of increasing the primary residence credit. The committee was provided with the estimated fiscal impact to increase the primary residence credit amount by $50 increments, up to a maximum credit of $1,000, as follows:

Credit Amount	Number of Households	Annual Amount	Biennium Amount
$500	165,000	$82,500,000	$165,000,000
$550	165,000	$90,750,000	$181,500,000
$600	165,000	$99,000,000	$198,000,000
$650	165,000	$107,250,000	$214,500,000
$700	165,000	$115,500,000	$231,000,000
$750	165,000	$123,750,000	$247,500,000
$800	165,000	$132,000,000	$264,000,000
$850	165,000	$140,250,000	$280,500,000
$900	165,000	$148,500,000	$297,000,000
$950	165,000	$156,750,000	$313,500,000
$1,000	165,000	$165,000,000	$330,000,000

The committee also received a breakdown of approved primary residence applications by age of the applicants from a representative of the Tax Department. The committee was informed of the 134,893 total primary residence credit applicants, 1,253 applicants were under age 25, 12,526 applicants were between ages 25 and 34, 27,032 applicants were between ages 35 and 44, 22,284 applicants were between ages 45 and 54, 27,799 applicants were between ages 55 and 64, and 43,999 applicants were age 65 and older.

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 and centrally assessed property. 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 received information from the Legislative Council regarding legislative authority to classify and exempt property under constitutional provisions. The committee reviewed the primary constitutional provisions related to the authority to classify and exempt property, including Section 5 of Article X of the Constitution of North Dakota and the constitutional guarantee of equal protection. The committee also was informed that determining whether a constitutional limitation or concern is implicated by a particular property classification or exemption is a fact-specific inquiry, which may require analysis of additional constitutional provisions or laws depending on the specific classification or exemption at issue.

The committee also received information from the Legislative Council regarding property tax exemptions. The committee was provided a list of existing property tax exemptions enacted in North Dakota since 1890 and the date each exemption was originally enacted.

The committee received a summary of the results of a statewide survey of tax-exempt parcels in each county conducted by the North Dakota Association of Counties. The committee was informed 52 of the 53 counties responded to the survey and 20 property tax exemption categories were reported in the survey. Nearly 60 percent of all exempt properties are farm related. Cass County reported the highest number of exempt parcels, and approximately 50 percent of the exemptions claimed in Cass County were related to new construction or new business. Renville County reported the fewest number of exempt parcels.

The committee expressed a desire to review information regarding the valuation of property exempt from taxation. However, a representative of the North Dakota Association of Counties informed the committee because not all tax-exempt property is consistently valued by assessors, a comprehensive set of data that includes valuations of all tax-exempt property most likely is not available. The data counties aggregate related to tax-exempt property generally is limited to the information specifically requested by the Tax Department. The Tax Department requires each county to submit an abstract, which includes valuation information for a narrow list of tax-exempt property in the county.

The committee received an overview of centrally assessed property and payments in lieu of property taxes from a representative of the Tax Department. The committee received information regarding valuation of centrally assessed property, including oil pipelines, natural gas pipelines, carbon dioxide pipelines, railroads, wind farms, electric and gas companies, and air transportation companies. The committee also received information regarding calculation of electric generation, distribution, and transmission taxes, which are levied in lieu of ad valorem property taxes.

The committee received testimony from a representative of the North Dakota Association of Counties regarding the potential to impose limitations on the growth of property values, county budgets, or property taxes levied. The committee reviewed property tax data, including data related to property taxes levied by taxing district, changes in property value, the average increase of county property tax levies, and county uses of property tax revenue. Counties levied approximately 23.3 percent of total property taxes in tax year 2021, and the top three categories of county expenditures were highway and public improvements, general government, and public safety. The committee was informed counties are opposed to limitations on the growth of property valuations. The testimony contended year-to-year impact of nonproperty tax revenue on a taxing district's budget should be considered if contemplating limitations on a taxing district's budget. It is important to consider differences unique to each county when contemplating whether implementing a limitation is appropriate. According to the testimony, limitation on the growth of a county's property tax levies may inhibit a county's ability to quickly respond to the needs of the county. The testimony encouraged taxpayers to be informed of the services funded by the property taxes levied by each taxing district and to engage in the local budgeting process.

The committee received testimony from a representative of the North Dakota League of Cities regarding the potential to impose limitations on the growth of property values, city budgets, or property taxes levied. According to the testimony, it will be difficult to identify a limitation related to the growth of property taxes which works well for each of the 355 unique cities with differing populations, economic climates, and needs. The impact of a percentage limitation on the growth of a city's budget may be difficult to manage for small communities with relatively small budgets. Property tax revenue constitutes about 30 percent of a city's budget. If a limitation is imposed on property taxes levied by cities, the services impacted most likely would include public safety, road repair, and snow removal. The committee also reviewed a survey that included information regarding taxable valuation and tax levies in cities for tax year 2023.

The committee received testimony from a representative of the North Dakota School Boards Association regarding the potential to impose limitations on the growth of property values, school district budgets, or property taxes levied. School districts are funded by a mix of federal, state, and local revenue sources. The state is constitutionally required to establish a public education system available to any school age student residing in the state, regardless of student ability, need, or circumstances, or the cost or expense to educate the students. According to the testimony, this obligation would make reducing services difficult, particularly if a limitation is imposed on a school district budget or property tax levy.

The committee also was informed the largest general fund expenditure for schools is labor costs, including salaries and benefits for school staff. On average, more than 79 percent of general fund expenditures are used for this purpose. According to the testimony, school employees are entitled to employment contracts under state law and have the right to negotiate terms and conditions of employment, which limits a school district's ability to make timely adjustments in staff, compensation, and benefits. Because school districts often use increases in school salaries to address issues like teacher shortages and retention, a limitation on the growth of property taxes could cause difficulty in attracting and retaining teachers. The committee also was informed the North Dakota School Boards Association supports the local share in the K-12 education funding formula because it increases the likelihood of local engagement in school issues.

The committee received testimony from a representative of the North Dakota Township Officers Association regarding the potential to impose limitations on the growth of property values, township budgets, or property taxes levied. The committee reviewed background information regarding the township budget and property tax levy procedure. The testimony indicated all township levies require a vote of electors at a meeting for which notice has been published at least 10 days before the meeting. Township electors have a greater ability to influence property taxes than any other taxing district because the electors are able to amend the budget that has been proposed for a vote. The testimony contended because the procedures provided in statutes allow township electors to control the growth of property taxes, an additional limitation for townships may not be necessary.

The committee received testimony from interested persons related to the committee's study of property tax relief. The testimony encouraged the committee to reform rather than abolish property tax and to review the property tax exemptions provided under law to determine whether the state should continue to provide the exemptions. The committee also was encouraged to involve property taxpayers and representatives of property taxpayer groups in discussions regarding property tax reform and relief and to consider the impact of approaches for property tax reform and relief on rural taxpayers.

Committee Discussion Regarding Property and Income Tax Relief

Committee members expressed mixed opinions regarding how best to approach tax relief in the upcoming legislative session. Some committee members supported income tax relief as an important tool to positively impact the state's economy and attract individuals to move to the state, particularly a younger population of individuals who more recently entered the workforce. Other committee members acknowledged the importance of providing property tax relief, particularly in light of the volume of constituent concerns and the initiated measure seeking to prohibit ad valorem property taxation.

Committee members discussed various potential forms of income tax relief, including adjustments to the individual income tax brackets, implementing a path to full elimination of individual income tax, and removing the marriage penalty. Committee members expressed mixed feelings regarding the necessity of additional income tax relief beyond what was provided in House Bill No. 1158. Some committee members advocated for additional individual income tax relief while other committee members advocated for more of a focus on property tax relief in the upcoming session. Committee members discussed a desire to explore potential approaches to taxing certain unearned or passthrough income, such as income reported on K-1 forms, royalty income reported on 1099-MISC forms, or interest, dividends, and capital gains, differently than other individual taxable income if additional individual income tax relief is provided to taxpayers. The committee discussed potential benefits to implementing this type of alternative tax structure, including ensuring out-of-state mineral owners contribute to state and local costs associated with mineral extraction and providing more targeted income tax relief to specific types of individual income.

The committee discussed various approaches to property tax relief including, increasing the amount of the primary residence credit, providing targeted property tax relief for primary residences, examining the taxable valuation calculation for residential property, and reviewing the property tax exemptions available under law. Some committee members expressed a desire to continue the primary residence program beyond tax year 2025 and increase the amount of the credit. Committee members mentioned the credit has been successfully implemented, appears to be well received by the public, and provides targeted property tax relief to primary residences. Other committee members encouraged the committee to examine the approaches taken by other states and exercise caution as appropriate, particularly related to providing one property classification significantly more tax relief than other property classifications.

Committee members also discussed the importance of considering property tax reform in addition to property tax relief to slow the growth of property tax levies. Committee members discussed that further increases in state spending to reduce property taxes should be coupled with property tax reform to ensure taxpayers will feel the impact of the property tax relief. Some committee members expressed a desire to explore potential limitations on the growth of property values, taxing district budgets, or property taxes levied by a taxing district. Committee members raised concerns regarding the potential unintended consequences of imposing the limitations, including those unique to certain taxing districts. Committee members noted that while it is important to explore property tax reform options, it also is prudent to implement change incrementally to avoid unintended consequences that may be associated with a more dramatic change. The committee indicated a desire to continue discussions with representatives of local taxing districts to find efficiencies in local spending and lower property tax levies for taxpayers.

Committee members noted the committee's directive was not necessarily to put forth a particular property tax relief plan to compete against other property tax relief legislative proposals or the initiated measure seeking to prohibit ad valorem property taxes, but rather was to gather and analyze information, learn about potential options for tax relief, including advantages and disadvantages of the options, and hear from tax experts on issues related to income and property tax relief. Committee members noted the information gathered by the committee will be available to all legislators and may help inspire ideas for privately sponsored legislation or prepare legislators to analyze proposals that may be introduced during the legislative session. Committee members noted the appropriate form or level of tax relief will depend on available state funding and the outcome of the initiated measure proposed to prohibit the levy of ad valorem property taxes, the vote for which will take place after the adjournment of the committee.

CONCLUSION

The committee makes no recommendation regarding its study of income and property tax relief.

TAXATION COMMITTEE

The Taxation Committee was assigned three studies:

- Section 1 of House Bill No. 1247 (2023) directed a study of providing 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 North Dakota Century Code Section 10-06.1-12.
- Section 1 of Senate Bill No. 2359 (2023) directed a study of the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers.
- The Legislative Management directed a study of economic development tax incentives pursuant to Section 54-35-26.

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

- Annual reports from the Tax Commissioner on statewide property tax increases, pursuant to Section 57-20-04.
- Annual reports from the Department of Commerce's Division of Community Services on renaissance zone progress, pursuant to Section 40-63-03(2).
- Annual reports 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).
- Annual reports from the Tax Commissioner summarizing information provided by taxpayers that received a sales tax exemption for raw materials, single-use product contact systems, and reagents used for biologic manufacturing, pursuant to Section 57-39.2-04.19.
- A report from the Tax Commissioner, State Supervisor of Assessments, and the Chairmen of the Finance and Taxation Standing Committees of the House of Representatives and the Senate regarding their findings and recommendations on a study of property tax transparency, pursuant to Section 3 of House Bill No. 1245 (2023).

Committee members were Representatives Jared Hagert (Chairman), Jason Dockter, Jim Grueneich, Patrick Hatlestad, Craig Headland, Donna Henderson, Jim Kasper, Ben Koppelman, Mike Motschenbacher, and Vicky Steiner and Senators Justin Gerhardt, Jordan L. Kannianen, Randy D. Lemm, Merrill Piepkorn, and Mark F. Weber

Senator Doug Larsen served on the committee until his death on October 1, 2023.

Representative Randy A. Schobinger served on the committee until his death on August 13, 2024.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

AGRICULTURAL COMMODITY STORAGE STRUCTURE PROPERTY TAX EXEMPTION STUDY

Section 1 of House Bill No. 1247 (2023) directed a study of providing 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 required consideration of the potential shift in property tax burdens if the exemption were to be enacted, the definitions of agricultural property and farm plant as used in Section 57-02-08(15), and the impact of abandoned elevators, potato warehouses, and other farm structures classified as commercial property on the political subdivisions in which they are located, including the cost of refurbishment or removal.

Background

A property tax exemption for warehouses and elevators used for personal use and situated on commercial property was proposed in House Bill No. 1247, as introduced. "Personal use" was defined as "the use of a warehouse or elevator to store or process grain or potatoes produced by the owner of the elevator or warehouse or an individual related to the owner by blood, adoption, or marriage. The term exclud[ed] the use of an elevator or warehouse to store or process grain or potatoes produced by individuals other than the owner of the elevator or warehouse or the owner's relatives." The bill clarified a structure used to process grain or potatoes which results in a value-added physical or chemical change to the potatoes was not included in the exemption.

Testimony in support of the bill as introduced was provided by a representative of the North Dakota Farm Bureau and a property owner and potato producer. This testimony indicated off-farm facilities owned and used by farmers for agricultural product storage should be subject to the same agricultural structure exemption as on-farm storage facilities. Testimony in opposition to the bill as introduced was provided by the North Dakota League of Cities. This testimony indicated creating a tax exemption for warehouses and elevators used for personal use and situated on commercial property may significantly impact cities' budgets and those to whom the tax burden would be shifted if the exemption is granted. The bill subsequently was amended to provide for this study.

Farm Structure Property Tax Exemption

North Dakota law provides for a property tax exemption for farm structures that fit the criteria in Section 57-02-08(15)(a). However, this exemption is not available for agricultural commodity storage structures located on commercial land. The taxable or exempt status of a farm structure is dependent on the characteristics and location of the specific farm structure being assessed and is a fact-intensive inquiry. When interpreting Section 57-02-08(15), the North Dakota Supreme Court determined the analysis of whether a farm structure is exempt requires a two-part inquiry as to: (1) the character of the land - whether the structure is on agricultural land; and (2) the nature of the structure - whether the structure is used as part of the farm plant.

Requirement to be Located on "Agricultural Lands"

The first part of the inquiry as to whether a structure qualifies as an exempt farm structure under Section 57-02-08(15)(a) is whether the structure is located on agricultural lands. To qualify for a farm structure exemption, the property on which the structure is situated must be classified as agricultural property as defined in Section 57-02-01. "Agricultural property" is defined in Section 57-02-01 as follows:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection.
    - a. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:
        - (1) The land is platted by the owner.
        - (2) Public improvements, including sewer, water, or streets, are in place.
        - (3) Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
        - (4) Property is zoned other than agricultural.
        - (5) Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
        - (6) The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
        - (7) The property sells for more than four times the county average true and full agricultural value.
    - b. Land that was assessed as agricultural property at the time the land was put to use for extraction of oil, natural gas, or subsurface minerals as defined in section 38-12-01 must continue to be assessed as agricultural property if the remainder of the surface owner's parcel of property on which the subsurface mineral activity is occurring continues to qualify for assessment as agricultural property under this subsection.

Section 57-02-08(15)(a) also specifically carves out certain structures or improvements from the exemption based on the location of the structures. For example, structures or improvements located on platted land within the corporate limits of a city or located on railroad operating property subject to assessment under Chapter 57-05 are not eligible for the exemption.

The committee reviewed Attorney General opinions that provide guidance for administration of the exemption, including opinions related to the land on which the certain farm structures at issue were situated. The committee also reviewed guidance provided by the Tax Department to political subdivisions regarding administration of the exemption, which is consistent with the Attorney General opinions. The Tax Department's guideline related to the exemption for farm buildings and other improvements indicates the land must be used for raising agricultural crops or grazing farm animals to be eligible for the exemption.

Requirement to be Used or Intended for Use as Part of a "Farm Plant"

Section 57-02-08(15)(a) provides to qualify for the farm structure exemption, the farm structure must be used or intended for use as part of a farm plant. The section also prohibits certain structures or improvements from receiving the exemption based on the use of the structure or improvement. For example, structures or improvements used primarily in connection with a retail or wholesale business other than farming, including processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.

Section 57-02-08(15) does not include a definition of "farm plant." However, Section 57-02-01(17) provides information regarding the definition of "farm" in the context of property taxation. Section 57-02-01(17) provides:

> There shall be a presumption that a unit of land is not a farm unless such unit contains a minimum of ten acres [4.05 hectares], and the taxing authority, in determining whether such presumption shall apply, shall consider such things as the present use, the adaptability to use, and how similar type properties in the immediate area are classified for tax purposes.

The committee reviewed North Dakota Supreme Court opinions in which the court was presented with the issue of whether certain structures are used or intended for use as part of a farm plant for purposes of the property tax exemption. The committee also reviewed guidance provided by the Tax Department to political subdivisions regarding administration of the exemption, which includes a definition of "farm plant" as follows:

> The land must be used for raising agricultural crops or grazing farm animals and used as part of a farm plant. A farm plant is the entire farm enterprise operated as an economic unit. If the unit contains less than 10 acres of land, the taxing authority, in determining whether the unit is a farm, must consider such things as the present use, the adaptability to use, and how similar type properties in the immediate area are classified for tax purposes.

Recent Legislation

The committee reviewed recent legislation related to the study.

House Bill No. 1153 (2019) provided for an exemption of 50 percent of the true and full value of commercial property on which a grain elevator used for personal use is situated. "Personal use" was defined as the use of a grain elevator to store grain produced by the owner of the grain elevator or an individual related to the owner by blood or marriage and excluded the use of a grain elevator to store grain produced by individuals other than the owner of the grain elevator or the owner's relatives. This bill failed to pass.

Senate Bill No. 2041 (2021) provided for a property tax exemption for all warehouses and elevators situated on commercial property used for personal use. "Personal use" was defined as the use of a warehouse or elevator to store or process grain or potatoes produced by the owner of the elevator or warehouse or an individual related to the owner by blood or marriage and excluded the use of an elevator or warehouse to store or process grain or potatoes produced by individuals other than the owner of the elevator or warehouse or the owner's relatives. The bill clarified a structure used to process agricultural commodities which results in a value-added physical or chemical change to the potatoes was excluded from the exemption. The bill was amended to remove the proposed exemption and to recommend the Legislative Management consider studying the provision of a property tax exemption for elevators, warehouses, and other farm structures classified as commercial property. The study was not selected by the Legislative Management for review during the 2021-22 interim.

Senate Bill No. 2279 (2023), as introduced, sought to expand the farm structure exemption under Section 57-02-08(15) to include agricultural commodity storage structures used exclusively for personal use and permanently affixed to land used for an agricultural operation. The bill as introduced required the owner of an agricultural commodity storage structure to file an application with the county auditor to claim the exemption.

The term "agricultural commodities" was defined in the bill to include barley, buckwheat, canola, corn, crambe, flaxseed, hay, hemp, lentils, mustard seed, oats, peas, potatoes, safflower, sorghum, soybeans, sunflower seed, sesame seed, and wheat, all whether harvested as whole grain or other than whole grain. The term "land used for an agricultural operation" was defined as a single tract or multiple tracts of platted or unplatted agricultural or commercial land, which are not required to be contiguous, used for raising agricultural crops, grazing farm animals, or storing or preserving agricultural commodities in a structure or other similar operations normally associated with farming and ranching. "Personal use" was defined as the use of a structure exclusively for postharvest storage and preservation of agricultural commodities produced by the owner of the structure or a direct relative of the owner and excludes use of a structure to store or preserve agricultural commodities produced by individuals other than the owner of the structure or the owner's direct relatives. The bill clarified a structure used to process agricultural commodities which results in a value-added physical or chemical change to the potatoes was excluded from the exemption.

The Senate amended the bill to remove the requirement to submit an application to receive the exemption. The House amended the bill to limit the exemption to apply only to potato storage structures that originally were constructed on agricultural property and met the other criteria for the exemption. The bill failed to pass.

Testimony and Committee Considerations

The committee received testimony from representatives of the Tax Department regarding guidance provided by the Tax Department to local taxing districts related to administration of the farm structure property tax exemption, particularly related to agricultural commodity storage structures. The committee was informed to be exempt from property tax, farm structures and improvements must be located on agricultural lands as defined in Section 57-02-01(11). Local assessors determine whether a structure meets the qualification criteria for the exemption. The Tax Department publishes a guideline to provide guidance to taxing districts regarding the applicability of the exemption for farm buildings and other improvements. If a property owner is dissatisfied with the valuation or classification of property, the property owner may contest the assessment to the local, county, and state boards of equalization.

The committee received testimony from a representative of Northland Potato Growers Association regarding United States Department of Agriculture good agricultural practices related to potato farming and storage. The committee was informed the United States Department of Agriculture good agricultural practices include food safety protocols, such as proper field selection, irrigation and drinking water testing, traceability, employee training, separation requirements, and inspection of equipment and buildings for cleanliness.

The committee received information from a representative of the North Dakota Grain Dealers Association regarding the use of grain elevators in the state. The committee was informed since 1980, the number of elevators is decreasing, but the average capacity of the elevators is increasing. The committee also was informed an elevator used for private purposes is not required to be licensed and is not tracked by the North Dakota Grain Dealers Association. Grain elevators often are centrally located in a city and many grain elevators are located on a railroad right of way and might be under a lease.

The committee received testimony from a representative of interested persons and farmers from Pembina County. The testimony contended, in the context of eligibility decisions regarding the farm structure property tax exemption, inconsistent application of the definition of "agricultural property" across taxing districts has caused disparate tax treatment. The committee was encouraged to consider potential solutions to the inconsistent application of the exemption, including amending the definition of "agricultural property" to include a specific definition of the terms "raising agricultural crops" or "platted" within the definition of "agricultural property." The committee was encouraged to define the terms to provide clarity to assessors and local taxing districts to reduce the extent to which the assessors and local taxing districts can use discretion when determining what constitutes agricultural property.

The committee received testimony from several potato farmers who advocated for legislation to provide an exemption for all agricultural commodity storage structures used for personal use regardless of the location of the property. The farmers expressed concerns regarding inconsistent application of the farm structure property tax exemption across taxing districts, including specific examples. The committee received information regarding property tax assessed against potato storage structures owned by the various potato farmers. Additionally, the committee was informed providing a property tax exemption for privately owned farm structures classified as commercial property and used to store agricultural products for personal use might extend the life of the structures in rural areas and keep farmers interested in purchasing rural real estate.

The committee received testimony from a representative of the North Dakota Farm Bureau in support of creating a property tax exemption for agricultural production structures on plotted lands in unincorporated municipalities. The committee was encouraged to provide facilities owned and used by farmers for the storage of agricultural products, such as warehouses, the same agricultural exemptions available to farm storage structures used for the same purpose.

The committee also received testimony from a representative of the North Dakota Corn Growers Association in support of the study. The committee was informed that farms have changed over the years, and a farm is no longer limited to the area in and immediately around the homestead. Rather, modern farms often include all land, buildings, and equipment necessary for agriculture production for the farming operation, including grain storage, which is a critical part of the farming operation. Farmers often acquire old grain elevators and bring them back to use in rural towns to remain viable and reduce or eliminate the number of vacant structures.

A representative of the North Dakota Association of Counties expressed concern regarding the potential impact of expanding the farm structure property tax exemption to include privately owned agricultural commodity storage structures used for personal use and located on commercial property. The committee was encouraged to exercise caution when considering the expansion of property tax exemptions because new or expanded property tax exemptions shift the property tax burden to owners of taxable property within the taxing district. Property owners receiving property tax exemptions receive the services that property taxes support, such as law enforcement, fire protection, and maintenance of public roads. The committee also was informed assessors are required to complete uniform assessor training, which is intended to reduce inconsistencies in the assessment process.

The committee received information from several county representatives related to the study. The committee was informed an exemption for all privately owned agricultural commodity storage structures used for personal use and located on commercial property may be difficult to administer because of the difficulty associated with verifying personal use status, particularly in cases of structures rented to other individuals. In addition, many agricultural storage structures were built within city limits to take advantage of amenities not offered on a farm, including roads, railway, utilities, and infrastructure. A representative estimated if the property tax exemption was expanded, $2.66 million of true and full value would be eliminated from the taxable base in Walsh County, and based on 2023 valuations and property taxes levied, an expanded exemption would result in an estimated $53,400 in consolidated tax dollars being shifted for payment by other taxpayers in the county. Recent sales in Walsh County indicate a high demand for existing agricultural storage structures and certain storage structures have been used for various purposes, including continued agricultural storage and alternative purposes. The committee was informed a property's zoning classification does not always align with how the property is classified for property tax assessment purposes.

County representatives provided information regarding the process for an assessor to change the classification of a property for property tax purposes. The committee was informed if development of an agricultural parcel of land occurs in the middle of a year, the value of the parent parcel is spread among the children parcels until the parcel is reviewed on the next assessment date. Assessors review the seven statutory conditions in Section 57-02-01(1)(a) to determine whether a property platted on or after March 30, 1981, must be reclassified to a nonagricultural classification. When valuing an agricultural storage facility located in a city, which is owned by a private party for personal use, an assessor will consider economic factors, such as sales price, age of the structure and equipment, and whether rail lines are operational. The committee was informed taxpayers may use the equalization or abatement process to appeal the local valuation or classification of a parcel of property.

A representative of the North Dakota League of Cities expressed concern regarding the impact of an exemption for privately owned farm structures classified as commercial property and used to store agricultural products for personal use. The committee was informed the North Dakota League of Cities opposes many property tax exemption proposals because exempting property from taxation shifts the revenue generating burden to taxable property. The committee was informed such an exemption would have the largest impact on the remaining taxable property in small cities and townships. The threat of potato warehouses and grain elevators becoming abandoned is not a significant enough threat to justify the ongoing cost of a property tax exemption. The committee was presented with survey data related to agricultural commodity storage structures in the state based on assessor and tax director knowledge of existing agricultural commodity storage structures.

Concerns were expressed by a number of local taxing district representatives, including concerns related to an unfair shift in tax burden associated with imposing the exemption, potential administrative difficulties that may arise related to determining personal use and family relations, and concerns regarding the extent of services supported by property taxes that would be received by property owners who would be exempt under the proposed exemption.

The committee reviewed research compiled by Legislative Council staff, including information regarding property classifications for property tax assessment purposes, definitions of each property classification, historical information related to the definition of agricultural property, information regarding the legislative history of the creation of and each amendment to the definition of agricultural property, and an overview of Attorney General opinions that provide analysis regarding the definition of agricultural property since the creation of the definition.

Committee members expressed mixed opinions regarding the desirability of providing a property tax exemption for privately owned elevators, warehouses, and other farm storage structures classified as commercial property and used for personal use. Some committee members noted the importance of considering the potential shift in tax burden that may result from changes to property tax calculations for agricultural storage facilities located on commercial land and recognizing the value of local services received by owners of agricultural storage structures located on commercial land. Other committee members expressed concerns regarding the inconsistent application of the farm structure exemption and application of the definition of agricultural property across taxing districts.

The committee reviewed a bill draft to amend the definition of "agricultural property" to include the storage of harvested crops until the crop is delivered to the first end-point user in the definition of the term "raising agricultural crops." The committee was informed the bill draft also would clarify which circumstances are appropriate to apply the seven statutory conditions in Section 57-02-01(1)(a) to determine whether unplatted property or property platted before March 30, 1981, is agricultural property. Committee members noted a desire to recommend legislation to address the concerns expressed by several interested parties throughout the interim and support for the consideration of a potential solution to the issue moving forward.

Committee Recommendation

The committee recommends Senate Bill No. 2039 to amend the definition of "agricultural property" to include the storage of harvested crops until the crop is delivered to the first end-point user as defined in the term "raising agricultural crops."

SPECIAL ASSESSMENTS AGAINST POLITICAL SUBDIVISION PROPERTY STUDY

Section 1 of Senate Bill No. 2359 (2023) directed a study of the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers. The study required analysis of the impact on taxpayers not governed by the political subdivision levying special assessments and exploration of forms of taxation policy that minimize the levying of special assessments in the form of taxes through political subdivisions.

Background

As introduced, Section 1 of Senate Bill No. 2359 would have expanded a political subdivision's ability to exceed its maximum property tax levy limits if a political subdivision was levying a tax to pay for land acquisition costs. The substantive portion of the bill was removed in the Senate, leaving the study language as the only remaining bill section.

Cities, recreation service districts, water resource districts, counties, water districts, and townships are authorized to levy special assessments for improvements. Several chapters of Title 40 govern improvements by special assessment in cities. Recreation service districts and counties glean authority to levy special assessments for improvements by adopting the provisions relating to cities by reference. Special assessment levy authority and related procedures for water resource districts are contained in Chapter 61-16.1 and special assessment levy authority and related procedures for water districts are contained in Chapter 61-35. Township special assessment levy authority is governed by an abbreviated statutory procedure in Chapter 58-18.

Purposes for Which Special Assessments are Imposed and the Manner in Which Special Assessments are Calculated

Pursuant to Section 40-22-01, a city may defray the expenses related to a number of improvements by levying special assessments. Improvement costs for which special assessments may be levied include costs for new water supply or sewage systems, or the extension or replacement of existing systems; improvements to a municipal street system, broadly ranging from paving and resurfacing streets to installing Christmas streetlighting decorations; improvements to boulevards or other public places and the maintenance of those improvements; the acquisition of land and easements for flood protection purposes and the construction of necessary works; and the acquisition or leasing of property and easements for parking lots, ramps, and garages and associated construction costs. A city also may establish a special assessment district pursuant to Chapter 40-22.1 for the promotion of business activity and new business development.

For a defined area outside the limits of an incorporated city, the board of county commissioners may initiate a special assessment district and levy special assessments for improvements. Pursuant to Section 11-11-55.1, a county is given all the authority and duties pertaining to special assessments which belong to cities in Chapters 40-22 through 40-28.

Townships may defray expenses of improvements through special assessment districts pursuant to Chapter 58-18. The board of township supervisors may create an improvement district upon petition of at least 60 percent of the property owners in a proposed improvement district area. Each improvement district must be of a size and form to include all properties the township board of supervisors believes will be benefited by the improvement project.

A recreation service district may levy special assessments to provide services, including police protection, sewer and water, garbage removal, and public road construction and maintenance. Pursuant to Section 11-28.2-04.1, a recreation service district is deemed to be a "municipality" for purposes of the special assessment provisions in Chapters 40-22 through 40-27.

Chapter 61-16.1 governs the administration of special assessments by water resource districts. Pursuant to Section 61-16.1-15, a water resource board may provide for the cost of construction, alteration, repair, operation, and maintenance of a water resource district project through issuance of improvement warrants or with funds raised by special assessments, a general tax levy, issuance of revenue bonds, or a combination of these methods.

Chapter 61-35 governs the administration of special assessments by water districts. Under Section 61-35-14, a water district board of directors may provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments and may issue improvement bonds in anticipation of the levy and collection of special assessments. Section 61-35-48 also allows a water district to defray the expense of certain improvements by special assessment.

Authority for a Political Subdivision to Levy Special Assessments Against Property Owned by a Political Subdivision

Political subdivisions with special assessment levy authority are statutorily authorized to levy special assessments against property owned by a political subdivision and to levy property taxes to pay for special assessments levied against a political subdivision's property without a levy limitation.

Sections 40-23-07 and 40-23.1-06 provide property of a political subdivision is not exempt from special assessments. Section 40-23-07 provides in pertinent part "[b]enefited property belonging to counties, cities, school districts, park districts, and townships is not exempt from [special] assessment, and such public corporations whose property is so assessed shall provide for the payment of such assessments, installments thereof and interest thereon, by the levy of taxes according to law." Section 40-23.1-06 is applicable to the alternative allocation of special assessments under Chapter 40-23.1 and contains language almost identical to the language in Section 40-23-07.

Sections 61-16.1-21 and 61-35-61 similarly provide political subdivisions are not exempt from special assessments levied by a water resource board or water district. Pursuant to these sections, political subdivisions are required to provide for the payment of these special assessments, special assessment installments, and interest by the levy of taxes according to law.

Section 57-15-41 allows a political subdivision to exceed its otherwise applicable maximum property tax levy limits if the political subdivision is levying tax to pay special assessments or to pay the debt service on bonds issued to prepay special assessments. Section 57-15-41 provides in pertinent part "no tax levy limitations provided by any statute of this state apply to tax levies by any county, city, school district, park district, or township for the purpose of paying any special assessments or paying debt service on bonds issued to prepay special assessments made in accordance with the provisions of title 40, against property owned by such county, city, school district, park district, or township." Section 57-15-41 also requires any surplus in the special assessment fund to be placed in the general fund of the political subdivision. Sections 61-16.1-21 (water resource board) and 61-35-61 (water district) similarly prohibit the application of statutory tax limitations to tax levies made by a political subdivision for the purpose of paying any special assessments levied under each corresponding chapter. As such, in the circumstance in which a political subdivision levies special assessments against property owned by a political subdivision, the political subdivision responsible for paying the special assessment may levy a general tax to raise revenue sufficient to pay the special assessment, without limitation.

Testimony and Committee Considerations

The committee received testimony from representatives of the Tax Department regarding property tax and special assessment data reported by the counties to the Tax Department. The committee was informed each county auditor is required to prepare and transmit to the Tax Commissioner a complete abstract of the county tax list, which includes the taxable valuation of property subject to general property tax, general and special property taxes levied by the state and its political subdivisions, taxes levied on classes of property, county mill rates, and ad valorem and special property taxes per capita. The information is compiled in a statistical report, which is published annually by the Tax Department and is available on the Tax Department's website. The committee also was informed the Tax Department does not have an auditing mechanism for political subdivision data reported to the Tax Department related to property tax levies.

The Tax Department also provided data related to taxes levied by taxing districts to pay for special assessments levied against the taxing district's property and examples of special assessments levied against property owned by political subdivisions. The committee was informed from tax year 2019 through 2023, counties levied $165,016 to pay special assessments levied against county property; townships levied $392,140 to pay special assessments levied against township property; cities levied $4,532,591 to pay special assessments and drain assessments levied against city property; park districts levied $70,142,726 to pay special assessments levied against park property; and school districts levied $28,699,134 to pay special assessments levied against school property.

The committee received testimony from a representative of the North Dakota Association of Counties regarding special assessments levied against county property. For tax year 2023, counties levied more than $25,000 to pay special assessments levied against county property and some counties pay for special assessments using the county's general fund rather than creating a separate mill levy for the amount owed. The committee was informed the issue of special assessments levied on political subdivision property is more of a city, city park district, and school district issue than a county issue.

The committee received information from a representative of the North Dakota League of Cities regarding the study. The committee received a general overview of the special assessment process and was informed cities are the main political subdivision using special assessments for improvements. If a political subdivision owns property within the special assessment district, the political subdivision is assessed a benefit and is responsible for paying the special assessments associated with the benefit. To pay the special assessment, the political subdivision may use revenue generated from a general property tax levy against all property in the political subdivision. The committee also was informed of the potential impact of exempting political subdivision property from special assessments. If a political subdivision owns property within a special assessment district and is not assessed a benefit to pay for the improvement, the other property in the special assessment district will be responsible for a higher share of the improvement cost.

The committee received information from a city representative regarding special assessments levied by the city against other political subdivision property. The committee was encouraged to treat political subdivision property in the same manner as other property in the special assessment district to ensure the special assessment burden is not disproportionately shifted to other property owners.

The committee was encouraged by a public school representative to re-evaluate the special assessment process as it relates to special assessments levied against political subdivision property. When a special assessment improvement district includes property owned by a political subdivision other than the political subdivision levying the special assessments, property taxes in the political subdivision in which the property is situated generally increase because the cost of the special assessments may be passed through to the taxpayers within the political subdivision. The committee was encouraged to explore policy considerations, including requiring special assessment agreements between political subdivisions or implementing a mechanism to empower counties and school districts to opt-out of or deny special assessment projects.

Committee members noted the importance of allocating costs for new infrastructure in cities to ensure the infrastructure cost associated with new school construction is appropriately allocated to the taxpayers in those school districts. The committee did not identify concerns relating to the ability of a political subdivision to levy special assessments against property owned by a political subdivision or ways in which the process could be improved.

Conclusions

The committee makes no recommendations regarding its study of the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers.

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-year period. The Legislative Management selected the interim Taxation Committee to review tax incentives during the 2023-24 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 of the economic development tax incentives listed in Section 54-35-26 to be analyzed within each 6-year period 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 Current 6-year Review Cycle

The following table provides an overview of the current 6-year economic development tax incentive review cycle:

Current 6-Year Review Cycle		
2021-22 Interim	**2023-24 Interim**	**2025-26 Interim**
Research expense credit	Biodiesel fuel credits	
Agricultural commodity processing facility investment credit	Internship program credit	
Seed capital investment credit	Workforce recruitment credit	
Soybean or canola crushing facility construction or retrofit credit	Coal severance and conversion tax exemptions	
Manufacturing automation equipment credit	Oil and gas gross production and oil extraction tax exemptions	
New or expanding business exemptions	Fuel tax refunds for certain users	
Manufacturing and recycling equipment sales tax exemption	Carbon dioxide capture and injection sales tax exemption	
New jobs credit from income tax withholding		

2023-24 Review of Incentives

The committee selected seven incentives to review from the list provided in Section 54-35-26. Although the committee initially selected a group of seven incentives, including the renaissance zone credits and exemptions, biodiesel fuel credits, internship program credit, angel fund investment credit, workforce recruitment credit, carbon dioxide capture and injection sales tax, and development or renewal area incentives, the committee reconsidered its selection. The committee determined it may be important to review energy-related incentives provided under Section 54-35-26 this interim, particularly in light of the potential impact of the initiated measure related to ad valorem property tax elimination. After reconsideration, the committee selected the biodiesel fuel credits, internship program credit, workforce recruitment credit, coal severance and conversion tax exemptions, oil and gas gross production and oil extraction tax exemptions, fuel tax refunds for certain users, and carbon dioxide capture and injection sales tax exemption 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 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. Committees selected to conduct the economic development tax incentives study in past interims have encountered difficulties accessing data related to use of the incentives selected for study and, in response to those difficulties, a past committee recommended legislation to provide access to the information, now codified at Section 57-01-02(17). This section authorizes disclosure of tax credits or deductions with five or fewer claimants upon request by the Chairman of the Legislative Management.

In response to the committee's and the Chairman of the Legislative Management's request for fiscal information pertaining to the economic development tax incentives selected for study this interim, the committee was informed the Tax Department was unwilling to disclose the number of claimants and amount claimed for the sales tax exemption selected for study because the exemption was claimed by five or fewer claimants. In reaching this conclusion, the Tax Department explained Section 57-01-02(17) references the disclosure of tax credits and deductions, but does not reference the disclosure of tax exemptions; thus, Tax Department policy prevents disclosure of the number of claimants and amount claimed for tax exemptions, including the carbon dioxide capture and injection sales and use tax exemption, if the exemptions were claimed by five or fewer claimants.

The committee expressed frustration regarding the difficulty of receiving information related to the utilization of the incentives selected for study with five claimants or fewer. The committee reviewed a bill draft to make clear the requirement under Section 57-01-02(17) for the Tax Commissioner to disclose the amount of a tax incentive claimed or earned by a taxpayer upon receiving a written request from the Chairman of the Legislative Management or the chairman of a standing committee of the Legislative Assembly applies to all tax incentives, including deductions, credits, and exemptions. The committee expressed hope that the proposed legislation, if enacted, would clarify issues when requesting data related to the utilization of all incentives selected for study, regardless of the number of claimants. The committee noted the importance of this data to fully evaluate the incentives as required in this study.

Biodiesel Fuel Credits

Explanation of the Credits

A variety of income tax credits are available to taxpayers for the production or sale of biodiesel fuel. Section 57-38-30.6 provides for a biodiesel fuel production facility construction or retrofit income tax credit in the amount of 10 percent per year for 5 years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or to construct a new facility in this state for the purpose of producing or blending diesel fuel containing at least 2 percent biodiesel fuel or green diesel fuel by volume. Lifetime credit limits are capped at $250,000 per taxpayer and credits exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years.

Section 57-38-01.22 provides for an income tax credit for blending biodiesel fuel or green diesel fuel and is available to a taxpayer licensed by the Tax Commissioner as a fuel supplier who blends biodiesel fuel or green diesel fuel in this state. The amount of the credit is equal to 5 cents per gallon of biodiesel fuel or green diesel fuel of at least a 5 percent blend. Any credit amount exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years.

Section 57-38-01.23 provides for an income tax credit for adapting a facility to allow for sales of biodiesel or green diesel fuel and is available to a taxpayer licensed by the Tax Commissioner as a fuel retailer. The amount of the credit is equal to 10 percent per year for 5 years of the direct costs incurred by the fuel retailer to adapt or add equipment to a facility to enable the facility to sell diesel fuel containing at least 2 percent biodiesel fuel or green diesel fuel by volume. 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 $50,000 in credits over any combination of taxable years.

Perceived Goals in Creating or Altering the Credits

Provisions relating to biodiesel credits were enacted in 2003 and pertained to credits for producing or blending diesel fuel. The perceived goal of the Legislative Assembly in creating the credit was to encourage the development of biodiesel production or blending facilities. It was noted the credit would assist in reducing dependence on foreign energy sources and dependence on farm subsidies because the credit likely would result in increased demand for the state's soybean crops. The credit was viewed as a tool to help stimulate the development of a new industry in North Dakota. The estimated fiscal effect of the corporate income tax credit for biodiesel production and blending equipment costs could not be determined during the 2003 legislative session. The credit was expanded in 2009 to apply to costs incurred to construct or retrofit a facility for the purposes of producing crushed soybeans or canola, and expanded in 2011 to apply to costs incurred to construct or retrofit a facility for the purpose of producing or blending diesel fuel containing at least 2 percent green diesel fuel by volume.

Additional biodiesel credits were added in 2005 to provide for an income tax credit to biodiesel blenders, in the amount of 5 cents per gallon of biodiesel fuel of at least a 5 percent blend, and a credit to biodiesel retailers equal to 10 percent per year for 5 years of the direct costs incurred by the fuel retailer to adapt or add equipment to enable a facility to sell diesel fuel containing at least 2 percent biodiesel fuel by volume. The perceived goal of the Legislative Assembly in creating these credits was to incentivize development of the renewable fuels industry in North Dakota. Enactment of the credits was viewed as a significant step toward biodiesel production in this state. Both credits were expanded in 2011 to apply to the blending or sale of green diesel fuel in addition to biodiesel fuel. Credit provisions were modified in 2013 to clarify that a licensed fuel supplier must blend biodiesel fuel or green diesel fuel in this state to qualify for the credit.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the biodiesel fuel credits, including the number and dollar amount of credits claimed from tax year 2018 through 2022. The data indicated the biodiesel fuel blending credit has been claimed by 16 corporate income taxpayers and 20 individual income taxpayers over the 5-year period, with credits totaling over $3.8 million and $526,000, respectively. The biodiesel fuel equipment costs credit has been claimed by seven individual income taxpayers over the 5-year period, with credits totaling over $88,000. The biodiesel facility construction credit has not been claimed over the 5-year period. The committee also received testimony in support of retaining the credits from representatives of Petro Serve USA, Archer Daniels Midland Company, Clean Fuels Alliance America, North Dakota Soybean Growers Association, Northern Canola Growers Association, and the Economic Development Association of North Dakota.

A representative from Petro Serve USA, which owns and operates 33 convenience stores across North Dakota and Minnesota and collected and paid $7,061,172 in state gas and fuel taxes in this state in the last year, provided testimony in support of retaining the credits. The testimony indicated the biodiesel fuel blending credit has helped create jobs on family farms and employment opportunities on rural main streets in North Dakota. Targeted tax incentives, like the biodiesel fuel credits, along with product education, may help the soy industry to grow to be more effective and self-sufficient.

Representatives from Archer Daniels Midland Company, which employs approximately 450 people in 17 communities across the state and conducts $2 billion worth of business with North Dakota-based vendors, including farmers, provided testimony in support of retaining the credits. The committee was informed Archer Daniels Midland Company plays an important role in achieving the goals of the biodiesel fuel credits by increasing the demand for crops grown in North Dakota and promoting energy independence by producing biodiesel fuel in the state. The committee was encouraged to consider making small changes to the existing biodiesel fuel credits, including allowing the credit to apply to a company's entire North Dakota unitary group rather than only the company's legal entity. The committee also was encouraged to extend the expiration of the credit from 5 to 10 years. In addition, because the longstanding federal biofuel blenders tax credit is set to expire at the end of 2024 and will be replaced by a carbon intensity-based producer tax credit, the committee was informed it may be beneficial to change the state credit to a similar producer tax credit.

A representative of Clean Fuels Alliance America provided testimony in support of retaining the credits. The testimony indicated biodiesel and renewable fuels reduce dependence on finite fossil fuels and lower greenhouse emissions. Additionally, the production and use of biodiesel and renewable diesel can bolster the state's economy. In North Dakota, the biodiesel and renewable diesel industry provides $781 million in economic activity, over 2,000 jobs, and more than $111 million in wages. According to the testimony, if the state promotes renewable fuels, the state can attract new investments and technologies and position North Dakota as a leader in the renewable energy sector.

The committee also was informed the credits are important to the soybean and canola industries. Testimony provided by a representative of the North Dakota Soybean Growers Association indicated biodiesel fuel is made through the transesterification of vegetable oils and animal fats, such as soybean oil, and typically is blended with petroleum diesel. Soybean oil comprises 44 percent of feedstock inputs to United States biodiesel, renewable diesel, and other biofuel production. In addition, the testimony indicated the biodiesel fuel production facility construction tax credit helps drive investment in the construction of facilities in the state. For example, the committee was made aware of a proposal to build a biodiesel fuel facility near Grand Forks, which would benefit from the biodiesel fuel production facility construction tax credit.

Representatives from the Northern Canola Growers Association also testified in support of retaining the state biodiesel fuel credits, and indicated a change from a blenders tax credit to a producers tax credit may be positive for the biodiesel fuel industry in the state. North Dakota canola growers account for 80 to 85 percent of canola production in the nation, and the industry generates 5,500 jobs with $500 million in labor income and $50 million in state and local government revenue.

The committee did not receive testimony in support of eliminating the biodiesel fuel credits. The committee did not identify any concerns relating to the credits or ways in which the credits could be improved.

Conclusions

The committee makes no recommendation regarding the biodiesel fuel credits.

Internship Program Credit

Explanation of the Credit

Section 57-38-01.24 provides for an internship program income tax credit. The credit is available to income taxpayers that are employers in this state and have a qualifying internship program. A qualifying internship program must be located in this state and requires the taxpayer to supervise and evaluate an intern enrolled in an institution of higher education or in a vocational technical education program in North Dakota and who is seeking a degree or certification in a field closely related to the work being undertaken during the internship. The internship also must provide academic credit or count toward the completion of a vocational technical education program being pursued by the intern. The amount of the credit is equal to 10 percent of the stipend or salary paid to an intern employed by the taxpayer. A taxpayer may claim no more than $3,000 in credits over any combination of taxable years and may claim a credit for up to five interns employed at the same time. 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 and passed through to the entity's partners, shareholders, or members in proportion to their respective ownership interests in the passthrough entity.

Perceived Goals in Creating or Altering the Credit

The internship program credit was enacted with the passage of House Bill No. 1018 (2007). The perceived goal of the Legislative Assembly in creating the credit was to encourage businesses to establish internship programs that potentially could lead to the retention of more North Dakota college graduates in the North Dakota workforce. The only changes made to the credit following its enactment were technical in nature and related to the elimination of the optional long-form filing method in 2009, and the streamlining of the description of a passthrough entity in 2013.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the internship program credit, including the number and dollar amount of credits claimed from tax year 2018 through 2022. The data indicated the credit has been claimed by 4 corporate income taxpayers and 139 individual income taxpayers over the 5-year period, with credits totaling approximately $5,600 and $42,000, respectively.

The committee received testimony in support of retaining the credit from representatives of the Economic Development Association of North Dakota. A representative of the Economic Development Association of North Dakota indicated the internship program credit is of particular interest to the association because workforce is the primary issue preventing growth for companies in North Dakota. The testimony contended the internship program credit is an essential tool for attracting new employees to the state. The committee was encouraged to consider modifying the limitations of the internship credit to encourage more internship opportunities in the state.

The committee also received information from a representative of the Workforce Development Division of the Department of Commerce and the Workforce Development Council, regarding other state-administered programs that may have complimentary or duplicative effects to the internship program credit. The committee received information regarding the operation intern program, which is a state-funded program that provides North Dakota businesses up to $4,000 in matching funds for each internship or apprenticeship, with a limit of five interns or apprentices per program year. The funding may be used for the intern or apprentice's wage, or for items needed for interns to perform their work duties, such as tools and equipment, training, or tuition reimbursement. The committee also received information regarding the department's find the good life in North Dakota program, which is a comprehensive talent attraction initiative launched in June 2022, which uses targeted marketing and a software system that allows the department to collect information from job seekers, connect job seekers with communities of interest and employers in their field, and track the progress of the job seekers as they explore opportunities in the state.

The committee did not receive testimony in support of eliminating the internship program 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 internship program credit.

Workforce Recruitment Credit

Explanation of the Credit

Section 57-38-01.25 provides for a workforce recruitment credit. The income tax credit is available to income taxpayers that are employers in this state and have incurred costs to recruit and hire employees for hard-to-fill employment positions in North Dakota. The credit is equal to 5 percent of the first 12 months of salary paid by the employer to an employee hired to fill a hard-to-fill position for which the annual salary meets or exceeds the state average wage. For purposes of the workforce recruitment credit, the state average wage is equal to 125 percent of the state average wage amount published by Job Service North Dakota at the time the employee is hired.

The credit may be claimed in the tax year following the employee's completion of the first 12 consecutive months of employment. The amount of credit exceeding a taxpayer's liability may be carried forward to each of the 4 succeeding taxable years. A "hard-to-fill employment position" is defined as a position that requires an employer to use extraordinary recruitment methods and a position an employer has been unsuccessful in filling for 6 consecutive months. An employer must use a fee-based recruiter, advertise the position in a publication directed at a particular profession and on a fee-based employment website, and pay a signing bonus, moving expenses, or nontypical fringe benefits to meet the requirement of having used extraordinary recruitment methods.

Perceived Goals in Creating or Altering the Credit

The workforce recruitment credit was created with the passage of House Bill No. 1018 (2007). The perceived goal of the Legislative Assembly in creating the credit was to address the shortage of workers in North Dakota and incentivize employers in this state to use extraordinary recruitment methods to fill high-paying, hard-to-fill positions. The credit was seen as a tool to help stimulate an influx of workers into the state and promote increased business and economic development. The only changes made to the credit following its enactment were technical in nature and related to the elimination of the optional long-form filing method, in 2009, and the streamlining of the description of a passthrough entity, in 2013.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the workforce recruitment credit, including the number and dollar amount of credits claimed from tax year 2018 through 2022. The data indicated the credit has been claimed by 11 individual income taxpayers over the 5-year period, with credits totaling less than $5,000.

The committee received testimony in support of retaining the credit from representatives of the Economic Development Association of North Dakota. A representative of the Economic Development Association of North Dakota indicated the workforce recruitment program credit is of particular interest to the association because workforce is the primary issue preventing growth for companies in North Dakota. The testimony contended the workforce recruitment credit is an essential tool for attracting new employees to the state.

The committee also received information from a representative of the Workforce Development Division of the Department of Commerce and the Workforce Development Council, regarding other state-administered programs that may have complimentary or duplicative effects to the workforce recruitment credit. The committee received information regarding the operation intern program, which is a state-funded program that provides North Dakota businesses up to $4,000 in matching funds for each internship or apprenticeship, with a limit of five interns or apprentices per program year. The funding may be used for the intern or apprentice's wage, or for items needed for interns to perform their work duties, such as tools and equipment, training, or tuition reimbursement. The committee also received information regarding the department's find the good life in North Dakota program, which is a comprehensive talent attraction initiative launched in June 2022 which uses targeted marketing and a software system that allows the department to collect information from job seekers, connect job seekers with communities of interest and employers in their field, and track the progress of the job seekers as they explore opportunities in the state.

The committee did not receive testimony in support of eliminating the workforce recruitment 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 workforce recruitment credit.

Coal Severance and Conversion Tax Exemptions

Imposition of Coal Severance Tax

The coal severance tax is imposed on the act of removing coal from the earth pursuant to Chapter 57-61. The tax is applied to coal severed for sale or industrial purposes, subject to certain exceptions. The tax is in lieu of both the sales and use taxes on coal and the property tax on minerals in the earth. The tax is applied at a rate of 37.5 cents per ton. An additional 2 cents per ton tax is levied for the lignite research fund.

Explanation of Coal Severance Tax Exemptions

Coal used to heat buildings in the state, by the state or any political subdivision of the state, and in agricultural processing facilities in the state or adjacent states is exempt from coal severance tax. A 50 percent reduction of the 37.5 cent tax is allowed for coal burned in a cogeneration facility designed to use renewable resources to generate 10 percent or more of its energy output. A county may grant a partial or complete exemption from the county's 70 percent portion of the 37.5 cent tax for coal that is shipped out of state. For taxable production beginning after June 30, 2021, a county may grant a partial or complete exemption from the county's 70 percent portion of the coal severance tax for up to 5 years, not to extend past June 30, 2026.

Perceived Goals in Creating or Altering Coal Severance Tax Exemptions

The exemption provided in Section 57-61-01.1, for coal used to heat buildings in the state and coal used by the state or any political subdivision of the state, was enacted by Senate Bill No. 2239 (1981). The perceived goal of the Legislative Assembly in creating the exemption was to encourage the use of coal by the state and political subdivisions and the use of coal for heating purposes to decrease the state's dependence on other energy sources. The exemption provided in Section 57-61-01.4, for coal used in agricultural processing facilities in the state or adjacent states, was enacted by House Bill No. 1470 (1985). As originally enacted, the exemption included an exemption for coal used in sugar beet refining plants. The perceived goal of the Legislative Assembly in creating the exemption was to make lignite coal more competitive with coal from Montana and Wyoming for use in agricultural processing facilities and sugar beet refining plants. Proponents of the exemption noted the loss of coal contracts was having a negative impact on employment in coal-producing areas of the state. The exemption was expanded in 2009 to include coal purchased for improvement through beneficiation which is then used in an agricultural commodity processing facility or a facility owned by the state or a political subdivision.

The 50 percent coal severance tax reduction provided in Section 57-61-01.3, for coal burned in a cogeneration facility designed to use renewable resources to generate 10 percent or more of its energy output, was enacted by Senate Bill No. 2449 (1985). The perceived goal of the Legislative Assembly in providing the tax reduction was to grow the export market for North Dakota coal.

Section 57-61-01.7, which allows a county to grant a partial or complete exemption from the county's 70 percent portion of the severance tax for coal that is shipped out of state, was enacted by House Bill No. 1362 (1993). As originally enacted, the exemption allowed a county to grant a partial or complete exemption from the county's 35 percent portion of the severance tax for coal that is shipped out of state. The perceived goal of the Legislative Assembly in creating the exemption was to prevent the potential closure of a local mine by reducing the tax on coal the mine shipped out of state.

The severance tax exemption for the first 1 million tons of coal per year used as a feedstock by a coal processing facility that utilizes coal as a feedstock in this state under Section 57-61-01.9 was enacted by House Bill No. 1511 (2023). The perceived goal of the Legislative Assembly in providing the exemption was to incentivize companies that process coal as a feedstock for their end products to use North Dakota coal. It was noted the exemption will support and incentivize new uses for North Dakota coal, which will allow the lignite industry to compete in a different market.

The option for a county to exempt up to 70 percent of the coal severance tax for up to 5 years, not to extend past June 30, 2026, under Section 57-61-01 was enacted by House Bill No. 1412 (2021). The perceived goal of the Legislative Assembly when enacting this legislation was to provide an opportunity for counties to provide temporary tax relief to the lignite industry to provide economic stability for the lignite industry. It was noted at the time House Bill No. 1412 was introduced, the North Dakota lignite industry produced more than $5 billion in regional economic impact, over 13,000 direct and indirect jobs, and $125 million in annual state and local tax revenues.

Imposition of Coal Conversion Tax

The coal conversion tax is imposed in lieu of property taxes on the operator of each coal conversion facility pursuant to Chapter 57-60. The land on which the facility is located remains subject to property taxes. The privilege tax on coal conversion facilities is applied based on the type of coal conversion facility. Electrical generating plants are subject to two separate levies. One levy is a .65 mill times 60 percent of installed capacity times the number of hours in the taxable period, and the other levy is .25 mill per kilowatt-hour of electricity produced for sale. Installed capacity means the number of kilowatts a power unit can produce as displayed on the nameplate assigned to the turbine of the power unit. Coal gasification plants are subject to a monthly tax of 13.5 cents per thousand cubic feet of synthetic natural gas produced for sale, or 2 percent of gross receipts, whichever is greater. Plants converting coal to products other than gas are taxed at a rate of 2 percent of gross receipts. Coal beneficiation plants are taxed at a rate of 20 cents per ton of beneficiated coal produced for sale, or 1.25 percent of gross receipts, whichever is greater.

Explanation of Coal Conversion Tax Exemptions

For taxable production beginning after June 30, 2021, through June 30, 2026, with limited exceptions, a coal conversion facility is exempt from the state's 85 percent share of the coal conversion privilege tax for 5 years. In lieu of paying the general fund's 85 percent share of the tax, coal conversion plant operators are required to pay a lignite research tax, which is equal to 85 percent of the coal conversion tax before the temporary exemption, multiplied by 5 percent. Additionally, for the 5-year period, a county may grant a partial or complete exemption from the county's 15 percent share of the coal conversion privilege tax for up to 5 years, not to extend past June 30, 2026.

In addition to the temporary relief available to coal conversion facilities, various types of plants and production receive a full or partial exemption from coal conversion tax. Beneficiated coal produced in excess of 80 percent of a plant's design capacity or produced for use within a coal conversion facility is exempt from tax. A new or repowered coal-burning electrical generation plant is exempt from the general fund portion of both levies for 5 years. All new coal conversion plants other than electrical generating plants are exempt from the general fund's 85 percent share of the tax for 5 years. A coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions during a taxable period receives a 20 percent reduction in the general fund share of the tax, and an additional reduction of 1 percent for every additional 2 percentage points of carbon dioxide emissions captured, up to a 50 percent reduction for 80 percent or more capture.

The reduction is available for 10 years from the date of the first capture or from the date the facility is eligible to receive the credit. A conversion facility that met the carbon dioxide capture requirements before January 1, 2017, is not eligible for the reduction.

Perceived Goals in Creating or Altering the Coal Conversion Tax Exemptions

The exemption provided in Section 57-60-02 for beneficiated coal produced in excess of 80 percent of a plant's design capacity or produced for use within a coal conversion facility was enacted by House Bill No. 1613 (1989). As originally enacted, the exemption only applied to beneficiated coal produced in excess of 80 percent of the plant's design capacity. The perceived goal of the Legislative Assembly in providing the exemption was to incentivize developers to consider beneficiation projects to help maintain existing coal jobs and create future jobs. The exemption was viewed as providing environmental as well as economic benefits. The exemption was expanded in 2015 to include beneficiated coal produced for use within a coal conversion facility.

The 5-year exemption provided in Section 57-60-02 for the general fund's 85 percent share of tax for new coal conversion plants other than electrical generating plants was enacted by House Bill No. 1574 (1985). As originally enacted, the exemption exempted 65 percent of the tax imposed on the plant for 5 years with the county retaining the ability to grant a full or partial exemption on the remainder of the tax for the same period. The perceived goal of the Legislative Assembly in providing the exemption was to encourage the construction of new coal conversion plants. The exemption was amended in 2001 to reflect changes to the county's portion of the tax, reduced from 35 to 15 percent, for purposes of identifying the amount of tax the county could exempt. House Bill No. 1412 (2021) temporarily removed a county's ability to exempt its share of the coal conversion tax specific to this exemption through June 30, 2026. In lieu of the more specific exemption authority, House Bill No. 1412 provided a county with broader authority to exempt the county's portion of all coal severance tax from coal conversion facilities through June 30, 2026, after which the county's more specific exemption authority related to this exemption will be reinstated.

The 5-year exemption provided in Section 57-60-02 for a new or repowered coal-burning electrical generation plant was enacted by House Bill No. 1606 (1991). As originally enacted, the exemption exempted 65 percent of the tax imposed on new electrical generating plants for 5 years with the county retaining the ability to grant a full or partial exemption on the remainder of tax for the same period. The perceived goal of the Legislative Assembly in providing the exemption was to promote economic development by providing the same tax incentive to electrical generation plants as was provided to coal conversion facilities. It was noted each 400-megawatt plant creates 1,000 direct and indirect jobs and $72 million in business activity. The exemption was amended several times following its enactment. The exemption was amended in 2001 to increase the exemption from 65 percent to 85 percent of the tax imposed and reflect changes to the county's portion of the tax, reduced from 35 to 15 percent, for purposes of identifying the amount of tax the county could exempt. House Bill No. 1412 (2021) temporarily removed a county's ability to exempt its share of the coal conversion tax specific to this exemption through June 30, 2026. In lieu of the more specific exemption authority, House Bill No. 1412 provided a county with broader authority to exempt the county's portion of all coal severance tax from coal conversion facilities through June 30, 2026, after which the county's more specific exemption authority related to this exemption will be reinstated.

The reduction provided in Section 57-60-02.1 for a coal conversion facility that captures carbon dioxide emissions was enacted by Senate Bill No. 2221 (2009). The perceived goal of the Legislative Assembly in providing the tax reduction was to encourage the capture and reduction of carbon dioxide emissions. The tax reduction was amended in 2017 to disqualify coal conversion facilities that met carbon dioxide capture requirements before January 1, 2017, from qualifying for the tax reduction.

The 5-year exemption provided in Section 57-60-02.2 for the general fund's 85 percent share of tax for coal conversion plants and imposition of a temporary lignite research tax in lieu of the state's portion of tax imposed on coal conversion facilities was enacted by House Bill No. 1412 (2021) and is effective through June 30, 2026. House Bill No. 1412 also provided a county the option of exempting the county's portion of the coal conversion tax. The perceived goal of the Legislative Assembly when enacting this legislation was to protect and preserve the lignite industry in the state by providing temporary tax relief from coal conversion taxes for lignite plants in need of economic relief due to the changing fuel markets and certain federal policies and regulations. It was noted the exemption will provide economic stability for the lignite industry as the industry develops additional uses for lignite, including carbon capture. At the time House Bill No. 1412 was introduced, it was noted the North Dakota lignite industry produced more than $5 billion in regional economic impact, over 13,000 direct and indirect jobs, and $125 million in annual state and local tax revenues. It was further noted the seven lignite power plants in North Dakota produced a total of 4,000 megawatts of electricity per year and one 1,000-megawatt lignite power plant provided over $32 million in annual state and local tax revenue.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the coal severance and conversion tax exemptions, including the dollar amount of exemptions claimed in fiscal years 2019 through 2023. The data indicated the total amount of coal severance tax exemptions claimed within the last 5 fiscal years was approximately $429,000 and the total amount of coal conversion tax exemptions claimed within the last 5 fiscal years was approximately $50.9 million. The total amount of coal severance and conversion tax exemptions claimed within the last 5 fiscal years was approximately $51.3 million. The committee also received testimony in support of retaining the exemptions from representatives of the Lignite Energy Council and the Economic Development Association of North Dakota.

The committee received testimony from a representative of the Lignite Energy Council regarding the status of the coal industry in the state and the exemptions selected for study. The committee was informed the lignite industry supports approximately 13,000 direct and indirect jobs, contributes $100 million in state and local tax revenue, and plays a crucial role in powering a reliable electrical grid. However, concerns exist regarding the impact of recent United States Environmental Protection Agency rules on the reliability of the electrical grid. Though most energy policy is set at the federal level, industry representatives believe the state could help the lignite industry by advocating for positive regulatory outcomes and analyzing taxes and incentives to enhance economic stability for the industry. The testimony indicated the lignite industry invested the tax relief provided during the 2021 legislative session in the future of the lignite industry by developing additional uses for lignite, including carbon capture.

The committee did not receive testimony in support of eliminating the coal conversion or coal severance exemptions. The committee did not identify any concerns relating to the exemptions or ways in which the exemptions could be improved.

Conclusions

The committee makes no recommendation regarding the coal severance and conversion tax exemptions.

Oil and Gas Gross Production and Oil Extraction Tax Exemptions

Imposition of Oil and Gas Gross Production Tax

Pursuant to Chapter 57-51, a gross production tax of 5 percent of the gross value at the well is levied upon oil produced in the state. The gross production tax levied upon gas produced in the state is calculated by multiplying taxable production by an annually adjusted flat rate per thousand cubic feet.

Explanation of Gross Production Tax Exemptions

Production exempt from gross production tax includes:

- Gas used on the lease for production purposes and any royalty interest from gas produced from a state, federal, or municipal holding, or from an interest held by an organized Indian tribe.
- Shallow gas produced during the first 24 months of production following the date gas was first sold from a shallow gas well and gas produced from a shallow gas well during testing, but prior to well completion, or during connection to a pipeline.
- Gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well.
- Gas collected at the well site by a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption, which are exempt for a period of 2 years and 30 days from the time of first production.

Perceived Goals in Creating and Altering Gross Production Tax Exemptions

The exemption provided in Section 57-51-02 for gas used on the lease for production purposes and any royalty interest from gas produced from a state, federal, or municipal holding, or from an interest held by an organized Indian tribe was enacted by Senate Bill No. 41 (1953). The exemption provided in Section 57-51-02.4, which exempts shallow gas produced from a new or recompleted shallow gas well during the first 24 months of production, was enacted by House Bill No. 1145 (2003). The perceived goal of the Legislative Assembly in creating the exemption was to attract investment in the state's natural resources by encouraging gas well production. The exemption provided in Section 57-51-02.5, for gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well, was enacted by Senate Bill No. 2413 (2009). The perceived goal of the Legislative Assembly in creating the exemption was to reduce flaring and generate electricity from gas that might otherwise be wasted. The limited duration exemption provided in Section 57-51-02.6 for gas collected at the well site by a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption was enacted by House Bill No. 1134 (2013). The perceived goal of the Legislative Assembly in creating the exemption was to encourage the use of gas that might otherwise be flared.

Imposition of Oil Extraction Tax

The oil extraction tax is levied on the extraction of oil from the earth pursuant to Chapter 57-51.1. As originally enacted, the tax rate was established at 6.5 percent of the gross value of oil at the well, subject to full or partial exemptions. Beginning January 1, 2016, the oil extraction tax rate was reduced from 6.5 to 5 percent and was subject to change depending on the average price of a barrel of crude oil from January 1, 2016, through July 1, 2023. During this time, if the average price of a barrel of crude oil exceeded the trigger price of $90 for 3 consecutive months, the rate increased to 6 percent on all oil extracted, and the rate remained at 6 percent until the average price of a barrel of crude oil fell below the trigger price of $90 for 3 consecutive months, at which time the rate reverted to 5 percent on all oil extracted. Beginning July 1, 2023, the Legislative Assembly removed the provisions that provided an increased tax rate triggered by an increase in the average price of a barrel of crude oil for all wells, except those located within the exterior boundaries of a reservation, located on trust properties outside reservation boundaries, or straddle wells located on reservation trust land. For these particular wells, a tribe is permitted to make an irrevocable election to opt-out of the oil extraction tax rate triggered by an increase in the average price of a barrel of crude oil by providing written notice to the Tax Commissioner.

Explanation of Oil Extraction Tax Exemptions

Production exempt from oil extraction tax includes:

- Liquids produced from a collection system employed to avoid flaring, which are exempt for a period of 2 years and 30 days from the time of first production.
- Production that is exempt from the gross production tax imposed by Chapter 57-51.
- Production from stripper well property or an individual stripper well.
- Incremental production from a secondary recovery project for 5 years from the date incremental production begins.
- Incremental production from a tertiary recovery project for 10 years from the date incremental production begins, or 20 years from the date incremental production begins or certified injection begins if the project injects more than 50 percent carbon dioxide produced from coal and is located outside the Bakken or Three Forks Formations.
- Incremental production from a tertiary recovery project from a horizontal well drilled and completed within the Bakken and Three Forks Formations for 5 years from the date incremental production begins, or 10 years from the date incremental production begins or certified injection begins if the project injects more than 50 percent carbon dioxide produced from coal and is located within the Bakken or Three Forks Formations.

The first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation are subject to a partial exemption in the form of a reduced tax rate of 2 percent on the gross value at the well of oil extracted.

A reduced tax rate of 2 percent on the gross value at the well applies to oil extracted from a certified restimulation well, as defined in Section 57-15.1-01, for the first 75,000 barrels of oil extracted or 18 months, whichever occurs first. The reduced rate applies to all certified restimulation wells, except those located within the exterior boundaries of a reservation, located on trust properties outside reservation boundaries, or straddle wells located on reservation trust land. However, for these particular wells, a tribe may make an irrevocable election to opt-in to the tax rate reduction by providing written notice to the Tax Commissioner.

Perceived Goals in Creating and Altering Oil Extraction Tax Exemptions

The limited duration exemption provided in Section 57-51.1-02.1 for liquids produced from a collection system employed to avoid flaring was enacted by House Bill No. 1134 (2013). The perceived goal of the Legislative Assembly in creating the exemption was to encourage the use of gas that might otherwise be flared. The exemption provided in Section 57-51.1-03(1) for oil that is exempt from the gross production tax imposed by Chapter 57-51, and the exemption provided in Section 57-51.1-03(2) for production from stripper well property or an individual stripper well, were enacted by Initiated Measure No. 6, which was approved by the voters at the general election held on November 4, 1980. The exemptions provided in Section 57-51.1-03(3) for incremental oil produced from secondary and tertiary recovery projects were enacted by House Bill No. 1414 (1991). The perceived goal of the Legislative Assembly in creating the exemption was to provide an exemption to encourage the enhanced recovery of oil that might not otherwise be produced. The enhanced oil recovery exemptions were amended several times following their enactment, including in 2009 to provide an exemption for incremental production from a tertiary recovery project that uses carbon dioxide, and in 2019 to provide an exemption for incremental production from a tertiary recovery project that uses carbon dioxide produced from coal.

The partial exemption in the form of a reduced 2 percent tax rate on the gross value at the well of the first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations, as provided in Section 57-51.1-03(4), was enacted by Senate Bill No. 2397 (2007). The perceived goal of the Legislative Assembly in creating the exemption was to foster a competitive tax environment to encourage industry to continue to develop oil resources in the state. The exemption was amended in 2009 to cap the amount of oil exempted per well at 75,000 barrels of oil produced or the first $4.5 million of gross value at the well, whichever is less, and to include additional parameters regarding application of the rate reduction. However, the provisions added in 2009 expired, effective July 1, 2013.

The partial exemption in the form of a reduced 2 percent tax rate on the gross value at the well for oil extracted from a certified restimulation well for the first 75,000 barrels of oil extracted or 18 months, whichever occurs first, as provided in Section 57-51.1-03(5), was enacted in House Bill No. 1427 (2023). The perceived goal of the Legislative Assembly in creating the partial exemption was to increase the recoverable barrels of oil in the state, provide an incentive to oil companies to invest in older wells, and positively impact the environment, including through continued use of existing infrastructure, wellsite footprints, and natural gas pipelines.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the oil and gas gross production and oil extraction tax exemptions, including the dollar amount of exemptions claimed in fiscal years 2019 through 2023. The data indicated the total amount of oil and gas gross production tax exemptions claimed within the last 5 fiscal years was approximately $345 million and the total amount of oil extraction tax exemptions claimed within the last 5 fiscal years was approximately $917 million. The committee also received testimony in support of retaining the exemptions from representatives of the Department of Mineral Resources, the North Dakota Petroleum Council, and the Economic Development Association of North Dakota.

The committee received information from a representative of the Department of Mineral Resources regarding the oil and gas production outlook for the state. The testimony indicated, as of January 2024, 38 drilling rigs were operating in the state and the state produces about 1.1 million barrels of oil per day. The statewide gas capture rate in 2023 was 95 percent. The committee also received an overview of the next 10 years of oil and gas development in the state, including the use of enhanced oil recovery.

The committee received information from a representative of the Department of Mineral Resources regarding the exemptions selected for study. The committee was informed approximately 160 million cubic feet of gas is issued per day on lease to provide processed heat, which is exempt from the gross production tax under Section 57-51-02. Two city landfills have claimed the gross production tax exemption for shallow gas through the use of methane recovery wells to capture methane to send to industrial boilers and at least three counties have the potential to produce shallow gas which may qualify for the shallow gas exemption under Section 57-51-02.4. According to the testimony, the oil extraction tax exemption under Section 57-51.1-03(2) for production from stripper wells helps stripper wells remain economical and supports, on average, 1 to 1.2 jobs while paying royalties and production tax for the life of the well. In addition to the projects that qualify for an enhanced oil recovery exemption under Section 57-51.1-03(3), there also are several pilot projects underway that may become eligible for an exemption. If additional carbon dioxide is made available in the state, the number of claimants for the enhanced oil recovery exemptions that require use of carbon dioxide likely will increase. The testimony indicated the exemption for incremental production from a tertiary recovery project from a horizontal well under Section 57-51.1-03(3) is adequate because the optimum project is about 12 square miles and takes about 3.5 years to process. Approximately 2.6 percent of permitted drilling wells are non-Bakken wells, which may be eligible to claim the partial exemption under Section 57-51.1-03(4). The partial exemption under Section 57-51.1-03(5) is claimed on three restimulation wells, and hundreds of restimulation wells may be forthcoming. Three projects are actively capturing and injecting carbon dioxide and may have taken advantage of the sales and use tax exemption under Sections 57-39.2-04.14 and 57-40.2-03.3. Dozens of similar projects are anticipated, which may cost an estimated $1 billion to $2 billion for each system to become operational.

The committee received testimony from a representative of the North Dakota Petroleum Council regarding the oil industry and in support of the incentives selected for study. The committee was informed that in April 2024, the statewide gas capture rate was 95 percent, approximately 1.24 million barrels of oil were produced per day, and there were 18,962 producing wells. According to the testimony, since 2008, $26 billion in tax revenue has been generated from oil production, which accounts for 51 percent of all taxes collected in North Dakota. The use of enhanced oil recovery methods could generate an additional 3.2 billion to 7 billion barrels of recoverable oil with the potential to store 1.1 billion to 3.2 billion tonnes of carbon dioxide.

The committee did not receive testimony in support of eliminating the oil and gas gross production and oil extraction tax 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 oil and gas gross production and oil extraction tax exemptions.

Fuel Tax Refunds

Imposition of Fuel Tax

A 23 cent per gallon tax is imposed on motor vehicle fuels, which includes gasoline and gasohol; and on special fuels, which includes diesel, kerosene, compressed natural gas, liquefied petroleum gas, and other fuels except gasoline, gasohol, or aviation fuels pursuant to Chapters 57-43.1 and 57-43.2. Dyed diesel fuel and special fuel other than diesel fuel which is sold for use in unlicensed machinery used for agricultural, industrial, or railroad purposes is exempt from the 23 cent per gallon special fuels tax and is instead subject to a 4 cent per gallon excise tax, with the exception of propane, which is subject to an excise tax of 2 percent. An 8 cent per gallon tax is imposed on aviation fuels pursuant to Chapter 57-43.3. Tax remitted by certain users and on fuel purchased for specified uses is subject to refund.

Explanation of Fuel Refunds for Specified Users

The operator of an emergency medical services operation who purchases motor vehicle fuel, special fuel, or aviation fuel for use in a licensed emergency medical services operation may claim a refund of tax paid. Tax paid on motor vehicle fuel purchased by the state or a political subdivision for use in construction, reconstruction, and maintenance of a public road or airport also is subject to refund. A Native American may claim a refund of motor vehicle fuel or special fuel tax paid if the fuel was purchased from a retail fuel dealer located on the reservation where the Native American is an enrolled member, and in which a motor fuel agreement is not in place, and the fuel was delivered to the Native American purchaser on that reservation. Refunds also are allowed to fuel resellers who sold fuel on which motor vehicle fuel, special fuel, or aviation fuel tax was paid to an agency of the federal government.

Perceived Goals in Creating or Altering the Refund Provisions for Specified Users

The perceived goal of providing fuel tax refunds for specified users is to reduce the tax burden for those users. The first fuel tax refund provisions provided for specified users were enacted by House Bill No. 360 (1937). The provisions allowed for refunds of the tax paid on motor vehicle fuel purchased by the state or a political subdivision for use in construction, reconstruction, or maintenance of a public road or airport. These refund provisions were followed by the enactment of refund provisions for the tax paid on motor vehicle fuel, special fuel, and aviation fuel for resellers who sold fuel on which tax was paid to an agency of the federal government by Senate Bill No. 2177 (1999). Refund provisions providing a motor vehicle fuel and special fuel tax refund for fuel purchased by a Native American from a retail fuel dealer located on the reservation where the Native American is an enrolled member was enacted by Senate Bill No. 2012 (2005). The final refund provision provided for specified users was enacted by House Bill No. 1138 (2007), which provided refunds for motor vehicle fuel, special fuel, and aviation fuel tax paid on fuel purchased by the operator of an emergency medical services operation. The perceived goal of the Legislative Assembly in enacting the fuel tax refund was to lower the operating costs of emergency medical services operations to keep the operations economically viable, especially in rural areas.

Explanation of Fuel Refunds for Specified Uses

The tax paid on motor vehicle fuel purchased for use in nonlicensed equipment used for agricultural or industrial purposes is subject to refund. The amount of tax refunded on motor fuel purchased for industrial purposes must be reduced by one-half cent per gallon for deposit in the agricultural products utilization fund. Tax paid on special fuel purchased for use in a refrigeration unit that has a separate supply tank on a truck or trailer is subject to refund. The amount of special fuel tax refunded on fuel purchased for use in a refrigeration unit must be reduced by 4 cents per gallon to account for the payment of special fuel excise tax. Refunds also are allowed on motor vehicle fuel, special fuel, or aviation fuel if the fuel is removed for sale, resale, or use in another state that requires payment of tax on the fuel.

Perceived Goals in Creating or Altering the Refund Provisions for Specified Uses

The perceived goal of providing fuel tax refunds for specified uses is to lower the tax burden applied to those specified uses. Refund provisions for tax paid on motor vehicle fuel purchased for use in nonlicensed equipment for industrial or agricultural purposes have been available since the motor vehicle fuel tax law was first enacted by an initiated measure approved by the voters at a statewide election held on June 30, 1926. The amount withheld from the tax refunded on fuel purchased for industrial purposes was set at one-half of one cent per gallon in 1983. The amount withheld from the tax refunded on fuel purchased for agricultural purposes was amended several times over the years until the deduction was eliminated in 2015.

Refund provisions for tax paid on motor vehicle fuel or special fuel removed for sale, resale, or use in another state were first enacted by House Bill No. 1164 (1975). The refund provisions were amended in 1997 to provide time limits for claiming the refund and require a claimant to include proof the fuel purchased for sale or resale in another state was reported to the taxing agency in the claimant's refund application materials. An aviation fuel tax refund for fuel removed for sale, resale, or use in another state was enacted by Senate Bill No. 2177 (1999). The special fuel tax refund provided for consumers who purchase special fuel for use in a refrigeration unit was enacted by Senate Bill No. 2224 (2009). The perceived goal of the Legislative Assembly in offering the refund was to allow drivers refueling at truck stops at which dyed fuel was not available to fill their refrigeration units with clear fuel and receive a refund on the amount of tax paid in excess of the tax that otherwise would have been paid on the dyed fuel.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the fuel tax refunds for certain users, including the dollar amount of refunds claimed in fiscal years 2019 through 2023. The data indicated the motor vehicle fuel tax refunds for the last 5 fiscal years totaled approximately $1.56 million. The special vehicle fuel tax refunds for the last 5 fiscal years totaled $731,489. The aviation vehicle fuel tax refunds for the last 5 fiscal years totaled $29,488. Thus, for all fuel types, including motor vehicle fuel, special fuel, and aviation fuel, the total refunds for the last 5 fiscal years exceeded $2.3 million.

The committee did not receive testimony in support of retaining, eliminating, or modifying the fuel tax refunds. The committee did not identify any concerns relating to the refunds or ways in which the refunds could be improved.

Conclusions

The committee makes no recommendation regarding the fuel tax refunds.

Carbon Dioxide Capture and Injection Sales Tax Exemption

Explanation of the Exemption

Sections 57-39.2-04.14 and 57-40.2-03.3 provide a sales and use tax exemption for tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. To qualify for the exemption, the tangible personal property must be incorporated into a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. The purchase of replacement equipment does not qualify for the exemption unless the replacement creates an expansion of the system.

Perceived Goals in Creating and Altering the Exemption

The sales and use tax exemption for tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for use in enhanced recovery of oil or natural gas was created by Senate Bill No. 2318 (2015). The perceived goal of the Legislative Assembly in creating the exemption was to provide a green incentive aimed at encouraging investment in costly carbon dioxide capture and injection systems, reducing carbon dioxide emissions, and increasing oil and gas recovery. The exemption also was viewed as a tool to increase jobs and income tax collections as a result of the construction required to complete systems used to compress, gather, collect, store, transport, or inject carbon dioxide. The only changes to the exemption following its enactment were made in 2019, which expanded the exemption to materials used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the carbon dioxide capture and injection sales and use tax exemption, including the number and dollar amount of exemptions claimed in fiscal years 2019 through 2023. The data indicated the exemption was not claimed in fiscal years 2019, 2020, and 2022. The Tax Department declined to disclose the number of claimants and amount claimed for fiscal years 2021 and 2023, citing a Tax Department policy prohibiting disclosure of exemptions claimed by five or fewer claimants.

The committee received information from a representative from Harvestone Low Carbon Partners, related to the carbon dioxide capture and injection industry and in support of the exemption. The committee was informed Harvestone Low Carbon Partners owns and operates three ethanol biorefineries that buy locally grown corn to convert into clean-burning, American-made renewable fuel and is developing infrastructure projects to capture and permanently sequester carbon dioxide generated in the ethanol production process. The company owns two North Dakota plants--the Blue Flint plant near Underwood and the Dakota Spirit biorefinery near Spiritwood. The Blue Flint plant has been in operation since 2007 and began carbon capture and storage operations in October 2023. The Dakota Spirit biorefinery has been in operation since 2015 and is undergoing advancements for a carbon capture project. The testimony indicated the carbon dioxide capture and injection sales tax exemption was an important component of the overall project economics for the Blue Flint project, and saved the company approximately $1.7 million in sales tax due to the exemption. The investment costs for the Blue Flint project totaled $60 million. The committee was informed the carbon dioxide capture and injection sales tax exemption is important to the advancement of the carbon capture project at Dakota Spirit.

The committee did not receive testimony in support of eliminating or modifying the 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 carbon dioxide capture and injection sales tax exemption.

Recommendation

The committee recommends Senate Bill No. 2038 to expand the requirement under Section 57-01-02(17) to require the Tax Commissioner to disclose the amount of a tax incentive, including a credit, deduction, or exemption, claimed or earned by a taxpayer upon receiving a written request from the Chairman of the Legislative Management or the chairman of a standing committee of the Legislative Assembly.

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 annual property tax increases pursuant to Section 57-20-04. The report is due by April 1 of each year and must include the annual increase in property taxes levied by each taxing district of the state after adjusting for property that was not taxable in the preceding year and property that is no longer taxable which was taxable in the preceding year. The committee received detailed information regarding the year-to-year change in dollars levied by the top 50 largest counties, cities, and school districts in the state, sorted by taxable value. The 2023 report indicated Pierce County, the City of Mayville, Bowbells School District, and Mapleton City Park District had the highest percentage of growth from 2021 to 2022 within each category, at 11.99, 32.87, 339.36, and 255.83 percent, respectively. The 2024 report indicated Burleigh County, the City of Enderlin, Grand Forks School District, and Lisbon City Park District had the highest percentages of growth from 2022 to 2023 in each category, at 28.93, 27.86, 24.44, and 37.33 percent, respectively.

Renaissance Zone and Tax Increment Financing Reports

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 2022 report on renaissance zone progress, 2,038 projects have been approved and 1,580 projects have been completed since the inception of the renaissance zone program. A survey of renaissance zone communities conducted in 2022 indicated renaissance zones created 11 new businesses, 7 business expansions, and 39 new jobs. The benefits realized by the 45 projects that reached completion in 2022 amounted to $3,322,326 in income tax exemptions and $2,226,657 in property tax exemptions. According to the 2023 report on renaissance zone progress, 2,101 projects have been approved and 1,634 projects have been completed since the inception of the renaissance zone program. A survey of renaissance zone communities conducted in 2023 indicated renaissance zones created 10 new businesses, 9 business expansions, and 63 new jobs. The benefits realized by the 41 projects that reached completion in 2023 amounted to $3,004,825 in income tax exemptions and $5,328,564 in property tax exemptions. Testimony indicated the renaissance zone program is functioning as intended.

Biologic Manufacturing Sales Tax Exemption Report

The committee was assigned the responsibility to receive an annual report from the Tax Department summarizing the information provided by taxpayers that received a sales tax exemption for raw materials, single-use product contact systems, and reagents used for biologic manufacturing, pursuant to Section 57-39.2-04.19. The report was required to include a summary of information received from claimants of the exemption as required by statute, including total sales and use tax liability exempted under Section 57-39.2-04.19, total gross payroll, total property taxes paid and square footage of buildings owned by the taxpayer, total Workforce Safety and Insurance premiums paid, North Dakota unemployment taxes paid, and total state income tax withheld by the taxpayer.

The Tax Department reported the total sales and use tax liability exempted in 2023 was $1,792,476. The total gross payroll, including payroll and taxes paid in multiple states, reported by claimants of the exemption was $89,010,581. The total state income tax withheld, including payroll and taxes paid in multiple states, reported by claimants of the exemption was $2,232,085.

A representative of the Tax Department informed the committee certain elements of data were redacted from the report due to taxpayer confidentiality considerations because of the low number of companies claiming the exemption in 2023. The representative further informed the committee in a situation in which a report would consist of fewer than five taxpayers' information, the Tax Department generally would decline to provide data to ensure confidentiality is protected. The representative explained that aggregating data is a less effective means of protecting confidentiality with a very small data set, and it was necessary to mask certain data points required to be reported under statute because the data points, if unmasked, would make confidential taxpayer information discernable.

Findings and Recommendations on the Study of Property Tax Transparency Report

The committee was assigned the responsibility to receive a report from the Tax Commissioner, State Supervisor of Assessments, and the Chairmen of the Finance and Taxation Standing Committees of the House of Representatives and the Senate regarding their findings and recommendations on a study of property tax transparency as required under House Bill No. 1245 (2023). A representative of the Tax Department provided the report. The committee was informed the Tax Department regularly evaluates approaches to providing property tax information to members of the public. The Tax Department provides information in the annual property tax statistical report and the biennial publication entitled *State and Local Taxes: An Overview and Comparative Guide*.

The committee was informed the Tax Department and other interested parties are working on potential modifications to the property tax statement to increase transparency and more clearly communicate property tax relief provided to taxpayers. However, the tax software providers used by the counties have varying abilities to accommodate modifications to property tax statements, including limited access to color printing resources. In addition, there is limited space on the property tax statement to include additional information or graphics, such as a pie chart or other visual depiction of property tax information.

The committee was informed representatives of the Tax Department are continuing to discuss with representatives of the Information Technology Department who work with the Geographic Information Systems Hub, representatives of the North Dakota Association of Counties, county auditors, and county tax directors the potential to bring property tax transparency into the digital arena, and develop interactive online tools and resources that would allow taxpayers to see how their tax dollars are spent by the taxing districts in which they live.

TRIBAL AND STATE RELATIONS COMMITTEE

North Dakota Century Code Section 54-35-23 establishes 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. After the joint meetings have concluded, the committee is required to 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 committee Chairman 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 assigned the committee the responsibility to receive a report from 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 Representatives Zachary Ista (Chairman), Lisa Finley-DeVille, Jim Grueneich, and Dennis Johnson and Senators Tim Mathern, Dale Patten, and Shawn Vedaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

FEDERAL INDIAN LAW AND POLICY

Indian law is a complex area of law. Due to the sovereign character of Indian tribes, most Indian law is federal in nature. Under the federal system, 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 was followed by the Indian removal era, approximately 1820 to 1850, when the federal government sought to limit friction between non-Indians and Indians by removing all Indians from east of the Mississippi River to the Oklahoma Territory. This was followed by what may be called the reservation era, 1850 to 1887, when, as non-Indians continued to move westward 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 reserved a small portion of the land the tribe occupied and ceded the remainder to the United States. This is the origin of the term reservation.

With the enactment of the federal General Allotment Act of 1887, or Dawes Act, United States Indian relations entered a new era known as the allotment era. The Act authorized the President to allot portions of reservation land to individual Indians. Allotments of 160 acres were made to each head of a family and 80 acres to others, with double those amounts to be allotted if the land was suitable only for grazing. Title to the allotted land was to remain in the United States in trust for 25 years, after which it was to be conveyed to the Indian allotted free of all encumbrances. The Act also authorized the Secretary of the Interior to negotiate with tribes for the disposition of all excess lands remaining after allotment for the purpose of non-Indian settlement. The Act resulted in a decline in the amount of Indian-held land from 138 million to 48 million acres between 1887 and 1934.

The allotment era was followed by the Indian reorganization era, 1934 to 1953, during which the land base of the tribes was protected by extending indefinitely the trust period for existing allotments still held in trust and encouraging tribes to establish legal structures for self-government. The Indian reorganization era was followed by the termination and relocation era, 1953 to 1968, when the federal government sought to terminate tribes that were believed to be prosperous enough to become part of the American mainstream, terminate the trust responsibility of the federal government, and encourage the physical relocation of Indians from reservations to seek work in large urban centers.

The policy of termination and relocation was regarded as a failure and the modern tribal self-determination era began with the federal Indian Civil Rights Act of 1968. The effect of this Act was to impose upon the tribes most of the requirements of the Bill of Rights. The Indian Civil Rights Act of 1968 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. There have been several acts since 1968 designed to enhance tribal self-determination. These include the Indian Financing Act of 1974, which established a revolving loan fund to aid in the development of Indian resources; the Indian Self-Determination and Education Assistance Act of 1975, which authorized the secretaries of the interior and of health, education, and welfare to enter contracts under which the tribes would assume responsibility for the administration of federal Indian programs; the Indian Tribal Government Tax Status Act of 1982, which accorded the tribes many of the federal tax advantages enjoyed by states, including that of issuing tax-exempt bonds to finance governmental projects; the Tribally Controlled Schools Act of 1988, which provided grants for tribes to operate their own tribal schools; the Indian Child Welfare Act (ICWA) of 1978; the American Indian Religious Freedom Act of 1978; and the Indian Gaming Regulatory Act of 1988.

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.

2023 LEGISLATION

The committee reviewed recent legislation including:

- House Bill No. 1018, which removed documented job placement rates at each eligible tribally controlled community college as a criteria for awarding workforce development grants and authorized colleges receiving workforce development grants to use the grants to develop or enhance career and technical education programs.
- House Bill No. 1223, which clarified the eligibility requirements to qualify for the motor vehicle excise tax exemption for enrolled tribal members. The bill provided the motor vehicle excise tax exemption is allowed for motor vehicles acquired in the state by an individual who is an enrolled tribal member and whose primary residence is within the boundaries of any reservation in this state.
- House Bill No. 1385, which added federally recognized Indian tribes to the list of political subdivisions and entities with which the State Water Commission (SWC) may enter contracts. The change allows a contracting tribe to be an eligible sponsor under the Department of Water Resources' cost-share program.
- House Bill No. 1536, which incorporated into the Century Code the placement preferences, court proceedings, procedures, and adoptee information requirements from the federal Indian Child Welfare Act.

- Senate Bill No. 2073, which authorized the Information Technology Department to provide information technology and cybersecurity services to education institutions under the control of a tribal government of this state after July 21, 2023.
- Senate Bill No. 2377, which removed the requirement for an agreement between the Governor and the governing body of any tribe in this state for the collection and administration of alcoholic beverage wholesale tax, alcoholic beverages gross receipts tax, or tobacco products wholesale tax to include an agreement for all three taxes. The bill replaced the method of allocating revenue under an agreement for the collection and administration of alcoholic beverages wholesale tax and alcoholic beverages gross receipts tax from one determined by multiplying the enrolled membership of the tribe by the tax revenue generated per capita for the respective tax type to a method which allocates 80 percent of the tax revenue to the tribe and 20 percent to the state. The bill also provided the venue for any controversy or claim between a tribe and the state arising out of or relating to an agreement for the collection and administration of alcoholic beverage wholesale tax, alcoholic beverages gross receipts tax, or tobacco products wholesale tax is the United States District Court for the District of North Dakota, Western Division.

EDUCATION

The committee received testimony from a representative of the Belcourt School District regarding the cost of education on the Turtle Mountain Reservation. According to the testimony, the cost of education on the Turtle Mountain Reservation is much higher than in other areas in the state. The committee was informed student activities are an important part of education and many students cannot afford activity fees. Testimony indicated the Turtle Mountain Reservation experienced difficulty in recruiting new teachers, especially in mathematics, science, special education, and English.

The committee received testimony from a representative of the Spirit Lake Tribal Council regarding the academic needs of the students on the Spirit Lake Reservation. According to the testimony, many teachers who teach at schools on the Spirit Lake Reservation do not live on the reservation.

The committee received testimony from a representative of the Department of Public Instruction regarding the department's recent developments and priorities for the 2025 legislative session. According to the testimony, the priorities include providing school board training, providing intervention to increase collaboration, building relationships, reducing barriers, and identifying resources for student success. Testimony indicated additional priorities include adult education, dyslexia identification training, a tribal history and culture textbook project, and encouraging participation in science, technology, engineering, and mathematics.

The committee received testimony from a representative of the North Dakota University System regarding the strategic efforts of the State Board of Higher Education. According to the testimony, the board is focused on preparing for the state's future by addressing student vitality, workforce, and the introduction of intelligent machines.

The committee received testimony from legislators regarding racism during high school sporting events. According to the testimony, there were three publicly reported incidents involving racial slurs, taunting, or mocking traditional powwow music and traditional dancing in 2023 and 2024. The committee discussed the impact of racism, including the emotional and psychological impact, the undermining of self-identity and pride, physical safety concerns, the impact on academic and professional success, the impact on interpersonal relationships and social isolation, and generational trauma.

The committee received testimony from a representative of the North Dakota High School Activities Association regarding the association's updated procedures to address racism in high school sports. According to the testimony, approximately 2,000 basketball games are played each season in North Dakota and approximately 80 percent of those games are livestreamed. The committee expressed interest in having victimized students and families be notified of investigations into racism; however, the committee was informed student disciplinary actions cannot be publicized.

The committee received testimony from a representative of Fort Totten Public School District regarding preventing racism in high school sports. The committee was informed when attendees are requested to leave a sporting event, criminal charges are not pursued against the attendee.

LAW ENFORCEMENT

The committee received testimony from a representative of the Bureau of Criminal Investigation (BCI) regarding an overview of BCI. The committee was informed BCI is an assistance agency specializing in crime scene, fire, and narcotics investigations. According to the testimony, BCI has 64 special agents stationed around North Dakota, 4 of whom have a Special Law Enforcement Commission designation and are stationed in Devils Lake, Rolla, and Rugby.

The committee received additional testimony from a representative of BCI regarding a cooperative agreement to provide assistance to the Bureau of Indian Affairs (BIA) to combat controlled substances trafficking on the Turtle Mountain Reservation. The committee discussed how special law enforcement commissions allow BCI agents to possess and enforce BIA jurisdiction over enrolled members and nonenrolled individuals as it relates to narcotics investigations and related criminal offenses. According to the testimony, the Turtle Mountain Band of Chippewa Indians and the Three Affiliated Tribes have signed a memorandum of understanding to allow BCI to house a special agent in Rolla and Stanley to assist BIA with drug trafficking in the region. The committee was informed BCI has completed training at high schools on the Standing Rock Reservation and with casino staff. According to the testimony, there is not an agreement in place with the Standing Rock Sioux Tribe.

The committee received testimony from a representative of BCI regarding a new detention center designed to provide additional educational, trauma, and substance abuse services. The committee discussed implementing alternative justice systems to combat substance abuse and homelessness.

HEALTH CARE

The committee received testimony from the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation regarding the Good Road Recovery Center in Bismarck. According to the testimony, elders and other tribal members are concerned about substance abuse in the tribe. Testimony indicated the tribe's vision for treatment is modeled after Arizona's successful Native American Connections behavioral health program. The committee was informed the tribe requested the state grant an Institutions for Mental Diseases waiver to allow the tribe to treat more than 16 patients at its facility. Testimony indicated, without a waiver, Medicare and Medicaid will not reimburse the facility for treating more than 16 patients.

The committee received testimony from representatives of the Department of Health and Human Services (DHHS) regarding substance use prevention and treatment services for tribal communities. According to the testimony, DHHS is contracted with four tribal nations with the goal of preventing substance misuse. Testimony indicated, DHHS funds residential treatment services and licensed addiction counselors on the Fort Berthold Indian Reservation. The committee was informed DHHS awarded funding to the Spirt Lake, Standing Rock, and Three Affiliated Tribes for opioid response and is working toward suicide prevention among Native Americans by increasing awareness and through mental health training.

The committee received testimony from representatives of DHHS regarding care coordination agreements. The testimony explained care coordination agreements and indicated 80 percent of savings generated by care coordination agreements are directed to the tribal care coordination fund. The remaining 20 percent is returned to the general fund. According to the testimony, the tribes may use funding from the tribal care coordination fund for public health services listed as the 10 essential services of public health by the Centers for Disease Control and Prevention.

The committee received testimony from a representative of the Spirit Lake Tribal Health Administration, requesting support from the committee for changes to Medicaid's Institution for Mental Diseases Exclusion. According to the testimony, the tribe is seeking to expand its addiction treatment facility to approximately 25 beds.

FOSTER CARE

The committee received testimony from a representative of the North Dakota Supreme Court regarding an overview of the Court Improvement Program and Indian child welfare courts. According to the testimony, the Court Improvement Program provided resources to state courts for evaluation and enhancement of court processes in response to the needs of children in the child welfare system. In 2023, 28 percent of foster care cases and 31 percent of cases involving the termination of parental rights in this state were impacted by ICWA. Testimony indicated more positive outcomes were reached in Indian child welfare court cases as compared to state courts cases, including earlier placement preferences, increased tribal presence and parental involvement, and earlier reunification with the caregiver.

The committee received testimony from a representative of the Turtle Mountain Band of Chippewa Indians regarding the need for foster care services on the Turtle Mountain Reservation. The committee was informed the drug epidemic has increased the number of children in foster care, which totals nearly 500 children on the reservation. Testimony contended a 24-hour-a-day foster care facility is necessary; however, adequate funding has been difficult to acquire.

The committee received testimony from the ICWA Coordinator for the Spirit Lake Tribe regarding family services and foster care recruiting in Spirit Lake. The testimony indicated it would be helpful to allow ICWA hearings to be attended through electronic means as opposed to in person. According to the testimony, many state courts do not allow electronic attendance, and it is difficult to attend all hearings in person when there are multiple hearings in different locations on the same day.

ECONOMIC DEVELOPMENT

The committee received testimony from the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation regarding economic development. The testimony indicated the tribe is working to develop new infrastructure and expand tourism and trade opportunities. According to the testimony, the tribe recently completed a new administration building, kidney dialysis unit, interpretive center, casino renovation, hotel, and water park, and plans to continue development. Testimony indicated other economic development strategies include enhancing oil and gas infrastructure for the tribe's energy program and adding infrastructure to transport oil to foreign markets. The committee was informed 3 percent of the nation's daily oil and gas production is derived from lands within the boundaries of the Fort Berthold Reservation.

The committee received testimony from the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation regarding workforce development. According to the testimony, the tribe is heavily reliant on outside experts and consultants in areas relating to kidney dialysis, energy development, and law enforcement. The committee was informed the need for training facilities, education, supplemental law enforcement, and continued partnerships will remain until tribal members can be trained to assist in these areas.

The committee received testimony from a representative of the Economic Development Administration Planning Department regarding economic development planning and grant management efforts for the Spirit Lake Tribe. According to the testimony, the level of funding available on the Spirt Lake Reservation only allows for maintenance of the roads and not large road projects.

The committee received testimony from a representative of the Indian Affairs Commission regarding an update on the commission. The committee was informed the commission is comprised of a small team that works on a variety of topics. Testimony indicated the commission is hosting legislative training for tribal members to provide information on the legislative process. The committee was informed there are liaisons working with each tribe to improve communication. Testimony indicated the commission is looking at an economic assessment to provide more tools to businesses that want to come to North Dakota.

The committee received testimony from a representative of George Mason University regarding the business climate and business incentive development on Indian reservations in the state. The information provided included the historical entrepreneurship in Native American societies, the barriers to economic growth faced by reservations, and potential economic reforms related to reservations. The testimony recommended collaboration with the federal government to streamline the process for leasing trust land, the provision of technical assistance for business development, support for tribal judicial systems, and clarification of overlapping jurisdictions.

INFRASTRUCTURE

The committee received testimony from a representative of the Department of Water Resources regarding an overview of the department, the SWC cost-share program, and water management in the state. The committee was informed the department is comprised of six divisions, which include the Administrative Services Division, Atmospheric Resource Division, Planning and Education Division, Regulatory Division, Water Appropriation Division, and Water Development Division. Testimony indicated tribal nations now are eligible to enter cost-share agreements with SWC.

The committee received testimony from the Chairwoman of the Standing Rock Sioux Tribe regarding a bridge over the Missouri River. The committee was informed the tribe applied for a grant from the federal government related to the bridge over the Missouri River and is waiting for a response from the federal government.

The committee received testimony from a member of the Spirit Lake Tribe regarding the road conditions and safety concerns on the Spirit Lake Reservation. Testimony indicated concerns regarding the condition of road infrastructure on the reservation. The committee discussed the different road conditions for the same road on and off the reservation.

WATER

The committee received testimony from a representative of the North Dakota Irrigation Association regarding irrigation development in the state. The testimony indicated about 300,000 of a potential 28 million farmland acres in North Dakota are irrigated. The committee was informed irrigation districts are political subdivisions governed by an elected board that may provide funding and resources to individual irrigators. Testimony indicated an irrigation district may request a 75 percent cost-share from SWC.

NATURAL RESOURCES

The committee received testimony from a representative of the Game and Fish Department regarding the introduction of bighorn sheep on the Fort Berthold Reservation. Committee members expressed appreciation for the program and the collaboration between the Game and Fish Department and the tribe. According to the testimony, the Game and Fish

Department and the tribe released approximately 30 bighorn sheep in the Mandaree and Twin Buttes region in 2020. Testimony indicated the herd has increased to approximately 80 bighorn sheep.

The committee received testimony from a representative of the Spirit Lake Tribal Environmental Protection Administration regarding the Climate Pollution Reduction Grant and tribal programs aiming to reduce greenhouse gases. According to the testimony, the tribe, in cooperation with the Game and Fish Department, has implemented clean, drain, and dry stations on the Spirit Lake Reservation to protect against invasive aquatic species.

The committee received testimony from a representative of the Game and Fish Department regarding an update to the cooperative elk project with the Standing Rock Sioux Tribe Game and Fish Department. The committee was informed of the research project and the memorandum of understanding with the Standing Rock Tribe to allow hunting on tribal land. Testimony indicated the Game and Fish Department distributed 14 elk licenses and Standing Rock Game and Fish distributed 28 elk licenses.

The committee received testimony from the director of Standing Rock Game and Fish regarding the elk herd on the Standing Rock Reservation. According to the testimony, the tribe, working with the Game and Fish Department, has successfully increased the elk herd population allowing for additional elk tags each year. The committee was informed the tribe has been dealing with poachers due to the increase in elk population.

AGRICULTURE

The committee received testimony from a representative of the North Dakota Advanced Agriculture Technology Engine regarding the future of agriculture technologies. According to the testimony, food systems Adapted for Resiliency and Maximized Security is a cooperative agreement funded through the National Science Foundation in partnership with the North Dakota Tribal College System, North Dakota State University, the Greater Fargo Moorhead Economic Development Corporation, Grand Farm, and the Fargo Moorhead West Fargo Chamber Foundation. Testimony indicated the goal of the National Science Foundation is to catalyze and accelerate ecosystems across the United States to advance critical technologies, address societal and economic challenges, promote economic growth, and cultivate regional talent.

JUSTICE

The committee received testimony from a representative of the Commission on Legal Counsel for Indigents regarding the public defense in tribal jurisdictions. The committee was informed of the right to counsel in state and tribal court. Testimony indicated there are opportunities for collaboration between the state and tribal nations regarding indigent defense. According to the testimony, indigent defense across the state lacks resources. Testimony indicated the tribal nations have a separate public defense system and the council does not provide assistance in tribal court.

The committee received testimony from a representative of the Spirt Lake Tribal Court regarding proposed changes to extradition laws related to tribal court warrants. According to the testimony, state law requires the appearance of the defendant before a state court judge before the transfer of custody to another state or tribe. Testimony indicated the statute requires the defendant be seen within a reasonable time; however, it may take several days to appear before a state court judge. The committee was informed Spirit Lake tribal law allows a defendant to waive the right to a judicial hearing and consent to extradition without appearing before a tribal judge when being extradited to state court. The testimony requested support for legislation to allow the waiver of extradition from state to tribal court without obtaining appearance before a state court judge.

ELECTIONS

The committee received testimony from representatives of the Secretary of State's office regarding voting in the 2024 general election. According to the testimony, the office has been working with all counties on training for the general election. Testimony indicated grants up to $5,000 are available to tribes for administering voter identification. The committee discussed information regarding set aside ballots along with forms of identification for tribal members.

REPATRIATION OF REMAINS

The committee received testimony from representatives of the University of North Dakota regarding compliance with the Native American Grave Protection and Repatriation Act. According to the testimony, in March 2022, remains of tribal ancestors were discovered on the university campus. In August 2022, the university notified tribal representatives and made a public statement regarding dozens of tribal ancestors and artifacts found on university property. Since June, the university has notified the federal government and two claims for ancestors have been made. The committee was informed the university plans to complete repatriations efforts by May 2025.

The committee received testimony from a representative of the Indian Affairs Commission regarding corporation with the repatriation efforts at the University of North Dakota. According to the testimony, the commission has been part of the repatriation discussions since the remains were discovered and is ensuring the tribes are involved in the process.

OIL AND GAS AGREEMENT REPORT

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 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. The section also provides the committee may meet and work collaboratively with the State Water Commission (SWC) and must 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.

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

- Quarterly reports from SWC regarding the projects designated as 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, pursuant to Section 61-02-14.4. 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 from the Department of Water Resources (DWR) regarding DWR's research, in coordination with the Garrison Diversion Conservancy District, into identifying options for the use of the Missouri River intake constructed near Washburn, pursuant to Section 19 of Senate Bill No. 2020 (2023).
- Quarterly progress reports from the Garrison Diversion Conservancy District on the Red River Valley Water Supply Project (RRVWSP), pursuant to Section 14 of 2019 Session Laws Chapter 45.
- Regular progress reports from the Garrison Diversion Conservancy District on RRVWSP, pursuant to Section 12 of 2019 Session Laws Chapter 45.

Committee members were Senators Ronald Sorvaag (Chairman), Michael Dwyer, David Hogue, Larry Luick, Jeffery J. Magrum, and Jim P. Roers and Representatives Mike Beltz, Jared Hagert, Jorin Johnson, Donald W. Longmuir, Bob Martinson, Jon O. Nelson, Anna S. Novak, Jeremy Olson, Todd Porter, Matthew Ruby, and Steve Swiontek.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

LEGISLATIVE OVERVIEW OF WATER TOPICS AND RELATED MATTERS

Missouri River Water Usage Update

The committee received testimony from a representative on behalf of the Missouri River Joint Water Board regarding the importance of the Missouri River. Testimony indicated North Dakota uses an estimated 117,000 acre-feet of the Missouri River, which is seven-tenths of the river's average flow and less than 3.2 percent of the 3.7 million acre-feet of water the state is permitted to use. 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 representatives of the Garrison Diversion Conservancy District and the North Dakota Irrigation Association. The committee was informed 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 with the potential to irrigate up to 28 million acres. Testimony indicated limitations to expanding irrigation development include water availability and funding. An irrigation district can assist individual irrigators with funding and resource availability and may request a 75 percent cost-share from SWC.

North Dakota Rural Water Systems Association and Municipal Water Systems

The committee received testimony from representatives of the North Dakota Rural Water Systems Association and North Dakota League of Cities regarding ongoing and planned projects in the state. The committee was informed of the 355 incorporated cities in the state, 268 cities are connected to a regional water system, 87 cities have their own water system, and 17 cities provide water for a rural or regional system.

Testimony indicated lack of infrastructure and contractors in rural areas are major concerns for many rural water systems across the state. Testimony contended rural water funding is necessary to allow residents in smaller communities and rural areas to receive water for a reasonable price. Overall costs of projects are increasing due to a lack of related materials, including pipes. Rural water projects approved for the 2023-25 biennium have had a shortfall of $14.56 million in funding. Fifty-eight new rural water projects have been approved by SWC at an estimated cost of $386.23 million, with the potential for SWC to award up to $230 million in grants. Fourteen tribal projects have been approved with a potential cost offset of $32.5 million in tribal grants.

Testimony indicated challenges facing municipal water systems include a shortage of food grade CO_2, work force shortages, and the rising cost of materials, specifically pumps and variable frequency drives. The state water development plan for municipal water systems includes 139 municipal water projects with an overall estimate cost of $369 million. Two hundred twenty-five municipal water systems have applied for planning funds through the Department of Environmental Quality (DEQ) to replace the use of lead service lines.

Department of Environmental Quality - Clean Water Act

The committee received testimony from representatives of DEQ regarding the Vision 2 North Dakota Total Maximum Daily Load (TMDL) Prioritization Strategy. The committee was informed a TMDL is a federal requirement of the Clean Water Act for waters that do not meet quality standards for public use. The TMDL Vision 2 strategy is a long-term workplan used by DEQ to establish prioritization of waters and pollutants and details the maximum amount of pollutant a waterbody can support while ensuring water quality standards are maintained. Every 10 years, each state is required to develop and submit a TMDL prioritization strategy to the United States Environmental Protection Agency. The department is requesting participation through public comments and surveys. Testimony indicated efficiency and effectiveness depend on coordination with the public and other Clean Water Act programs.

Managed Aquifer Recharge and Recovery

The committee received testimony from a representative of DWR regarding the feasibility and use of managed aquifer recharge (MAR) in the state's glacial drift aquifers. The committee was informed MAR involves capturing excess or abundant surface water and storing the captured water in an aquifer to extend and enhance resiliency. Testimony indicated the department contracted for a statewide MAR assessment, which was completed in early 2024. The completed work included detailed reports and interactive maps establishing five separate tiers, each illustrating MAR potential across the state. Given the growth and progression of water development in the state, many of the state's ground water systems are approaching full appropriation. Testimony contended as major ground water systems approach sustainable limits, it will become increasingly difficult to approve additional appropriation without some form of augmentation such as MAR. Testimony indicated the report will serve as an important step in the state's ability to strategically locate and use MAR in the future.

Water Resource Boards

The committee received testimony from representatives of the Sargent County Water Resource Board and landowners regarding an ongoing dispute relating to assessment drain 11. Testimony indicated the dispute was brought before the North Dakota Supreme Court which held the Sargent County Water Resource District failed to obtain landowner approval for a maintenance project on drain 11, in violation of the Century Code. The committee was informed the opinion held a water resource district must obtain landowner approval for all drainage maintenance projects if the district's local cost or obligation for the project exceeds the 6-year maximum levy, even when additional district funds are used.

Aquatic Nuisance Species

The committee received testimony from a representative of the Game and Fish Department regarding an overview of aquatic nuisance species (ANS) in the state. Testimony indicated aquatic nuisance species are nonindigenous, obligate aquatic species of plant or animal which are injurious to native and desirable aquatic species and their environments. Aquatic nuisance species can be spread using docks, barges, tugboats, or watercrafts for commercial or recreational activities. The committee was informed North Dakota has 33 species on the state's ANS list. The department's management goal is to prevent the introduction and spread of ANS throughout the state while mitigating ecological, economic, and social impacts of existing populations. The department's main objectives include communication and coordination with the public, educational outreach, prevention and control, and extensive sampling and monitoring of water bodies throughout the state.

COLLABORATION WITH THE STATE WATER COMMISSION, PROGRAM EXPENDITURES, AND REPORTS ON THE FUND BALANCES OF PROJECTS, GRANTS, AND CONTRACTS

Background

The SWC 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 million 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 DWR 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 DWR 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's 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 Discussion

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 SWC budget and the status of projects funded by SWC.

The committee received testimony from representatives of DWR regarding the resources trust fund and the water projects stabilization fund. Additional testimony addressed 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 was informed the project stabilization fund has a balance of $140.1 million which was transferred to the Retirement and Investment Office to be deposited in a cash account averaging a 5.14 percent annual return.

The committee also received testimony regarding funding for the 2023-25 biennium and updates to the 2023-25 biennium budget. Testimony indicated the total funding needs for the 2023-25 biennium are estimated at $1.05 billion. The committee was informed Section 20 of Senate Bill No. 2020 (2023) authorized DWR to transfer up to $9.9 million between the operating expenses and capital assets line items. The DWR directed the Office of Management and Budget to transfer $425,000 from operating expenses to capital assets for the purchase of construction equipment and equipment for Devils Lake. The DWR submitted an emergency commission request to transfer $375,000 of federal funds from the capital assets line item to the discretionary funding line item. The committee was informed this transfer will facilitate DWR grant funds to Minot for the purchase of equipment for the operation of the Biota Water Treatment Plant.

The committee discussed the importance of the $9 million discretionary purpose fund and the authorization of line item transfer for capital assets due to the size and complexity of water related issues.

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 for a total of $175 million provided from 2009 to 2013. The 2013 legislation included a statement of legislative intent for the state to 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 from 2009 to 2015. The Legislative Assembly also included a statement of legislative intent to provide up to $570 million for Fargo flood control projects, $120 million of which 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 a statement of legislative intent indicating 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 toured the FM Area Diversion Project, including the Maple River aqueduct, the southern embankment, and the Red River structure. The committee received testimony from a representative of the FM Area Diversion Project. Testimony indicated the FM Area Diversion Project remains a critical infrastructure initiative designed to protect the Red River Valley from catastrophic flooding. The committee was informed the project, which employs a public-private partnership model, is expected to safeguard 260,000 residents and $18 billion in property by providing protection from 100-year flood events, with the capability to handle a 500-year flood.

The committee received an update on the project's four major components--the stormwater diversion channel and associated infrastructure, the southern embankment and associated infrastructure, local flood protection and associated infrastructure, and mitigation features and associated infrastructure.

The committee received testimony regarding the construction of the 30-mile stormwater diversion channel, which began in August 2022 and remains on schedule for completion in 2027. Testimony indicated significant progress is being made on key transportation crossings, including roads, railroads, and interstates, which are essential for ensuring the channel's effective operation. Testimony indicated the diversion outlet is expected to be completed by November 2024. The structure will feature 24,000 cubic yards of riprap and more than 450 boulders to facilitate fish passage and ensure the stability of the channel. The committee also received updates on the Maple River and Sheyenne River aqueducts, which are scheduled for completion by 2025. The committee was informed these aqueducts are essential for managing river flow while maintaining ecological balance and are among the northernmost aqueducts in the world. In addition, testimony indicated crews are constructing 14 drainage inlets along the channel, several of which are in advanced stages, ensuring that stormwater is efficiently diverted away from urban areas to reduce flood risks.

The committee received testimony regarding the progress of the 22-mile southern embankment, which serves as a primary flood defense barrier for the Red River Valley. Testimony indicated the diversion inlet structure is nearly complete, with 99 percent of construction finished, and only requires final work on gate machinery and turf establishment. Testimony indicated the structure is expected to be completed by early 2024 and features three 50-foot-wide gates, which will regulate water flow during flood events.

The committee was informed of the near completion of the Wild Rice River Structure, with 98 percent of the project finished as of June 2023. The remaining tasks, including adjustments to the operational machinery and landscaping, will be completed in 2024. Testimony indicated the Red River Structure, which is the largest of the three control structures, is 59 percent complete and is expected to be finished by 2026. Testimony emphasized the importance of this structure in managing the Red River's floodwaters, noting the structure's three 50-foot-wide gates and the significant excavation and piling work already completed.

The committee received testimony regarding the progress of local flood protection measures in Fargo, Moorhead, and the surrounding counties. Testimony indicated significant progress has been made in constructing levees, floodwalls, stormwater lift stations, and road improvements, all of which are designed to provide localized flood protection. Testimony indicated 259 properties have been acquired in Fargo and Cass County, and 276 properties have been acquired in Moorhead and Clay County, to make room for these essential flood protection infrastructures. Additionally, road improvement projects, including raising road grades to ensure vital transportation routes remain accessible during floods, are underway. The committee also received testimony regarding the installation of stormwater lift stations and modifications to storm structures, which will help ensure local stormwater systems can handle heavy rainfall more efficiently. The committee was informed these local protection efforts are expected to continue through 2025, with several key projects showing significant progress.

The committee received testimony regarding the project's environmental mitigation efforts, which aim to restore and protect natural habitats impacted by the FM Area Diversion Project. The committee was informed the oxbow wetland mitigation project, completed in spring 2023, restored 10.6 acres of wetlands and planted 63.1 acres of seedlings. Testimony indicated these efforts significantly improved the ecological health of the floodplain and wetland ecosystems, helping to mitigate the environmental impacts caused by the construction.

The committee also received updates on the Drayton Dam mitigation project, which was completed at the end of 2023. Testimony indicated the project involved the partial removal of the dam and the construction of a rock rapids fishway, which will improve fish passage and biotic connectivity along the Red River. The committee received testimony underscoring the importance of this project in restoring ecological balance and promoting fish migration in the region. The committee was informed the FM Area Diversion Project remains on track to provide essential flood protection for the Red River Valley, ensuring the long-term safety and resilience of the region.

Souris River Basin Flood Control

The committee toured the flood control structure in and around Minot. The committee received testimony from representatives of the City of Minot and the Souris River Joint Board (SRJB) regarding the ongoing efforts to enhance flood protection in the Mouse River Basin. Testimony indicated during the 2023-25 biennium, SRJB received $66.35 million for construction and engineering costs throughout the Mouse River Basin and the City of Minot received $9.75 million for acquisition costs.

The committee received information indicating the anticipated work plan had shifted from MI-4 Maple Diversion to MI-6 and MI-7 due to continued negotiations with BNSF Railway Company. The committee was informed Phase MI-6 involves constructing a downtown floodwall and levee system, while Phase MI-7 focuses on the Roosevelt Park levee and floodwall. Testimony contended both phases are crucial to protecting Minot from future floods, with Phase MI-6 expected to cost $59 million and Phase MI-7 around $41 million. Testimony indicated these projects are fully designed and ready for construction once the necessary approvals and funding are secured.

The committee was informed a notable obstacle in the project has been the interaction with railroad companies. Testimony indicated the initial designs for flood protection required significant reconstruction of tracks and bridges belonging to BNSF Railway, as well as changes to the Amtrak passenger platform. However, after negotiations, the design was modified to reduce the scope of work required from the railroad companies.

The committee was informed the Maple Diversion is the most critical component of the Army Corps of Engineers contribution to the flood protection plan. Testimony indicated the Maple Diversion will form part of what is called "Milestone 1" for Minot and will remove approximately 60 percent of Minot Valley residents from the Federal Emergency Management Agency regulatory floodplain once completed. Testimony indicated the estimated cost of this phase is $61.45 million, with 65 percent covered by federal funds. The committee was informed the project is expected to start construction in 2026 and be completed by 2029. Testimony contended Milestone 1 will significantly reduce flood risk in Minot and provide a major step forward in floodplain management, lowering insurance costs and mitigating future flood damages.

The committee was informed SRJB has made steady progress in rural areas. The committee received testimony regarding several completed and ongoing projects, including the replacement of bridges that obstruct water flow along the Mouse River. Testimony indicated the Sawyer bridge replacement has been successfully completed and the Velva bridge replacement is in the final stages of permitting, with bidding scheduled for fall 2024. The Mouse River Park bridge replacement; however, has encountered difficulties, with no bids received after four attempts. The committee was informed that to address this concern, SRJB is considering alternative delivery methods to attract smaller contractors for specialized components of the project, given the limited availability of traditional bridge contractors in North Dakota.

The committee was informed the rising costs of construction due to inflation have posed a significant challenge to the flood protection project. Testimony indicated recent bids for portions of Phases MI-6 and MI-7 were 40 to 50 percent higher than estimated. The committee was informed the increase in cost is driven by increased labor costs, higher material prices, and a competitive construction environment across the region. Contractors have indicated labor shortages and competing demands for construction work have made it difficult to meet the schedules for flood control projects. The committee was informed that, in response, SRJB rejected a bid for part of Phase MI-7 that was 50 percent over the estimate and plans to rebid the project in smaller segments with more flexible completion timelines. Testimony indicated the goal is to make the projects more manageable for local contractors and improve pricing through more competitive bidding processes.

The committee was informed inflation continues to be a major concern for the project. Testimony indicated the project's original budget, established in 2013, was $1.028 billion, but inflation has since driven the total cost up to $1.083 billion, with an estimated $674 million still needed to complete the project. The legislative intent, in Section 14 of Senate Bill No. 2020 (2023), requires $76.1 million in state funding per biennium for 5 successive biennia, totaling $380.5 million. However, only $304.4 million of that amount has been formally appropriated, leaving future funding dependent on legislative action.

Western Area Water Supply Authority

The committee received testimony from a representative of Western Area Water Supply Authority. Testimony indicated from 2011 to 2022, total connections increased by 193 percent. The committee was informed McKenzie and Williams Counties have seen significant population growth over the past 10 years, specifically, 83 percent growth in Williams County and 131 percent growth in McKenzie County. Testimony indicated the Western Area Water Supply Authority had over $170 million in total project costs relating to domestic expansion. The committee received testimony regarding funding, including the local cost share and state cost share for the project during the 2023-25 biennium. The committee was informed the Western Area Water Supply Authority was moved from the Industrial Commission to DWR during the 2023 legislative session. The authority now reports to DWR.

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. Testimony indicated the SWPP serves roughly 58,000 customers across 13 counties covering more than 15,000 square miles of southwest North Dakota. The Southwest Water Authority is funding projects to provide additional capacity for 120 subsequent customers. The committee was informed plans for expansion include transmission facilities and strategic hydraulic improvements to reach customers outside the project's service zone. Additional projects for the 2023-25 biennium include the Southwest Water Treatment Plant, rural expansion for Hebron and Burt services areas, West Zone transmission facility and hydraulic improvements, and attempts to finalize the supplementary intake pump station. The committee was informed there are 762 potential customers on a waiting list for connection.

The committee received information regarding capital repayment, with projected returns totaling $6.5 million in 2024. The committee also received information regarding proposed projects for the 2025-27 biennium. Testimony indicated the anticipated funding needs for SWPP is $148.6 million.

Northwest Area Water Supply

The committee received testimony from representatives of the Northwest Area Water Supply (NAWS) project regarding the progress and challenges relating to providing a reliable water supply to approximately 81,000 people in northwestern North Dakota. The committee received information regarding several key aspects of the project, including the status of major infrastructure improvements; funding arrangements; coordination between state, local, and federal partners; and the ongoing difficulty posed by procurement delays and permitting issues.

The committee received information regarding the contracts for the Snake Creek Pumping Plant intake modification. The committee was informed Contract 1 focuses on internal modifications within the plant, while Contract 2 covers external work, including the installation of pipelines and a permanent intake structure. The committee received information indicating Contract 1 has experienced significant delays. This contract, which includes procurement, demolition, and construction phases, was plagued by extensive supply chain disruptions, particularly in the delivery of electrical equipment. Originally, the project team expected equipment deliveries by March 2024, but critical components are now delayed until March 2025. Additionally, the demolition contract, which involved removing Pump Unit No. 1 and constructing a bulkhead in the discharge structure at Lake Audubon, has faced delays due to extensive review processes with the Bureau of Reclamation. This has resulted in a new completion target of July 2025 for the entirety of Contract 1.

Contract 2, which covers external modifications to the Snake Creek Pumping Plant, also has been broken into two parts--Contract 2-1E, which involves the installation of a discharge pipeline; and Contract 1-1A, which focuses on building a permanent intake structure. Testimony contended the discharge pipeline is vital because it will transfer water from the Snake Creek Pumping Plant to the Biota Water Treatment Plant, located at Max. The discharge pipeline contract was awarded in June 2023, with a target completion date of fall 2024. However, testimony indicated design changes and delays related to permitting processes with the Army Corps of Engineers could further push back the completion date. Contract 1-1A, which includes the construction of a permanent intake pipe and screen structure, is still under design. The committee was informed the timeline for this critical component will extend into 2027 because the construction is complicated by lakebed installation requirements and the need for environmental and structural permits.

The committee was informed the Biota Water Treatment Plant (Phase 1) is another central aspect of the NAWS project. Testimony indicated this facility is constructed to comply with the Boundary Waters Treaty Act and is therefore a federal responsibility under the Dakota Water Resources Act. Testimony clarified Phase 1 of the Biota Water Treatment

Plant is fully federally funded, with costs reimbursed through the Municipal, Rural, and Industrial Water Supply Program. The City of Minot, in coordination with SWC, is responsible for day-to-day operations of the plant. However, startup of the plant has been delayed due to issues at the Snake Creek Pumping Plant. Originally slated for completion in February 2024, the plant is now expected to be operational by November 2024, with full lake water delivery contingent on the completion of the discharge pipeline and temporary intake at Snake Creek. To avoid further delays, the project team is pursuing a modified startup using groundwater from the Sundre Aquifer, allowing the plant to begin operations before lake water becomes available. This will ensure the Biota Water Treatment Plant is fully functional by the time lake water reaches Minot in mid-2025.

The committee was informed the South Prairie Reservoir and Hydraulic Control Structure are other significant projects within the NAWS system. Testimony indicated the hydraulic control structure, located eight miles north of Max, is designed to protect the pipeline from pressure spikes, ensuring the safety and stability of water flow through the system. The South Prairie Reservoir, which has a capacity of 10.5 million gallons, will serve as a critical storage point within the NAWS infrastructure. The reservoir and control structure have been substantially completed, and Sundre Aquifer water will be used to fill the reservoir to support the Biota Water Treatment Plant's modified startup. Testimony indicated these facilities are key to regulating water flow and providing additional storage capacity as other elements of the NAWS system are completed.

The committee was informed the timeline for delivering lake water to Minot remains a major focus of the NAWS project. The original plan was to have lake water delivered by mid-2025, but this timeline is now closely tied to the completion of the Snake Creek Pumping Plant modifications and the associated discharge pipeline. The committee was informed the temporary intake at Snake Creek, which will serve as an interim solution until the permanent intake is completed, is expected to be operational by July 2025. This will allow water to be delivered from Lake Audubon to Minot through the newly constructed pipelines. However, the permanent intake structure, necessary for long-term water supply stability, will not be ready until 2026 or 2027, meaning the temporary system will need to function for 1 to 2 years until the full infrastructure is completed.

In addition to information relating to the large-scale infrastructure developments, the committee received information regarding the financial arrangements for the NAWS project. The committee was informed the City of Minot is providing 35 percent of the local cost-share, except for the Biota Water Treatment Plant, which is fully funded by federal sources. The remainder of the local share is being funded through a 1 percent sales tax collected by the City of Minot. Testimony indicated SWC and the City of Minot have updated and finalized the financing agreement to ensure adequate funds are available to cover the cost of ongoing construction.

The committee was informed the NAWS project also extends water services to several additional districts. The committee received information indicating water service was extended to Bottineau in October 2022, to the Upper Souris Water District in February 2023, and to Westhope in October 2023. Testimony contended these expansions highlight the broader regional benefits of the NAWS project, as more communities gain access to a reliable water supply.

Red River Valley Water Supply 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 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 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 for the project called the Garrison Diversion Unit.

The Garrison Diversion Unit was intended to transport water through the McClusky Canal and use 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 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 through 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 requested 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 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 Eastern North Dakota Alternate Water Supply (ENDAWS) was signed in January 2021.

Testimony

The committee received testimony throughout the interim regarding the status and project development of RRVWSP during the 2023-25 biennium. Senate Bill No. 2020 (2023) appropriated $180 million for RRVWSP and provided legislative intent for total state commitment of $953 million. The committee received information regarding the project's anticipated spending schedule for each biennium. Testimony indicated the biennium funding for RRVWSP was $240 million with the addition of $60 million in local shares. The City of Grand Forks and the City of Fargo contribute 80 percent of the local share for RRVWSP. According to the testimony, the two cities are focused on keeping the project affordable for small user groups. Rural and municipal water systems committing to join the project will be required to pay 10 percent of the local share in development costs. The committee was informed 35 water systems have committed to the project.

The committee received testimony regarding the construction status of RRVWSP. The committee was informed Contract 1 and Contract 2, consisting of the Missouri River pumping station wet well and site development and the Missouri River intake screen structure and tunnel, are each complete. Other completed construction consists of the initial pipeline south of Carrington and the Sheyenne River outfall discharge structure and site development. The committee was informed Phase 1 of the project is under construction, specifically, three contracts for transmission pipeline east and west of Carrington. Once completed, the 72-inch steel transmission pipeline will extend a total of 125 miles from McClusky to Cooperstown.

The committee received information indicating designs are in progress for 11 miles of transmission pipeline for ENDAWS and the 41 miles of pipeline west of Carrington. The committee was informed United States Senator, John Hoeven, is requesting $454 million in federal funds for the ENDAWS project, including the 32 miles of pipe. Testimony indicated additional designs are in progress for the McClusky Canal intake and Biota Water Treatment Plant, which are estimated to be completed in the 2025-27 biennium.

The committee received information regarding the restoration process for easement corridors. Testimony indicated the Garrison Diversion Conservancy District anticipates full restoration of the easement corridors could take 3 to 10 years. The committee was informed the project's crop damage policy will extend until the landowner determines damages from the pipeline can no longer be proven.

REPORT FROM THE DEPARTMENT OF WATER RESOURCES

The committee received a report from DWR regarding the department's research, in coordination with the Garrison Diversion Conservancy District, into identifying options for the use of the Missouri River intake constructed near Washburn, pursuant to Section 19 of Senate Bill No. 2020 (2023). The report indicated the existence of the Missouri River Intake at its location south of Washburn is well positioned to support future water demands for domestic water users, as well as future industrial economic development opportunities. The report indicated the recommendations include the use of the intake as a new or replacement water supply to Washburn or Riverdale, a primary or supplemental water source for industrial water users, and a supplemental water supply for RRVWSP during a severe drought.

WORKFORCE COMMITTEE

The Workforce Committee was assigned four studies:

- Section 1 of Senate Bill No. 2122 (2023) directed a study of the workforce training center funding distribution model. The study required consideration of the funding distribution model, statewide integration and alignment across workforce training centers, and awarding college credit for workforce training center-offered training.
- Section 3 of House Bill No. 1519 (2023) directed a study of the use of existing autonomous system capabilities and infrastructure to provide solutions to workforce and safety needs in the state. The study required an analysis of using autonomous technology for infrastructure inspection, rural emergency service needs, agriculture advancement, energy industry application, and other opportunities for collaboration through the use of autonomous system technology.
- Section 52 of Senate Bill No. 2012 (2023) directed a study of the feasibility and desirability of the Legislative Assembly enacting the social work licensure compact. The study required consideration of whether the public and the social work community support enactment and whether the North Dakota Board of Social Work Examiners has the capacity to participate in the compact.
- Section 2 of Senate Bill No. 2170 (2023) directed a study of the feasibility and desirability of creating a state office of apprenticeship. The study required consideration of the advantages and disadvantages of creating the office in comparison to apprenticeships remaining solely under the control of the federal Department of Labor. The study required identification of areas in which the state may exercise more control over the federal labor law to provide more flexibility as it applies to minors at least 16 years of age.

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

- A report from the Industrial Commission regarding the Industrial Commission's findings and recommendations regarding its study of the feasibility and desirability of creating an employee recruitment and retention incentive program for the Bank of North Dakota, pursuant to Section 25 of House Bill No. 1014 (2023).
- Periodic reports from the Labor Commissioner on the status of the Commissioner's review and meetings with each occupational board under North Dakota Century Code Title 43, the Education Standards and Practices Board, and the State Board of Law Examiners to establish a strategy to expedite licensure of out-of-state practitioners and revise continuing education requirements, pursuant to Section 2 of Senate Bill No. 2249 (2023).
- A report from the Department of Commerce regarding workforce development grants awarded to a tribally controlled community college, pursuant to Section 6 of Senate Bill No. 2015 (2023).
- A report from Workforce Safety and Insurance (WSI) on WSI's findings and recommendations for statutory changes regarding its study of Section 65-04-26.2, regarding the liability of a general contractor or the payment of premiums for subcontractors and independent contractors who do not secure required coverage or pay premiums owed, pursuant to Section 9 of House Bill No. 1052 (2023).
- A report from the Bank of North Dakota on the Bank's findings and recommendations regarding its study on environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state, pursuant to Section 5 of House Bill No. 1429 (2023).

Committee members were Representatives Shannon Roers Jones (Chairman), Dick Anderson, Landon Bahl, Josh Christy, Hamida Dakane, Jay Fisher, Mike Motschenbacher, Scott Wagner, and Jonathan Warrey and Senators Jeff Barta, Ryan Braunberger, Randy A. Burckhard, and Michael A. Wobbema.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2024. The Legislative Management accepted the report for submission to the 69th Legislative Assembly.

WORKFORCE TRAINING CENTER FUNDING DISTRIBUTION MODEL STUDY

Section 1 of Senate Bill No. 2122 (2023) directed a study of the workforce training center funding distribution model. The study required consideration of the funding distribution model, statewide integration and alignment across workforce training centers, and awarding college credit for workforce training center-offered training.

Background

North Dakota has several workforce training centers preparing individuals to be productive members of the North Dakota workforce. The state invests in these workforce training centers through a program called TrainND. TrainND was created as a result of the recommendations from a 1998 task force formed to study best practices in surrounding states and develop a comprehensive workforce training program. The 56th Legislative Assembly enacted House Bill No. 1443 (1999), which created a workforce training board in Chapter 52-08 and provided an appropriation for TrainND.

The State Board for Career and Technical Education distributes funds from federal and state sources to fund career and technical education (CTE), pursuant to Section 15-20.1-05. The board is comprised 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 68th Legislative Assembly appropriated $2.5 million to the Department of Career and Technical Education for workforce training in House Bill No. 1019 (2023). Of that amount, $500,000 was earmarked to defray expenses for salaries and wages of workforce organization employees.

The workforce funding distribution model in repealed Section 52-08-12 was based on covered employment in each TrainND region. Section 52-08-12 was repealed by Senate Bill No. 2109 (2003).

The Department of Career and Technical Education allocates the appropriated funds to each of the four TrainND regions of North Dakota. The primary TrainND institutions in the state are Bismarck State College (BSC), Lake Region State College (LRSC), North Dakota State College of Science (NDSCS), and Williston State College (WSC). Additional regional offices are in Fargo, Grand Forks, Jamestown, and Minot. The current funding formula divides the funds allocated to the department for workforce training among the four TrainND regions based on covered employment figures from Job Service North Dakota. Covered employment consists of the total number of employees attached to employers in the four regions.

As introduced, Senate Bill No. 2122 (2023) proposed the biennial appropriation for workforce training be distributed to workforce training centers by the State Board for Career and Technical Education as follows:

- 50 percent distributed evenly among the workforce training centers;
- 40 percent distributed proportionally among the centers based on the number of workforce members trained in each region according to the statistics from the previous biennium; and
- 10 percent distributed proportionally among the centers based on the number of businesses in each region.

During the 2023 legislative session, the Senate Workforce Development Committee and the House Industry, Business and Labor Committee heard testimony relating to the workforce training center distribution model. The consensus from industry representatives indicated the current funding formula needs reconsideration. As a result, Senate Bill No. 2122 (2023) was amended to provide for the study.

Testimony

Department of Career and Technical Education

The committee received testimony from a representative of the Department of Career and Technical Education which indicated despite the lack of a codified formula, the State Board for Career and Technical Education continues to base funding on the covered employment numbers provided by Job Service North Dakota. Testimony contended a new formula incorporating a combination of different variables may be appropriate for today's workforce climate. These variables include a base allocation, an allocation based on covered employment, the number of employees trained, the number of employers served, the amount of training hours provided, and the impact of the training offered. Testimony indicated these variables could be weighed differently depending on whether the training is customized or reoccurring.

Bismarck State College

The committee received testimony from representatives of BSC regarding the TrainND program. According to the testimony, when the Legislative Assembly created the TrainND program in 1999, the objective was for the program to become self-sufficient. The business demands in the region influence the types of training provided at TrainND Southwest. Testimony indicated approximately 44 percent of the state's covered employment is in western North Dakota, and the TrainND institutions at BSC and WSC trained 77 percent of those employees. Each of the four TrainND regions charge a business fair market value for administering training programs. Testimony contended a new funding model could consider covered employment, a baseline allocation, the number of full-time employees in each region, success rates, and performance measures. The committee was informed that if at any time TrainND is reorganized to incorporate other institutions in the state, an increased appropriation would be required, and the parties subject to the plan would need to collaborate with the Director of the Department of Career and Technical Education.

North Dakota State College of Science

The committee received testimony from representatives of NDSCS regarding the TrainND program. According to the testimony, at NDSCS, 80 percent of students are enrolled in CTE programs. Testimony indicated the training provided under the TrainND program should not be viewed merely as an expense but also as an economic investment. Testimony contended that due to the regional disparities, using a past performance metric may not be the best metric for a new funding model. The committee was informed a proposed funding model could split 75 percent of the appropriation equally between the four regions and allocate the remaining 25 percent of the funds to the regions based on covered employment. Testimony indicated the cost of training has increased during the current biennium. Testimony contended if at any time TrainND is reorganized to incorporate other institutions in the state, legislative appropriations would need to match the demands of the program to ensure the program's continued success.

Williston State College

The committee received testimony from representatives of WSC regarding the TrainND program. Testimony indicated between 2010 and 2020, TrainND Northwest trained 86,877 participants, served 4,209 companies, conducted 11,439 training sessions, and contracted 1.17 million training hours. The committee was informed TrainND operates as a business, with only 6 percent of TrainND Northwest's budget funded by legislative appropriations. Testimony contended a new funding model should use performance metrics to determine where in the state training demands are greatest. Testimony contended adding additional institutions as part of a reorganization of TrainND would have a negative impact on TrainND Northwest.

State Board of Higher Education

The committee received testimony from a representative of the State Board of Higher Education which indicated due to population increases in western North Dakota, the State Board of Higher Education has contemplated adding training services and institutions to the TrainND program. Testimony contended expanding the program would help develop highly skilled workers to meet the demands of the state's robust energy, agriculture, and digitization sectors.

Dakota College at Bottineau

The committee received testimony from a representative of Dakota College at Bottineau (DCB) which indicated the Envision 2035 goal is a year-long study attempting to determine the needs of the state in 2035. The committee was informed TrainND may need to be reorganized to continue to grow the energy sector in the state. Testimony contended adding DCB and Dickinson State University (DSU) as TrainND members would benefit the TrainND program. Testimony also indicated if reorganization occurs, all current and prospective institutions will need to communicate and work collaboratively to meet the workforce training needs of the state. The committee was informed adding TrainND sites at DCB and DSU likely will require additional funding from the Legislative Assembly.

Dickinson State University

The committee received testimony from a representative of DSU regarding the committee's study of the workforce training centers in the state. According to the testimony, DSU partners with school districts and CTE centers in southwestern North Dakota to provide workforce training and educational services. Testimony indicated DSU is poised to offer additional workforce training services under the TrainND program.

Lake Region State College

The committee received testimony from representatives of LRSC regarding the committee's study of the workforce training centers in the state. According to the testimony, training programs under TrainND are customized for each participating business. Training is offered in an open enrollment setting or through a contract with a specific business. According to the testimony, TrainND institutions at BSC, LRSC, NDSCS, and WSC work collaboratively to offer a productive and efficient training program to assist all industries in the state. Testimony indicated TrainND Northeast provides businesses with active shooter training and programs teaching individuals foundational workplace skills. The committee was informed the workforce training center funding formula is reviewed internally every 2 years and is not codified, giving TrainND flexibility to make changes quickly. Historically, the four TrainND regions have collaborated to create the funding formula. The committee was informed the TrainND regions collaborated to implement a new funding formula effective July 1, 2025. The new formula would require the Department of Career and Technical Education to distribute the total amount appropriated for the biennium for workforce training in the following manner:

- 60 percent evenly among the four TrainND regions;
- 20 percent distributed proportionally among the regions based on training hours provided by each region during a lookback period of 3 consecutive fiscal years starting 4 fiscal years before the year of distribution; and
- 20 percent distributed proportionally among the regions, based on the number of unduplicated participants trained by each region during a lookback period of 3 consecutive fiscal years starting 4 fiscal years before the year of distribution.

Other Testimony

The committee received testimony from a North Dakota resident regarding the committee's study of the workforce training centers in the state. The testimony indicated the current funding model is not equitable to TrainND Northwest and a preferred model would split the appropriation equally among the four TrainND regions.

Committee Considerations

The committee requested the four TrainND institutions collaborate to create an updated funding formula. The representatives from TrainND shared the new formula and the committee considered a bill draft that would have provided for the codification of the updated funding formula created by the TrainND institutions. The committee determined refraining from codifying the formula would give the TrainND institutions more flexibility to make future changes. The committee generally agreed giving TrainND flexibility would continue to promote its operational efficiency. The committee determined the proposed reorganization plan would need to be discussed further during the 2025 legislative session.

Conclusion

The committee makes no recommendation regarding its study of the workforce training center funding distribution model.

EXISTING AUTONOMOUS SYSTEMS AND INFRASTRUCTURE STUDY

Section 3 of House Bill No. 1519 (2023) directed a study of the use of existing autonomous system capabilities and infrastructure to provide solutions to workforce and safety needs in the state. The study required an analysis of using autonomous technology for infrastructure inspection, rural emergency service needs, agriculture advancement, energy industry application, and other opportunities for collaboration through the use of autonomous system technology.

Background

State Investment

House Bill No. 1519 (2023) appropriated $475,000 of federal funds and $12,500 from the strategic investment and improvements fund to the Department of Career and Technical Education for uncrewed aircraft systems (UAS), autonomous vehicles, or other autonomous technology grants to the workforce training center serving northwest North Dakota. The bill also appropriated $275,000 of federal funds and $12,500 from the strategic investment and improvements fund to the Department of Agriculture for UAS, autonomous vehicles, or other autonomous technology grants to individuals and entities in the agriculture industry. Testimony from representatives of the economic development, technology, aviation, energy, and agriculture sectors during the 2023 legislative session indicated support for the study and the state for seeking to expand the use and development of autonomous systems. Testimony from representatives of TrainND, the Department of Agriculture, and the North Dakota University System also indicated support for integration and greater utilization of autonomous systems in new state government sectors.

State Law and Programs

Chapter 6-09.18 provides for a loan program administered by the Department of Commerce in consultation with the Bank of North Dakota. Section 6-09.18-04 provides for a legacy investment technology loan program to develop emerging technologies in North Dakota. When reviewing a loan application under the program, the Legacy Investment for Technology Committee assesses whether the proposal will deliver applied research, experimentation, or operational testing in one or more diversification sectors to create information or data to enhance industries in North Dakota. Section 6-09.18-01 provides "diversification sectors" include autonomous and uncrewed vehicles and related technologies. Section 6-09.18-06 requires loan recipients to use loan proceeds only to conduct applied research, experimentation, or operational testing in North Dakota. The loan proceeds may not be used for capital or building investments, academic or instructive programming, workforce training, administrative costs, or to supplant funding for regular operations of institutions of higher education.

Chapter 8-12 provides for establishing autonomous vehicles and on-demand autonomous vehicle networks. Section 8-12-01 defines an "autonomous vehicle" as "a vehicle equipped with an automated driving system." The section defines an "on-demand autonomous vehicle network" as "a transportation service network that uses a software application or other digital means to dispatch or otherwise enable the prearrangement of transportation with autonomous vehicles for purposes of transporting persons or goods, including for-hire transportation, transportation for compensation, and public transportation." These networks and vehicles may provide transportation of persons or goods for public, for-hire, or rideshare transportation services.

Section 8-12-02 requires an on-demand autonomous vehicle network connecting passengers to autonomous vehicles without human drivers to comply with Section 39-01-01.2(3). Section 39-01-01.2 permits a registered and insured autonomous vehicle to operate on any public highway if the vehicle complies with all applicable state and federal laws. An autonomous vehicle does not require a human driver to operate on the public highway if the autonomous vehicle can safely bring the vehicle to a complete stop in case of a system failure. An individual using an autonomous vehicle does not need a driver's license to use the vehicle if the vehicle is completing all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic and is capable of safely bringing the vehicle to a complete stop in case of a system failure.

Chapter 29-29.4 outlines when unmanned aerial vehicles (UAVs) may be used for surveillance. Section 29-29.4-01 defines the term "unmanned aerial vehicle" as any aerial vehicle, excluding satellites, operating without the possibility of direct human intervention within or on the aerial vehicle. Section 29-29.4-02 prohibits using information obtained from a UAV as admissible evidence in a prosecution or proceeding in the state unless the information was obtained under a search warrant or a legally recognized warrantless search exception. Information collected from a UAV may not be relied upon to obtain a search warrant unless the information was collected under a valid search warrant, a legally recognized warrantless search exception, or was obtained by monitoring public lands or international borders.

Chapter 29-29.4 does not prohibit using UAVs for surveillance under certain circumstances. These circumstances are provided in Section 29-29.4-04 and include the use of a UAV for surveillance of national borders for illegal activity; by law enforcement, if exigent circumstances exist for purposes of preventing imminent danger to life or bodily harm; by state or local authorities to investigate environmental or weather-related catastrophes; or for research, education, training, testing, or development efforts undertaken by or in conjunction with a school or institution of higher education in the state. Section 29-29.4-05 expressly prohibits using UAVs for domestic use in private surveillance or surveillance of the lawful exercise of constitutional rights.

Pursuant to Section 54-60-28, the Department of Commerce operates and administers the UAS Test Site, which was authorized and designed as a test site in 2014 by the Federal Aviation Administration (FAA). The Department of Commerce may cooperate and contract with the University of North Dakota (UND), the North Dakota Aeronautics Commission, the Adjutant General, and other public or private entities in the operation and administration of the test site. Section 54-60-29 establishes the UAS program fund. This fund was established to defray the expenses of the operations of the UAS Program and test site and the Beyond Visual Line of Sight (BVLOS) UAS Program, established under Section 54-60-29.1. The Department of Commerce administers this program for the design, purchase, implementation, and operating costs of the BVLOS UAS. The Northern Plains UAS Test Site is one of seven FAA-approved UAS test sites. Research is conducted at the test sites to determine ways to safely integrate UAS into the national airspace. In May 2014, the Northern Plains UAS Test Site, headquartered in Grand Forks, was the first FAA test site to conduct a research flight.

Unmanned aircraft systems are used in several industries, including precision agriculture, disaster and emergency response, energy monitoring, and scientific research. In agriculture, applications include pesticide spraying, crop monitoring, livestock tracking, yield estimations, crop harvesting, disease detection and mitigation, and moisture monitoring. In response to disasters and emergencies, UAS helps monitor forest fires, floods, and tornadoes and assists in search-and-rescue operations. In the energy industry, UAS are used to explore oil, gas, and mineral deposits. These systems also are used to monitor transmission lines, components of wind turbines, pipelines, and pollution levels. As it relates to scientific research, this technology is used for biological research; wildlife conservation efforts; archeological surveys; polar, volcanic, and oceanic research; and the monitoring of animal poaching.

Unmanned aircraft systems also are used for military purposes in North Dakota. The 40 RQ-4 Global Hawk, housed at the Grand Forks Air Force Base, provides global intelligence and surveillance. The North Dakota Air National Guard uses MQ-9 Predator aircraft to aid in global military missions, and the United States Customs and Border Protection in Grand Forks monitors 861 miles of international border between the United States and Canada.

Federal Law

Under the FAA Modernization Reform Act of 2012 [Pub. L. 112-95; 126 Stat. 11; 49 U.S.C. § 40101 et seq.], a 5-year program was created to establish six UAS test sites. The Administrator of the FAA was tasked with creating these sites, which were designed to integrate UAS into the National Airspace System. In 2014, the FAA established six UAS test sites throughout the United States. In 2016, Congress passed the FAA Extension, Safety and Security Act of 2016 [Pub. L. 114-190; 130 Stat. 615; 49 U.S.C. § 40101 et seq.], which added a seventh test site. The seven test sites are administered by Griffiss International Airport (New York), New Mexico State University (New Mexico), the North Dakota Department of Commerce (North Dakota), the State of Nevada (Nevada), Texas A&M University Corpus Christi (Texas), the University of Alaska Fairbanks (Alaska), and Virginia Polytechnic Institute & State University (Virginia). The United States Congress passed House Resolution 3935, the FAA Reauthorization Act of 2024 [Pub. L. 118-63; 138 Stat. 1025; 49 U.S.C. § 40119 et seq.], which reauthorized the FAA through fiscal year 2028, including activities and programs related to airport planning and development, facilities and equipment, and operations. The administrative rules for the FAA are provided in 14 CFR Chapter I.

Testimony

University of North Dakota

The committee received testimony from representatives of UND regarding the committee's study of the existing autonomous systems and infrastructure within the state. According to the testimony, autonomy is the ability to perform complex tasks with a sustainable reduction of human intervention. Testimony indicated artificial intelligence (AI) is a critical component of autonomy. Artificial intelligence is the development of computer systems to perform tasks typically performed by humans. Autonomy is used in several industries within the state, including agriculture, transportation, manufacturing, construction, energy, and data management. The committee was informed the Research Institute for

Autonomous Systems is a program at UND to promote and grow autonomous research and systems worldwide. Testimony indicated recent trends have shown machines are performing tasks traditionally completed by a human. The committee was informed the College of Engineering and Mines at UND works with private and public partners to advance the growth of autonomous systems and AI.

Northern Plains UAS Test Site

The committee received testimony from a representative of the Northern Plains UAS Test Site indicating the amount of time and funding required to train pilots is causing workforce shortages in the aviation sector. Testimony contended autonomous systems will help relieve some workforce pressures in the aviation sector. Testimony indicated the role of the Northern Plains UAS Test Site is to innovate, test, and advance aerial autonomy across North Dakota and the United States. The test site addresses technology implementation and regulatory challenges facing industry and governmental partners in advancing aerial autonomy. The committee was informed North Dakota is a national leader in aerial autonomy.

Vantis

The committee received testimony from a representative of Vantis which is North Dakota's UAS network and is one of seven sites tasked with integrating drones into the national airspace. Testimony contended several barriers, including laws, regulations, and the lack of shared infrastructure, hinders the full use and integration of drones into the national airspace. Testimony indicated Vantis is attempting to create a sanitized airspace that allows several aircraft types to operate simultaneously at different altitudes. Testimony also indicated while hardware and software are critical components of the Vantis network, policies, procedures, safety plans, and management protocols are equally important to ensuring the national airspace remains safe and functional. Testimony contended that due to the work at Vantis, the federal government is becoming less apprehensive about integrating drones into the national airspace.

Grand Sky

The committee received testimony from a representative of Grand Sky indicating one of Grand Sky's primary missions is to support and integrate emerging technologies for the United States Department of Defense. Testimony indicated Grand Sky is retrofitting and installing RQ-4 Global Hawk aircraft with autonomous technology for the United States Department of Defense. Testimony contended continued investment in programs such as the legacy investment for technology loan fund will bolster the development of autonomous systems and emerging technologies in the state. The committee was informed the UAS industry generally discourages policies and regulations hindering the development and deployment of autonomous systems.

Three Affiliated Tribes of the Fort Berthold Reservation

The committee received testimony from a representative of the Three Affiliated Tribes which indicated the Three Affiliated Tribes will need to obtain a BVLOS waiver from the FAA to continue the expansion of drone use on the Fort Berthold Reservation.

Department of Emergency Services

The committee received testimony from a representative of the Department of Emergency Services which indicated during emergencies, the Department of Emergency Services coordinates and assembles agencies and stakeholders to address ongoing crises. The committee was informed the Department of Emergency Services is concerned about regulatory hurdles and constraints stemming from federal policies or regulations.

Highway Patrol

The committee received testimony from a representative of the Highway Patrol which indicated crash reports for the Highway Patrol are generated by autonomous systems. These reports generally are used and accepted as evidence in insurance claims and court proceedings.

Energy and Environmental Research Center

The committee received testimony from a representative of the Energy and Environmental Research Center informing the committee of the more aggressive oil well stimulation techniques that have enabled drilling operators to extract and recover larger amounts of crude oil in the Bakken Formation. Testimony contended enhanced oil recovery paired with autonomous technology likely will extend high levels of oil and gas production in the state.

TrainND

The committee received testimony from a representative of TrainND which indicated TrainND Northwest is creating workforce training programs centered around using AI in UAS technologies. The committee was informed TrainND created a UAS curriculum for high school students attending CTE centers throughout the state. The curriculum was funded with appropriations from the Legislative Assembly.

Upper Great Plains Transportation Institute

The committee received testimony from a representative of the Upper Great Plains Transportation Institute indicating labor unions in the railroad and longshoreman industry oppose continued automation in the transportation industry. However, the testimony indicated labor unions in the motor carrier industry do not oppose continued transportation automation due to driver shortages and other workforce challenges. Testimony contended insurance policies will need to adapt to emerging technologies such as autonomous trucking.

Department of Transportation

The committee received testimony from a representative of the Department of Transportation which indicated the autonomous attenuator platooning program is designed to continue to automate trucking and eliminate the risk of serious injury for a driver on the job site. The committee was informed most consumer automated vehicles use partial driving automation rather than full driving automation. Testimony indicated once reliable technology is developed, the department will seek to implement automated snow removal crews on North Dakota roads.

Other Testimony

The committee received testimony from numerous private industry participants in the agriculture, construction, drone, manufacturing, medical, software, and transportation sectors regarding the committee's study of the existing autonomous systems and infrastructure within the state. According to the testimony, drones detect energy inefficiencies in buildings by capturing heat and cooling losses using thermodynamic cameras. Testimony contended, due to the regulatory and business-friendly climate of North Dakota, investment in the state's drone industry allows investment dollars to be stretched further than investment in other states with more stringent regulations. According to the testimony, first responders have increased the use of drones to help save lives. The committee was informed the autonomous systems market is valued at approximately $38 billion. By 2028, the market is forecasted to be $62 billion.

According to the testimony, a North Dakota-based company develops, builds, and distributes power modules for autonomous systems on the ground, underwater, and in space. Testimony indicated a North Dakota-based company developed technology to build application programming interfaces to save time and labor autonomously. Testimony contended some studies suggest drones delivering Narcan to rural and Indigenous areas are more efficient than an ambulance. The committee was informed tribes in North Dakota are using drones for drug and international border surveillance, emergency service response, crop identification, and abandoned or dangerous building inspections.

The committee was informed an autonomous platoon program employed in North Dakota uses trucks allowing human riders to quickly shut down autonomous functions and retain control of the vehicle. Testimony indicated, in an autonomous truck platoon, the human driven lead truck sets the gap between all other autonomous trucks. Redundant navigation systems, braking systems, sensors, and active safety systems are integrated into the trucks used in the autonomous truck platoon to ensure safety and proper handling.

Testimony indicated autonomous systems on farms require reliable fiber optic connectivity. Per capita, North Dakota is the most fiber-connected state in the United States. Testimony contended testing and implementing emerging autonomous technologies help establish the capabilities and limitations of these systems in an agricultural setting. Testimony indicated autonomous agricultural systems are not able to calculate and weigh correct outcomes versus incorrect outcomes. The committee was informed the advent of large language models will help future farmers integrate and operate autonomous technologies.

Testimony contended the lack of a consistent federal framework, not the lack of technology, is the largest obstacle in deploying autonomous vehicle networks across the United States. The committee was informed North Dakota continues to be a leader in developing and using automated technology for machine control in the construction industry. Testimony indicated the focus for the next 25 years in the manufacturing industry will be who can make parts the smartest, not necessarily the cheapest. The committee was informed the two factors driving the current workforce shortage in the United States are a decrease in available workers and an increase in jobs.

Testimony indicated medical providers in the state are using tools to record and detect vital signs from a remote location. Artificial intelligence is integrated into commonly used medical devices, including insulin detectors and radiology machines. Messaging applications between health providers and patients use generative AI to respond to patient inquiries accurately.

Testimony contended policymakers in the state should continue enacting policies to expand emerging technologies' entrepreneurial footprint. Policymakers were urged to allow innovators to operate and not unduly regulate industries developing emerging autonomous technologies. Testimony contended policymakers should continue to invest public funds in developing autonomous systems in the state.

Committee Considerations

Committee members expressed support for continued investment in the autonomous systems infrastructure and framework established in the state. Committee acknowledged the importance of the state prioritizes the creation of autonomous systems and recognized the development of autonomous systems is a critical component of maintaining a diverse state economy. The committee considered a bill draft to appropriate funds to several state agencies for the development of UAS, autonomous vehicles, or other autonomous technologies in the state.

Recommendation

The committee recommends House Bill No. 1037 to provide an appropriation to the Agriculture Commissioner, the Attorney General, the Department of Career and Technical Education, the Department of Health and Human Services, and the Department of Transportation to increase the use of UAS, autonomous vehicles, or other autonomous technologies in the state.

SOCIAL WORK LICENSURE COMPACT STUDY

Section 52 of Senate Bill No. 2012 (2023) directed a study of the feasibility and desirability of the Legislative Assembly enacting the social work licensure compact. The study required consideration of whether the public and the social work community support enactment and whether the North Dakota Board of Social Work Examiners has the capacity to participate in the compact.

Background

Chapter 43-41 governs the licensure and practice procedures of social workers in North Dakota. The North Dakota Board of Social Work Examiners receives applications, conducts background checks, regulates and disciplines social workers, and ultimately decides whether to issue a license to an applicant. The Council of State Governments partnered with the Department of Defense and the Association of Social Work Boards (ASWB) to foster flexibility for licensed social workers through the Social Work Licensure Compact. The compact aims to build a more cohesive social work licensing structure to allow professionals to be licensed seamlessly in multiple states simultaneously. The National Center for Interstate Compacts at the Council of State Governments defines an interstate compact as a contractual arrangement between two or more states in which the assigned parties agree on a specific policy issue and either adopt a set of standards or cooperate on a particular regional or national matter.

According to the National Center for Interstate Compacts at the Council of State Governments, the compact will enable regulated social workers with bachelor's, master's, and clinical licenses to serve clients in every compact member state. This is a deviation from current licensure practices because each state has a separate licensure process. Under the compact, each compact member state would agree to recognize the licenses issued by every other member state mutually. To qualify for a multistate license, a social worker who lives in a compact member state must hold or be eligible for an active, unencumbered license in their home state. Social workers also must satisfy the requirements associated with their license category. A social worker licensed under the compact to practice in another compact member state must abide by that state's laws and regulations related to the practice of social work. As of October 22, 2024, 22 states have joined the compact as compact member states.

Summary of Compact Provisions

Section 1 of the compact outlines the objectives of the compact to increase public access to social work services, reduce burdensome licensure requirements, encourage cooperation of member states in regulating multistate practitioners, support military families, promote licensure mobility, address workforce shortages, and allow for the use of telehealth to facilitate increased access to regulated social work services.

Section 2 outlines the defined terms used throughout the compact.

Section 3 provides the eligibility requirements for states to join the compact and compliance requirements for member states. To enact the compact, a state must:

- License and regulate the practice of social work at either the clinical, master's, or bachelor's category;
- Require applicants for licensure to graduate from an accredited program or in candidacy by an institution that subsequently becomes accredited and corresponds to the licensure sought; and
- Require applicants for clinical licensure to complete a period of supervised practice.

Under the terms of the compact, to maintain membership in the compact, a state must:

- Require applicants for a multistate license to pass a qualifying national examination corresponding to the category of multistate license sought; and
- Implement procedures for considering the criminal history records of applicants for a multistate license.

Section 4 provides three categories of multistate licenses--bachelor's, master's, and clinical. To receive a multistate license, regardless of category, all applicants in a member state must:

- Hold, or be eligible for, an active, unencumbered license to practice social work in the compact member state in which they are domiciled;
- Agree to abide by the laws, regulations, and rules of the state in which the client is located at the time service is provided;
- Submit to a review of criminal history, including a background check; and
- Pay all required fees related to the application and process and any other fees the commission may require by rule.

To receive a clinical-category multistate license, an applicant must:

- Fulfill a competency requirement, which may be satisfied by either:

    Passing a clinical-category qualifying national examination;

    Holding and continuously maintaining a clinical-category social work license in their home state before a qualifying national examination was required by the home state as further governed by the rules of the commission; or

    Proving clinical competency through a substantially equivalent standard, which the commission may determine by rule.

- Attain at least a master's degree in social work from an accredited program or be a candidate at an institution that subsequently becomes accredited.
- Fulfill a supervised practice requirement, which must be satisfied by either:

    Demonstrating completion of 3,000 or more hours of postgraduate supervised clinical practice;

    Demonstrating completion of 2 years or more of full-time postgraduate supervised clinical practice; or

    Being found to have proven clinical competency through a substantially equivalent standard, which the commission may determine by rule.

To receive a master's-category multistate license, an applicant must:

- Fulfill a competency requirement, which may be satisfied by either:

    Passing a master's-category qualifying national examination;

    Holding and continuously maintaining a master's-category social work license in their home state before a qualifying national examination was required by the home state as further governed by the rules of the commission; or

    Proving master's-category competency through a substantially equivalent standard, which the commission may determine by rule.

- Attain at least a master's degree in social work from an accredited program or be a candidate at an institution that subsequently becomes accredited.

To receive a bachelor's-category multistate license, an applicant must:

- Fulfill a competency requirement, which may be satisfied by either:

    Passing a bachelor's-category qualifying national examination;

    Holding and continuously maintaining a bachelor's-category social work license in their home state before a qualifying national examination was required by the home state as further governed by the rules of the commission; or

    Proving bachelor's-category competency through a substantially equivalent standard, which the commission may determine by rule.

- Attain at least a bachelor's degree in social work from an accredited program or be a candidate at an institution that subsequently becomes accredited.

According to the National Center for Interstate Compacts, the only national licensing examination is produced and administered by the ASWB. To be eligible for licensure under the compact, social workers must have passed the ASWB examination corresponding to the category of license sought. Social workers who already have passed the ASWB examination corresponding to the category of license sought will not be required to take an additional licensing examination. Using the broad term "qualifying national examination" allows the commission flexibility if social work licensing examination practices change.

Section 5 of the compact describes the license issuance process. Section 6 of the compact outlines and describes the relationship between the commission and the member state's lawmaking and rulemaking bodies. Section 7 of the compact provides an expedited reissuance mechanism for social workers who hold a multistate license in a member state but choose to relocate to another member state. Section 8 of the compact allows an active military member or their spouse to designate a home state where the individual has a current license in good standing and allows the designated state to serve as the individual's home state for as long as the service member is on active duty.

Section 9 of the compact discusses adverse actions against regulated social workers. The compact defines an "adverse action" as any administrative, civil, equitable, or criminal action permitted by a state's laws that is imposed by a licensing authority or other authority against a regulated social worker, including actions against an individual's license or multistate authorization to practice such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a regulated social worker's authorization to practice, including the issuance of a cease and desist action. This section provides only a licensee's home state may take adverse action against a multistate license. However, a remote state may take adverse action against the multistate authorization to practice in that state and issue enforceable subpoenas for witnesses and evidence from other member states. Notably, a home state may consider any reported adverse actions in any member state and rely on factual findings from any member state when considering discipline on a multistate license. All adverse actions must be reported to the data system provided under Section 11 of the compact.

Section 10 of the compact establishes the commission. This section outlines the composition and powers of the compact commission and executive committee. Each member state is entitled to one delegate. The delegate must be a regulated social worker who is a current member or public member of the member state's licensing authority at the time of appointment. The delegate also may be the administrator, executive director, or equivalent of the member state's licensing authority or their designee. Each delegate has one vote on commission rules and bylaws. The commission may establish a term of office, code of ethics, bylaws, rules, a budget, and financial records to fulfill the purpose of the compact. The commission must meet at least once per calendar year. The commission shall elect an executive committee composed of seven voting members. The executive committee shall include up to four ex officio, nonvoting members from four national social work organizations. All commission and executive committee meetings must be open to the public unless confidential or privileged information is to be discussed.

Section 11 of the compact requires the commission to provide for developing, maintaining, operating, and utilizing a coordinated data system. All member states must submit a uniform data set to the coordinated data system on all individuals to whom the compact is applicable as required by the rules of the commission. A member state may assign information submitted to the data system as inaccessible to the public without the express permission of that member state. The information submitted to the data system includes:

- Adverse actions against a license and related information regarding the adverse action;
- Nonconfidential information related to alternative program participation, the beginning and ending dates of participation, and other information related to participation not made confidential under member state law;
- Any denial of application for licensure and the reasons for such denial;
- The presence of significant investigative information; and
- Other information that may facilitate the compact's administration or the public's protection, as determined by the rules of the commission.

Section 12 of the compact provides the commission the power to adopt and promulgate rules to execute the provisions of the compact. The rules enacted by the commission are legally binding in all member states. However, a simple majority of member state legislatures may veto a rule of the commission. Any amendments to a rule require a 30-day notice of proposed rulemaking, with an opportunity for a public hearing. If the commission takes an action exceeding the ambit of the compact, the action is deemed invalid and has no effect.

Section 13 of the compact discusses the compact's oversight, dispute resolution, and enforcement procedures. In the event of a default by a member state, and if the member state fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the delegates of the member states. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the default period. Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Upon the termination of a state's membership from the compact, that state immediately shall notify all licensees within that state of the termination. The terminated state shall continue to recognize all licenses granted under the compact for a minimum of 6 months after the date of the notice of termination. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact, which arise among member states and between member and nonmember states.

Section 14 provides an effective date as well as withdrawal and amendment procedures. The compact becomes effective when the seventh member state enacts the compact. States joining after the commission's first meeting are subject to the rules of the commission on the date the compact becomes law in that state. Member states may enact a law to repeal their membership in the compact. A state's withdrawal does not take effect immediately. A state's withdrawal is effective 180 days after enactment of a law repealing the compact.

Section 15 of the compact requires a liberal construction of the compact to effectuate its purposes. This section also requires any phrase, clause, sentence, or provision held unconstitutional or unlawful by a court of competent jurisdiction to be severed from the compact. If a provision is severed, the remainder of the compact remains in full force and effect.

Section 16 addresses conflicts of laws with other member states. This section allows member states to retain sovereignty over all laws. Furthermore, any laws, statutes, regulations, or other legal requirements in a member state conflicting with the compact are to be superseded to the extent of the conflict.

Testimony

Department of Commerce

The committee received testimony from a representative of the Department of Commerce regarding the committee's study of the feasibility and desirability of the Legislative Assembly enacting the compact. According to the testimony, interstate compacts tend to create ease and mobility for individuals in specific professions who seek licensure in other states. The committee was informed states enacting universal license recognition laws must exercise prudence to not interfere with enacted compact provisions. Testimony contended reciprocity is efficient in small-scale arrangements; however, reciprocity agreements for large-scale items are less efficient due to the number of required contracts.

North Dakota Board of Social Work Examiners

The committee received testimony from representatives of the North Dakota Board of Social Work Examiners indicating the state faces a significant shortage of social workers and mental health practitioners, especially those seeking legal residency in the state. Testimony indicated the shortage affects individuals living in rural communities especially hard because access to social work services in these communities is limited. The committee was informed the board intends to continue its recruitment and outreach efforts to eliminate the social work shortage.

Testimony also indicated joining the compact would not necessarily interfere with current reciprocity agreements. The committee was informed the board meets monthly to review, reject, and accept reciprocity and local licensure applications. Testimony indicated it generally takes 30 days to make a final determination on a reciprocity or local licensure application. The board processed 116 reciprocity applications between January 1, 2023, and February 22, 2024.

The committee was informed the board is concerned the ASWB examination under the compact is biased and does not necessarily reflect the true competency of a prospective social worker. Testimony contended the board is not necessarily against joining the compact. However, the board may wish first to observe how other states navigate the implementation of the compact. Testimony contended if North Dakota adopts the compact, additional funds and staff will be needed to fully administer its requirements, including the operation of the data system.

Testimony also contended telehealth services likely will increase if North Dakota becomes a compact member state, which might negatively impact patient care. The committee was informed the board anticipates a $27,000 yearly reduction in revenue due to the elimination of the reciprocity licensure fee if the state becomes a compact member state. Testimony indicated the compact does not allow entry-level social workers to participate in telehealth, and the state has a significant shortage of entry-level licensures.

Council of State Governments

The committee received testimony from a representative of the Center of Innovation at the Council of State Governments regarding the function of the compact in North Dakota and other states. Testimony indicated the compact commission is comprised of delegates from all member states. The rules adopted by the compact commission apply only to licenses offered under the compact. If a social worker obtains a home state license under the compact, the social worker may practice in all other states joined in the compact. If a state joins the compact, the testing requirement applies only to multistate licenses, not single-state licenses not covered by the compact.

Other Testimony

The committee received public comments regarding the committee's study of the feasibility and desirability of the Legislative Assembly enacting the compact. Testimony that contended, if enacted, the compact will lead to increased social work services for rural areas, make out-of-state licensure less burdensome, and deliver high-quality social work services for residents of the state. Testimony indicated the compact allows a social worker in a compact state to decide whether to obtain a state-issued license or a multistate license issued under the compact.

Committee Considerations

Although committee members expressed hesitancy over relinquishing control of licensing out-of-state social workers to the compact commission, committee members also noted the compact may significantly decrease the state's shortage of social workers. Committee members also noted the compact would benefit military families and the United States Department of Defense prioritized its adoption. The committee considered a bill draft relating to the adoption of the compact.

Recommendation

The committee recommends House Bill No. 1035 providing for the adoption of the compact.

STATE OFFICE OF APPRENTICESHIP STUDY

Section 2 of Senate Bill No. 2170 (2023) directed a study of the feasibility and desirability of creating a state office of apprenticeship. The study required consideration of the advantages and disadvantages of creating the office in comparison to apprenticeships remaining solely under the control of the federal Department of Labor. The study required identification of areas in which the state may exercise more control over the federal labor law to provide more flexibility as it applies to minors at least 16 years of age.

Background

The modern-day Registered Apprenticeship Program was established through the passage of the National Apprenticeship Act in 1937. The Act provided authority to the United States Department of Labor to regulate the health, safety, and welfare of apprentices and prevent discrimination in apprenticeship programs. Early apprenticeships focused on the skilled trades, but since have expanded to cater to a number of industries and occupations to meet the needs of today's workforce. The United States Department of Labor's Office of Apprenticeship (OA) oversees the national Registered Apprenticeship system.

In cooperation with the states, the OA registers apprenticeship programs that meet federal and state standards, assures all programs provide high-quality training to apprentices, issues certificates of completion to apprentices, encourages the development of new programs, and protects the safety and welfare of all apprentices. Apprenticeship programs in the states either are regulated federally by the OA or by a recognized State Apprenticeship Agency (SAA). Apprenticeship programs are overseen by the OA in Alaska, Arkansas, California, Georgia, Iowa, Idaho, Illinois, Indiana, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming. Apprenticeship programs are overseen by an SAA in Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New York, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, Washington D.C., and Wisconsin.

Federal Regulations

The United States Department of Labor has authority to grant recognition to an SAA under 29 CFR 29.13. A recognized SAA is authorized to determine whether an apprenticeship program conforms to published standards and is eligible for federal purposes. An agency must meet various requirements to be recognized as an SAA. An agency must submit a state apprenticeship law, whether instituted through statute, executive order, regulation, or other means, which conforms to the requirements of applicable federal regulations. An agency must establish and continue to use a state apprenticeship council, which operates under the direction of the SAA. The council may be either regulatory or advisory and must be composed of persons familiar with apprenticeable occupations. The council also must include an equal number of representatives of employer and employee organizations and include public members who may not number more than the number named to represent either employer or employee organizations. An agency also must submit a State Plan for Equal Employment Opportunity in Apprenticeship that conforms to the requirements published in 29 CFR 30. Additionally, an agency's submission must include a description of the basic standards, criteria, and requirements for program registration or approval and demonstrate linkages and coordination with the state's economic development strategies and publicly funded workforce investment system. Lastly, an agency's submission must include a description of policies and operating procedures that depart from or impose requirements in addition to those prescribed under applicable federal regulations.

Federal Child Labor Laws

Federal child labor laws are outlined in the Fair Labor Standards Act. Under the Fair Labor Standards Act, for nonagricultural employment, a 14-year-old worker may work in certain occupations outside of school hours for limited periods of time. A 16-year-old worker may be employed for unlimited hours in any occupation other than one declared hazardous by the Secretary of Labor. At 18, an individual may work in any occupation, including those declared hazardous by the Secretary of Labor. However, both state and federal law allow 16 and 17-year-olds to work in certain hazardous occupations if the individual is employed as a registered apprentice or in the federal student learner program. In instances in which a state's child labor laws are less restrictive than federal law, federal law will apply. In instances in which a state's child labor laws are more stringent than federal law, state law will apply.

State Laws

Section 54-60-17 requires the Department of Commerce's Workforce Development Division to administer a program to grow the use of internships, apprenticeships, and work experience opportunities in target industries for college and upper-level high school students. Job Service North Dakota also connects applicants to apprenticeships in North Dakota through its several offices across the state and its online database. Chapter 34-07 houses North Dakota's state child labor laws. Section 34-07-17.2 allows minors 16 and 17 years of age to work in a hazardous occupation if the minor is in a registered apprenticeship program or is a student learner of an approved CTE program. This section requires a parental signature for the minor to participate as an apprentice or student learner.

Testimony

Department of Career and Technical Education

The committee received testimony from a representative of the Department of Career and Technical Education regarding the committee's study of the feasibility and desirability of creating a state office of apprenticeship. Testimony indicated apprenticeship is a proven mechanism to bring people into the workforce. The three major components of an apprenticeship are related technical instruction, on-the-job training, and a progressive pay scale. Testimony indicated apprenticeships continue to expand beyond traditional trade programs. Testimony contended advantages offered by the federal OA include standardization, expertise, oversight, and influence over national policies. Disadvantages of the federal OA include a lack of local specificity, more complex bureaucratic processes, and limited staff members. Advantages of the establishment of an SAA include local tailoring of apprenticeship programs, easier access to apprenticeship staff, faster response time, and a better understanding of local labor market dynamics. Disadvantages of establishing an SAA include system fragmentation, the need for reciprocity agreements between other SAAs, and less national influence.

According to the testimony, some states have adopted a hybrid approach that uses the federal OA but uses state agencies to hire individuals to support the federal office. Testimony contended increased communication between the state and industries will help grow pre-apprenticeship and apprenticeship programs. Adding an SAA may allow a student to progress through an apprenticeship program at an accelerated rate. The committee was informed the department intends to target high school students in an effort to get more students involved in apprenticeship. Testimony contended expanding the capacity of the federal OA and increasing the number of apprentices in the registered apprenticeship program are needed to decrease workforce shortages.

Department of Commerce

The committee received testimony from a representative of the Department of Commerce which indicated North Dakota's Workforce Development Council identified several actions that could be taken to grow apprenticeships in the state. These actions include state agency support within the Department of Career and Technical Education to collaborate with the State OA Director, development of an apprenticeship scholarship, development and expansion of quality pre-apprenticeship programs at area CTE centers and high schools, and development of marketing to increase awareness and use of apprenticeship resources.

Department of Labor and Human Rights

The committee received testimony from a representative of the Department of Labor and Human Rights. According to the testimony, a pre-apprenticeship program is a program or set of strategies designed to prepare individuals to enter and succeed in a registered apprenticeship program. The committee was informed employers, educators, and workforce professionals across the country are launching apprenticeship programs serving youth from 14 to 16 years of age. Testimony contended the use of pre-apprenticeship programs and youth apprenticeships is crucial in growing the number of apprentices in the state. The testimony indicated the department would support providing space for three to four employees in the North Dakota Department of Labor and Human Rights to bolster the federal OA. The committee was informed, if afforded additional resources, the department would grow the apprenticeable occupations while allowing existing pathways to apprenticeships to remain in place. Testimony contended the benefit to the state would be a centralized location for registered apprenticeships to reach the entire state while also allowing the Legislative Assembly to control the costs of such an office.

United States Department of Labor

The committee received testimony from a representative of the United States Department of Labor indicating states may administer apprenticeship either through the federal OA or an SAA. The OA develops, registers, and reviews registered apprenticeship programs to ensure compliance with federal law and regulations. If a state creates an SAA, the United States Department of Labor must first authorize the SAA to register apprenticeship programs. Testimony contended an advantage of creating an SAA is internalized operations and a disadvantage is increased employee turnover. The committee was informed the federal OA works with several state agencies, including the Department of Labor and Human Rights, the Department of Commerce, the Department of Career and Technical Education, and Job Service North Dakota to create registered programs. Testimony indicated if registered with the federal OA, companies operating in multiple states only are required to register one apprenticeship program. The committee was informed creating an SAA will not give a state more flexibility over youth workers because states must follow federal child labor laws.

Testimony contended hiring additional employees to assist the federal OA is a more effective use of public funds than creating a new SAA in the state. Testimony indicated all federal OA programs must meet the minimum standards under Title 29, Code of Federal Regulations, Part 29.

Idaho Department of Labor

The committee received testimony from a representative of the Idaho Department of Labor which administers apprenticeship through the federal OA, rather than an SAA. The Idaho Department of Labor creates apprenticeship standards and forwards the standards to the federal OA for review. After review, the federal OA returns the standards to Idaho's SAA for further amendment or implementation. The Idaho Department of Labor employs nine state employees to assist the federal OA in administering apprenticeships in Idaho. The United States Department of Labor dictates all standards relating to registered apprenticeship programs.

Montana Department of Labor

The committee received testimony from a representative of the Montana Department of Labor indicating Montana's SAA conducts outreach in communities, schools, and businesses to provide guidance and raise awareness about apprenticeship opportunities. Testimony contended federal rules governing apprenticeship make it difficult for small businesses to administer the program.

German American Chamber of Commerce of the Midwest

The committee received testimony from a representative of the German American Chamber of Commerce of the Midwest which indicated the Industry Consortium for Advanced Technical Training was formed in 2014 and operates as a chamber of commerce under federal tax law. Testimony indicated the consortium was created because the United States Department of Labor was not providing clear occupational profiles and minimum standards for trainers. The consortium helps businesses create training programs to help employers navigate the apprenticeship system.

Committee Considerations

The committee discussed whether creating an SAA or providing additional resources to North Dakota's State OA Director would produce the greatest number of apprenticeships in the state. The committee generally agreed providing additional resources to North Dakota's State OA Director would be the most responsible and effective use of state resources.

The committee considered a bill draft to create a division of apprenticeship within the Department of Labor and Human Rights to provide assistance to North Dakota's State OA Director.

The committee considered a bill draft that would have created an office of apprenticeship within the Department of Commerce to provide assistance to North Dakota's State OA Director.

Recommendation

The committee recommends House Bill No. 1036 to provide for the creation of an apprenticeship division within the Department of Labor and Human Rights to provide assistance to North Dakota's State OA Director.

REQUIRED REPORTS

Industrial Commission Report

The committee received a report from a representative of the Industrial Commission regarding its findings and recommendations regarding its study of the feasibility and desirability of creating an employee recruitment and retention incentive program for the Bank of North Dakota. The report indicated the Bank and the Mill and Elevator are the only state-owned, for-profit enterprises in the United States. Recruiting and retaining employees remains a challenge for these entities, especially in a competitive labor market. According to the report, providing more opportunities for variable compensation would benefit state agencies and state employees. The report contended integrated compensation provides a mechanism for state agencies to sustain growth because it is strategically based, market-driven, requires thorough analysis, rewards results, and is transformative to changing business strategies. The report outlined the Bank's plan to increase retention and recruitment, which provides:

- Performance categories, targets, and indicators must be developed and approved by the Bank of North Dakota Advisory Board and the Industrial Commission annually;
- The plan must be applied universally across the Bank employee pool, including management, with no stratification of the performance and retention compensation;
- Additional compensation must be paid over a 3-year period to reinforce the critical importance of retention;
- Employees may qualify on their start date, with benefits under the program prorated the 1st year;
- To qualify, employees may not be on a performance improvement plan;
- Employees must be employed on December 31 of each year;
- Any material findings in the Bank of North Dakota's Financial Accounting Standards Board audit and safety and soundness audit must be subject to the Advisory Board and Industrial Commission acceptance that findings were not due to negligence; and
- Employees who leave the Bank must lose any unpaid retention bonus unless the employee has reached the rule of 85 or 90 or the age of 62.

Department of Labor and Human Rights Reports

The committee received periodic reports from the Commissioner of Labor and Human Rights regarding the Commissioner's review and meetings with each occupational board under Title 43, the Education Standards and Practices Board, and the State Board of Law Examiners to establish a strategy to expedite licensure of out-of-state practitioners and revise continuing education requirements. The report indicated the Commissioner's study consisted of four phases--research and data collection, stakeholder engagement, report generation, and proposed legislation. The Commissioner indicated all 42 occupational boards returned questionnaires regarding each board's licensure requirements and procedures. The Commissioner also contacted 16 other states where universal licensure laws exist. Based on the data collected from in-state and out-of-state respondents, several solutions are being considered for the upcoming legislative session. Some of these solutions include implementing a 7-day licensure process for routine licensure applications, expanding border state licensure reciprocity, considering equivalent experience in determining whether to issue a license, using technology to administer continuing education courses, accepting applications, and collecting and storing applicant information.

Department of Commerce Report

The committee received a report from a representative of the Department of Commerce regarding workforce development grants awarded to a tribally controlled community college. The report indicated during the 2023 legislative session, the Legislative Assembly appropriated $500,000 to the department for these grants. The department awarded the entire appropriation to the Turtle Mountain Community College. The college is using the funding to support dual-credit course offerings in cybersecurity, emergency medical technician education, medical terminology, and construction education and research. The report also indicated the college is developing certificate programs for prospective emergency medical technicians and medical laboratory assistants. Other training sectors this grant will be used relate to commercial drivers; heavy equipment operators; small business development; basic carpentry; heating, ventilation, and air conditioning; basic electrical; supervision and leadership; and human services.

Workforce Safety and Insurance Report

The committee received a report from representatives of WSI regarding findings and recommendations for statutory changes regarding its study of Section 65-04-26.2 regarding the liability of a general contractor or the payment of premiums for subcontractors and independent contractors who do not secure required coverage or pay premiums owed. The report indicated a general contractor is liable for the unpaid premium and penalty of its subcontractors or independent contractors that have not secured workers' compensation insurance. Workforce Safety and Insurance invited industry leaders to discuss general contractor liability in the state. The stakeholders present included representatives from the Greater North Dakota Chamber and the North Dakota Association of Builders. The Associated General Contractors of North Dakota and WSI surveyed 155 industry participants and asked how the business verified the insured status of subcontractors or independent contractors. Respondents indicated most businesses already require a WSI Certificate of Premium Payment at the time the contract is awarded or after the completion of a job to secure payment. The report concluded the current contractor liability statute is sufficient and no changes are recommended.

Bank of North Dakota Study

The committee received a report from a representative of the Bank of North Dakota on the Bank's findings and recommendations regarding its study on environmental, social, and governance trends, laws, and policies that impact businesses and industries in this state. The report indicated the Bank assembled a committee consisting of 27 members. The members included members of the Legislative Assembly, statewide elected officials, state agency employees, and private sector employees. The committee, through several working groups, conducted over 80 interviews with industry experts.

The committee identified key sectors in which the emergence of environmental, social, and governance policies could be regulated, including marketing, agriculture, energy, insurance, investments, carbon monetization, and federal and state regulations.

The proposed actions under the report relating to marketing and agriculture included unifying state-specific messaging for cross-promotion, expanding reporting metrics for state-funded research and development projects, establishing the state as a regional and global leader in agricultural technology, prioritizing synergy with the agriculture and energy industries, developing a grassland utilization and resilience program, continuing to use the Federal Environmental Law Impact Review Committee, promoting accurate, science-based information about agriculture and climate, and reviewing the Bank's agriculture funding programs.

Other recommended actions relating to energy and carbon monetization included expanding electric generation to stabilize regional grid supply, supporting the expansion of electrical transmission capacity and natural gas pipeline infrastructure, maximizing the use of Missouri River water, assessing the potential for the state's carbon market, and determining whether tax incentives could be used to bolster carbon capture and utilization.

Recommended actions relating to insurance, investments, and federal and state regulations included developing uniform building standards, marketing the state's attributes to the insurance industry, publishing the state's insurance risk management data, establishing a framework for new insurers in the state, investigating the viability of a multistate insurance captive market tailored to the coal industry, enhancing proxy voting procedures in the state, avoiding the use of investment blacklists, increasing funding to commence and defend federal litigation, partnering with other states to increase influence, and developing stronger relationships with federal agency representatives.

MISCELLANEOUS REPORTS

In addition to the committee's assigned studies and reports, the committee received additional reports relating to the state's labor market.

Fargo Moorhead West Fargo Chamber of Commerce

The committee received testimony from representatives of the Fargo Moorhead West Fargo Chamber of Commerce regarding the labor market in the state. The report indicated the rate at which individuals are hired in the United States is insufficient to fill job vacancies. In North Dakota, there are only 38 workers available for every 100 jobs posted. The worker-to-job ratio illustrates the workforce crisis in the United States. Employers are using geolocating technologies and Internet programs to assist in finding applicants for open positions, especially in rural communities. Investment in career academies is helping to generate a more skilled workforce in the state. Future considerations to address workforce shortages in the state include reinforcing and prioritizing critical investments in the workforce, modernizing and connecting numerous workforce systems, conducting statewide assessment and analysis, empowering regional strategies, and expanding the quality of place and attraction initiatives.

Department of Commerce

The committee received testimony from a representative of the Department of Commerce regarding the operation of the Office of Legal Immigration. Senate Bill No. 2142 (2023) created the Office of Legal Immigration to enact a statewide strategy to attract, retain, and integrate global talent to foster a robust and diverse workforce in the state. The committee was informed the department is conducting an internal study to determine how to implement its strategies. The department has met with stakeholder groups, including community organizations, international recruitment and staffing agencies working with North Dakota employers, health care providers, government agencies, higher education, chambers of commerce, and economic development organizations to educate individuals on the work of the Office of Legal Immigration and to gain a better understanding of the challenges in these industries. The department also conducted research and networking efforts with other states to determine how other states support employers, communities, individuals, and families through similar state offices. The Office of Legal Immigration and 19 other states are a part of the Office of New Americans State Network. This network creates knowledge of state employees working on these issues. The Office of Legal Immigration's scope of work includes sourcing national and international recruitment pipelines, improving employer awareness of those pathways and recruitment opportunities, and improving the retention of international talent within the state. The Office of Legal Immigration plans to provide connections to recruitment agencies, immigration attorneys, and community-based support.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE MANAGEMENT FOR THE 2023-24 INTERIM

The following table identifies the bills and resolutions considered by the Legislative Management for study during the 2023-24 interim under the authority of North Dakota Century Code (NDCC) Section 54-35-02:

Bill or Resolution No.	Subject Matter (Committee)
1003 § 43	**(Required)** Study funding for dual-credit courses. The study must include a review of all funding sources relating to dual-credit courses in the state, including tuition and fees, the higher education funding formula, elementary and secondary education integrated formula payments, institution scholarships, state scholarships, and the Bank of North Dakota. The study also must include a review of funding for dual-credit courses in other states. **(Higher Education Committee)**
1003 § 44	Consider studying the emergence of artificial intelligence and the potential impacts on the state's institutions, agencies, businesses, citizens, and youth. The study must include a review of the effect of artificial intelligence on the provision of health care, effects on student learning, potential opportunities or threats to the integrity of state services, the potential impact on electoral processes, including mitigating action to be taken leading up to the 2024 state elections, opportunities for state investment or policy changes to promote artificial intelligence businesses, and cybersecurity implications across all state institutions. **(Information Technology Committee)**
1008 § 3	Consider studying the appropriation procedures for the Department of Financial Institutions. The study must include an analysis of the feasibility and desirability of alternative appropriation methods, management structures employed, oversight and reporting to the executive and legislative branches of government, staff classifications structures tied to federal or market compensation indexes, and staffing structures which allow for adjustments to market conditions. **(Government Finance Committee)**
1012 § 16	Consider studying the effect of electric vehicles in the state. As part of the study, the Legislative Management shall consider the assessment of fees to offset reductions in motor fuel tax revenues; the impact of electric vehicles on electric demand and the electrical grid; the installation of electric vehicle charging infrastructure by private and public entities, including potential funding sources; the impact to public services and public transportation providers; and the effect on employment opportunities and other economic impacts, including tourism, automobile dealers, the energy industry, and the critical minerals industry. The study must include input from key stakeholders, including electric vehicle manufacturers, electric vehicle dealers, electric utilities, electric vehicle charging station manufacturers, and other transportation entities. **(Energy Development and Transmission Committee)**
1026 § 1	Consider studying the implementation of the recommendations of the 2018 North Dakota behavioral health system study conducted by the Human Services Research Institute and the 2022 acute psychiatric and residential care needs study conducted by Renee Schulte Consulting, LLC. **(Human Services Committee)**
1040 § 33	**(Required)** Study the Public Employees Retirement System main system plan, including funding options and contributions by political subdivisions. **(Retirement Committee)**
1040 § 34	**(Required)** Study best practices for public employee retirement plans, including defined benefit plans, defined contribution plans, and hybrid plans such as side-by-side hybrid plans, cash benefit plans, and stacked hybrid plans. The study must include development of legislation to implement the retirement plan best suited to meet the needs of the state, political subdivisions, and public employees. **(Retirement Committee)**
1158 § 5	**(Required)** The Legislative Management shall appoint a legislative tax relief advisory committee, which must consist of three members of the Finance and Taxation Standing Committee of the House of Representatives and three members of the Finance and Taxation Standing Committee of the Senate, appointed by the respective Majority Leaders of the House of Representatives and Senate. The committee shall study tax relief, including income and property tax relief. Based on information provided by the Tax Department, the study must include consideration of historical income and property tax relief provided by the Legislative Assembly, including the estimated and actual fiscal impact of the tax relief; an analysis of the tax relief provided by the 68th Legislative Assembly through individual income tax rate changes, a primary residence credit, and an expansion of the homestead credit, including the estimated fiscal impact for each method of tax relief and the effect of the income tax rate changes on passthrough income related to income reported on K-1 forms and royalty income reported on 1099-MISC forms; options to implement a flat individual income tax rate, including the estimated fiscal impact of the options; options to adjust the individual income tax structure, including the estimated fiscal impact of the options; and an update on the progress of implementing the primary residence credit, including the status of information technology changes and the amount spent on advertising the credit. The committee may consider input from local taxing districts regarding the administration of the primary residence credit and the homestead credit. **(Tax Relief Advisory Committee)**

Bill or Resolution No.	Subject Matter (Committee)
1195 § 1	**(Required)** Study, in collaboration with the Commission on Juvenile Justice, the North Dakota Criminal Code to ensure equitable application to youths charged with juvenile delinquencies. The study must include consideration of the desirability and feasibility of a separate juvenile delinquency offense code, whether a separate and unique classification of criminal offenses for juveniles should be created, and which criminal offenses should receive a distinct classification for juvenile offenders, if any. In conducting the study, the Legislative Management and the Commission on Juvenile Justice may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center. **(Juvenile Justice Committee)**
1238 § 2	**(Required)** Study the implementation of effective parameters for the ending fund balance for a school district so a school district is able to achieve credit scores sufficient to bond at a reduced cost to taxpayers while ensuring equitable and adequate education. The study must include identification of efficient ways to analyze information on district expenditures; a review of the ending fund balance's impact on a district's short- and long-range planning, related facilities, staffing, and programming; an evaluation of possible trends between state investment, district expenditures, and student performance; and a review of the dramatic increase in behavioral and mental health issues of students, which are addressed by schools with school budgets, in addition to the traditional scope of academic preparation. **(Education Committee)**
1242 § 5	Consider studying emergency and interoperable public safety communications system governance needs and options. The study must include an analysis of options to manage and operate state and local emergency and interoperable public safety systems, including the Statewide Interoperable Radio Network; evaluate the current and most appropriate governance roles for each state and local emergency and interoperable public safety government entity; determine the most appropriate state or local emergency and interoperable public safety government entity to have responsibility for the ongoing administrative and operational maintenance cost of the Statewide Interoperable Radio Network; and consider input from the Information Technology Department, Department of Emergency Services Division of State Radio, Statewide Interoperability Executive Committee, Emergency Services Communications Coordinating Committee, North Dakota Association of Counties, and local public safety entities. **(Information Technology Committee)**
1247 § 1	**(Required)** 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 potential shift in property tax burden if the exemption were to be enacted, the definitions of agricultural property and farm plant as used in Section 57-02-08(15), and the impact of abandoned elevators, potato warehouses, and other farm structures classified as commercial property on the political subdivisions in which they are located, including the cost of refurbishment or removal. **(Taxation Committee)**
1288 § 4	Consider studying infrastructure development by private operators as provided for under Chapter 48-02.1, agency construction management procurement procedures under Section 48-01.2-19, and construction management at-risk delivery methods under Section 48-01.2-20. The study must include input from contractor groups and other stakeholders to determine how public-private partnerships are being used and whether the use of these partnerships has been successful. **(Government Services Committee)**
1341 § 1	**(Required)** Study those provisions of the Century Code that place restrictions on carrying firearms and dangerous weapons. The study must include an examination of the state's current firearm and weapon possession prohibitions as compared to the nation's historical regulations and restrictions on the time, place, and manner in which firearms and dangerous weapons may be restricted. The study must include an assessment of recent federal court cases relating to firearm restrictions, including public carry, and an examination of the definition of a dangerous weapon and whether the current definition of a dangerous weapon should be maintained, narrowed, or expanded. The study must include input from the Attorney General, the Superintendent of Public Instruction, a representative of the North Dakota University System, and representatives of the Supreme Court, the Association of Counties, the League of Cities, the State's Attorney Association, the Commission on Legal Counsel for Indigents, the Peace Officers Association, and an association or organization with an interest in firearm legislation. **(Judiciary Committee)**
1476 § 1	Consider studying the impact of entities that receive Medicaid and Medicaid Expansion funding utilizing contract nursing agencies. **(Health Care Committee)**
1519 § 3	Consider studying the utilization of existing autonomous system capabilities and infrastructure to provide solutions to workforce and safety needs in the state. The study must include an analysis of utilizing autonomous technology for infrastructure inspection, rural emergency service needs, agriculture advancement, energy industry application, and other opportunities for collaboration through the utilization of autonomous system technology. **(Workforce Committee)**

Bill or Resolution No.	Subject Matter (Committee)
2003 § 22	**(Required)** Study the services and needs of the State Crime Laboratory, including staffing and equipment needs; the need for forensic scientists with training in firearms and fingerprint analysis; the feasibility and desirability of remodeling current State Crime Laboratory facilities, acquiring other vacant laboratory facilities in the state, and operating additional State Crime Laboratory facilities in the state; services the State Crime Laboratory should have the capability of providing to support law enforcement entities in the state; and whether the State Crime Laboratory should be administratively separate from the Bureau of Criminal Investigation. **(Government Services Committee)**
2009 § 22	Consider studying plans for mitigation of adverse wildlife and environmental impacts and monetary payments made to state agencies, contractors, nongovernmental organizations, and others by applicants or other persons for mitigation during the siting and operation of energy conversion or transmission facilities. The study must include consideration of the provisions of law that affect the ability of developers to effectively mitigate adverse wildlife habitat and environmental impacts, applicant payments used for the purchase of perpetual or nonperpetual conservation easements, the distinction between an adverse direct environmental effect or an adverse indirect environmental effect, methods to monetarily quantify adverse direct or adverse indirect environmental effects, and alternative programs that may be used or developed for the mitigation of adverse wildlife and environmental effects. **(Agriculture and Natural Resources Committee)**
2012 § 51	Consider studying the early child care programs and child care services to identify major needs and systemic approaches to stabilize child care infrastructure. **(Human Services Committee)**
2012 § 52	Consider studying the feasibility and desirability of the Legislative Assembly enacting the social work licensure compact. The study may include consideration of whether the public and the social work community support enactment and whether the North Dakota Board of Social Work Examiners has the capacity to participate in the compact. **(Workforce Committee)**
2012 § 53	**(Required)** Study the benefits of basing provider reimbursement rates for the Medicaid program in accordance with a provider's performance under established and accepted value-based care metrics. **(Health Care Committee)**
2012 § 54	Consider studying the payment rates for intermediate care facilities, including options to increase the rates. The study must consider the funded percentage of costs for services including day and small group care, individual employment, in-home supports, respite care, habilitative care, independent habitation, and residential habitation. **(Human Services Committee)**
2015 § 63	Consider studying, in collaboration with the Insurance Commissioner and the Director of the Office of Management and Budget, the feasibility and desirability of changing administration of the state fire and tornado fund and state bonding fund from the Insurance Commissioner to the Director of the Office of Management and Budget. The study must include an analysis of the statutory changes necessary to accomplish the change in administration and other statutory changes necessary to facilitate the Office of Management and Budget's administration of these funds. **(Government Finance Committee)**
2015 § 65	**(Required)** Study the state's guardianship programs. The study must include consideration of the existing structure for the programs under the Office of Management and Budget, judicial branch, and Department of Health and Human Services; the feasibility of consolidating the programs under one agency; and an appropriate level of funding for the programs. **(Government Finance Committee)**
2080 § 6	Consider studying the laws and practices of the child welfare system. The study must include a review of the implementation of the revisions in juvenile court procedures and the new model of practice; the laws, administrative rules, and practices of the foster care and adoption systems; the timeliness of termination of parental rights; the timeliness of permanency; and the availability of resources to support children and families experiencing out-of-home placement or risk of out-of-home placement. **(Juvenile Justice Committee)**
2085 § 3	**(Required)** Conduct a comprehensive study of the delivery of emergency medical services in the state. The study must include consideration of funding, taxation, access critical areas, demographics, volunteer training, volunteer retention, systems approach to rural areas, employment options, including access to a public safety pension, and educational reimbursements. The study also shall include consideration of distressed ambulance services, which are ambulance services that have indicated an intention to close or change their license level, or an ambulance service that fails to meet performance standards as established by the Department of Health and Human Services. **(Health Services Committee)**
2122 § 1	**(Required)** Study the workforce training center funding distribution model. The study must include the funding distribution model, statewide integration and alignment across workforce training centers, and awarding college credit for workforce training center-offered training. **(Workforce Committee)**
2155 § 2	Consider studying the expansion of federally qualified health care centers. The study must include consideration of increasing the number of federally qualified health care centers in the state and improving federally qualified health care center collaboration with local public health units. **(Human Services Committee)**

Bill or Resolution No.	Subject Matter (Committee)
2158 § 1	**(Required)** Conduct a study, in consultation with the Insurance Commissioner, Department of Health and Human Services, Board of the Comprehensive Health Association of North Dakota, and Public Employees Retirement System to determine the steps necessary for the dissolution of the Comprehensive Health Association of North Dakota under Chapter 26.1-08. The study must include analysis of the enrollees, transitioning of the current enrollees' plans to potential Affordable Care Act plans, Medicaid programs, and Public Employees Retirement System plans, and any other options determined by the study. The study also must include a process to discontinue any new enrollment into the Comprehensive Health Association of North Dakota immediately and transition all major medical plans in effect as soon as plan year 2024. **(Health Services Committee)**
2170 § 2	Consider studying the feasibility and desirability of creating a state office of apprenticeship. The study must include consideration of the advantages and disadvantages of creating the office in comparison to apprenticeships remaining solely under the control of the federal Department of Labor. The study must identify areas in which the state may exercise more control over the federal labor law to provide more flexibility as it applies to minors at least 16 years of age. **(Workforce Committee)**
2192 § 1	**(Required)** Study the impact of term limits on the manner in which the Legislative Assembly conducts business. The study must include an assessment of the desirability of providing increased educational opportunities for legislative members due to shortened tenures in the Legislative Assembly, increasing the number of Legislative Council policy staff available to assist new members, and holding legislative sessions on an annual basis. **(Legislative Procedure and Arrangements Committee)**
2238 § 1	Consider studying the statewide criminal history record check process. The study may include a comparison between the statewide and nationwide criminal history record check standards, a review of the average processing time of a requested criminal history record check, and an evaluation of methods to improve efficiency and processing times of the statewide criminal history record check process. **(Juvenile Justice Committee)**
2278 § 1	Consider studying the laws and procedures relating to courts established under Chapter 40-18. The study must include an examination of the number and geographic location of existing municipal courts; access to municipal court ordinances; jurisdiction of the municipal courts; municipal court judge qualifications and training; transfer of cases to district court; appeal of cases to district court; Supreme Court general oversight of municipal courts; applicability of judicial administrative rules to municipal courts; requirements for recording proceedings in municipal court; and requirements to report information to the Supreme Court on the establishment or abolition of a court, the election, appointment and removal of municipal court judges and clerks, and annual caseload data and annual financial information on the imposition, collection, and disposition of fines and fees. **(Judiciary Committee)**
2284 § 13	**(Required)** Study school choice models implemented nationally for K-12 schools, including charter schools, magnet schools, private schools, voucher systems, and home schools. The study must include input from stakeholders, including public and nonpublic teachers and administrators, parents of students, representatives from the Department of Public Instruction, a representative from the Governor's office, and representatives from regional education associations. The study also must include a review of regulations implemented by state regulatory agencies to ensure accountability for various school choice models; a comparison of nontraditional school choice models implemented by other states; an analysis of the impact of enrollment fluctuation, including the impact on state aid; a review of the state's student population and enrollment capacity and tuition costs of nonpublic schools; and a review of services nonpublic schools are able to offer students with special needs. **(Education Committee)**
2284 § 15	Consider studying the feasibility, desirability, and impact of replacing storm days with virtual instruction days. The study must include input from the Department of Public Instruction, public school administrators and teachers, and other stakeholders. The study also must include a review of relevant statutes, plans approved by school boards, and current practices related to storm days. **(Education Committee)**

Bill or Resolution No.	Subject Matter (Committee)
2304 § 6	**(Required)** Study statewide charitable gaming comprehensively. The study must include input from the Attorney General, stakeholders from large and small charitable organizations, local political subdivisions that authorize sites, gaming equipment manufacturers and distributors, gambling addiction counselors, and other industry leaders. The study also must include an evaluation of the economic impact of charitable gaming on the state in urban and rural areas; an evaluation of gambling addiction and treatment services currently available; an evaluation of the civic benefit of charitable gaming to the communities most closely related to the gaming sites; an evaluation of how site authorization is approved and renewed, including whether charities have equitable access to sites; an evaluation of the gaming tax structure; an evaluation of public support for charitable gaming; an evaluation of statewide local restrictions placed on charitable gaming; an evaluation of gaming expansion; an evaluation of site locations where gaming is taking place; an evaluation of charitable gaming proceeds and the eligible uses of gaming proceeds, including the percentage of proceeds that may be used for administration; an evaluation of the categories of organizations that are allowed to conduct charitable gaming, including the missions of such organizations; an evaluation of the placement of gaming activity within a gaming site, including electronic pull-tab device placement; an evaluation of the rental rate paid by organizations to alcoholic beverage establishments; and an evaluation of the authority of the Attorney General to regulate alcoholic beverage establishments. **(Judiciary Committee)**
2328 § 1	**(Required)** Establish and provide staffing and administrative services to a school funding task force facilitated by a nonpartisan leadership organization. The Chairman of the Legislative Management may add additional, temporary nonvoting members to the task force, as deemed necessary by the task force chair, to serve without compensation. The task force may include public school administrators or business managers, public school teachers, five members of the Legislative Assembly appointed by the Legislative Management, parents of public school students, representatives from the Department of Public Instruction, a representative from the Governor's office, and a representative from a regional education association. The school funding task force shall review litigation the state was a party to relating to school funding and the resulting implications for school funding models; analyze higher education funding sources to determine whether the sources may be used in whole or in part for the K-12 system; review school payment formulas to determine whether education costs can be equalized across the state; study the size, student population, and economics of school districts and the number of facilities within the district per square mile compared with student population; develop and study sliding-scale models within school districts based on size, student populations, and economics; assess the negative impacts of the current funding formula; study school funding formulas used by other states; determine the benefits of and incentives to promote school district consolidation; review school transportation costs considering location, size, and student enrollment; study high-cost student and special education student costs as those costs relate to the formula weighting factors; and analyze the cost of distance education, comparing the costs of different methods of instruction delivery, including synchronous as compared to asynchronous instruction. The task force may study the funding of school building maintenance and repairs considering location and whether buildings are located in a rural or urban area; and review ending fund balances and analyze how the current funding formula impacts ending fund balances. **(School Funding Task Force)**
2359 § 1	Consider studying the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers. The study must include analysis of the impact on taxpayers not governed by the political subdivision levying special assessments and explore forms of taxation policy that minimize the levying of special assessments in the form of taxes through political subdivisions. **(Taxation Committee)**
2365 § 1	**(Required)** Study the roles of the Insurance Commissioner, Department of Emergency Services, and Department of Water Resources in relation to the tracking and updating of the relevant primary land use authority on lands outside a municipality's jurisdiction. The study must include a method of tracking all organized townships within the state and maintaining updated contact information, certified annually by December 31st; consider a formal process for organized townships to request, establish, and track the yielding of land use authority to an adjacent jurisdiction; consider how insurance producers access the necessary information, including updated contact information of the authority, to appropriately associate potential insurance policyholders with the relevant land use authority for the purposes of the Federal Emergency Management Agency's national flood insurance program; and consider how a member of the public may access the relevant land use authority associated with a specific parcel of land. **(Agriculture and Natural Resources Committee)**
2366 § 1	Consider studying the accessibility of natural gas in small communities. The study must include a review of existing programs to assist small communities with gaining access to natural gas and accessibility assistance programs that may need to be extended. **(Energy Development and Transmission Committee)**

Bill or Resolution No.	Subject Matter (Committee)
2371 § 4	**(Required)** Study the number of persons that own or control any real estate or commercial assets or operate a business within this state which is owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries or individuals acting on behalf of or in conjunction with foreign adversaries or persons listed on the Office of Foreign Assets Control sanctions list. The study must attempt to craft a definition of foreign adversary and ascertain the number of such persons residing in this state which operate a business or a charitable enterprise or have obtained a beneficial interest in real estate, commercial assets, or a business or charitable organization in this state. The study must consider which federal foreign adversary list would be best suited for use for the security of this state and the impact of implementing and using a federally created list. The study must determine how to define, create, and implement a security review verification system that monitors and reviews the actions of foreign adversaries that operate a business or a charitable enterprise or have obtained a beneficial interest in real estate, commercial assets, or a business or charitable organization in this state. The study must identify optimal methods for state officials to work and collaborate with national intelligence agents at the state and federal level regarding background checks, national security, and state security; outline what constitutes a national security threat and which person or agency has the authority to declare a national security threat and security threat to this state; identify which state agencies are best equipped to create, implement, and operate a security review verification system that monitors and reviews foreign adversaries operating a business or a charitable enterprise or that have obtained a beneficial interest in real estate, commercial assets, or a business or charitable organization in this state; identify the proper structure and function of a security review verification system; identify the individuals and persons eligible to operate a business or a charitable enterprise or that have obtained a beneficial interest in real estate, commercial assets, or a business or charitable organization in this state, under the security review verification system; and identify other necessary changes to current industry practices relating to ownership of real property or commercial assets and the operation of business or charitable entities by a foreign adversary. The study also must include under which circumstances, if any, foreign adversaries are prohibited from owning real property in this state, and under which circumstances, if any, foreign adversaries are permitted to own real property in this state. **(Agriculture and Natural Resources Committee)**
2376 § 1	**(Required)** Study, with the assistance of the North Dakota Commission on Uniform State Laws, the recording practices of local and state law enforcement during custodial interrogations to determine the feasibility and desirability for uniform implementation of recording practices. The study must include the number of law enforcement agencies currently recording custodial interrogations and any policies regarding how the recording of interrogations is conducted; the storage and retention practices associated with recording interrogations; the types of equipment used to record interrogations; the types of locations at which interrogations are recorded; the types of criminal investigations in which interrogations are recorded and the frequency those interrogations are recorded; the current disclosure of recorded interrogations in criminal discovery; best practices and current requirements for the recording of interrogations, including adoption of the Uniform Electronic Recordation of Custodial Interrogations Act; the financial costs associated with the recording of custodial interrogations and implementation of uniform practices; and any barriers to uniform implementation of the recording of custodial interrogations. The Legislative Management may seek the assistance of the North Dakota Commission on Uniform State Laws in the development of recommended policies and procedures. **(Judiciary Committee)**
2389 § 1	Consider studying prior authorization in health benefit plans. The study must include consideration of the extent to which prior authorization is used by health insurance companies in this state, including the types of services and procedures for which prior authorization is required; the impact of prior authorization on patient care, including the effects on patient health outcomes, patient satisfaction, health care costs, and patient access to care; the impact of prior authorization on health care providers and insurers, including the administrative burden, time, and cost associated with obtaining prior authorization, and the appropriate utilization of health care services; state and federal laws and regulations that may impact prior authorization; and input from stakeholders, including patients, providers, and commercial insurance plans. The study may include consideration of issues related to response times, retroactive denial, data reporting, clinical criteria and medical necessity, transparency, fraud and abuse, reviewer qualifications, exceptions, and an appeal process. **(Health Care Committee)**
3017	Consider studying the increasing need for inpatient mental health care for children and whether there are adequate home- and community-based care and outpatient services for the number of children and the location of need. **(Human Services Committee)**
3021	Consider studying whether the services provided in the state relating to the care and treatment of individuals with brain injury are adequate, including a review of the state's existing programs to identify potential pathways and treatment options for individuals with brain injury, gap identification with programmatic recommendations identifying potential strategies to address the gaps, potential federal and state funding sources for services, and developing a method to evaluate the efficacy of new programs. **(Health Services Committee)**

Bill or Resolution No.	Subject Matter (Committee)
3026	Consider studying improving re-entry outcomes for incarcerated adults and youth. The study must include an assessment of current public and private re-entry services, policies, practices, statutes, data, and resource allocation with the goal of identifying opportunities to implement research-based strategies proven to reduce recidivism, improve education and employment outcomes, and maximize resources for the greatest public safety and return on taxpayer dollars. The study also must include an examination of re-entry services in the areas of correctional supervision, employment, job training, housing, transportation, support services, and behavioral health services; levels of collaboration across service systems; and current disparities in re-entry outcomes. The Legislative Management may develop a working group to oversee the study which includes legislators, representatives from nonprofit organizations that assist with re-entry, community members with re-entry experience, and representatives from the Department of Corrections and Rehabilitation, county jails, the Behavioral Health Division of the Department of Health and Human Services, the Supreme Court, job service or business community, adult and postsecondary education institutions, and tribal nations. The Legislative Management may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center or the Crime and Justice Institute. **(Juvenile Justice Committee)**
3030	Consider studying homelessness and barriers to housing, including consideration of the effectiveness of the RentHelp program; the provision of housing financial support; legal assistance programs available to tenants; state, local, or federal educational programs for tenants and landlords regarding rights and responsibilities; month-to-month eviction rates by human service zone area; definitions of homelessness or homeless rates used by government entities; barriers to accessing housing; the manner in which homeless children receive services; historical rates of homelessness; and how a community-based approach to homelessness may reduce rates of homelessness. **(Government Services Committee)**
3034	Consider studying sustainable energy policies to maximize the economic viability of existing energy sources, assess future demands on electricity in the state, and determine the feasibility of advanced nuclear energy development and transmission in the state. **(Energy Development and Transmission Committee)**
4004	Consider studying accessible transportation for older adults and individuals with disabilities in the state. The study must include an evaluation of statewide challenges to system services and barriers to expanding the state's accessible transportation infrastructure, an examination of the fiscal impact of providing accessible transportation, an assessment of effective long-term modification of funding formulas to support accessible transportation, and an evaluation of modifications to anticipate the responsibilities of public entities under the federal Americans with Disabilities Act. **(Government Services Committee)**

NDCC Citation	Subject Matter (Committee)
4.1-01-21.1(6)	Receive a biennial report from the Agriculture Commissioner regarding environmental impact mitigation fund disbursements. (Agriculture and Natural Resources Committee)
4.1-01-26	Receive a report from the Agriculture Commissioner by June 1 of each even-numbered year regarding the implementation of and services provided under the postproduction royalty oversight program. (Energy Development and Transmission Committee)
4.1-01-28	Receive a report from the Model Zoning Review Task Force on the development of a new or updated model zoning ordinance related to animal feeding operations. (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)
6-09-53	Receive an annual comprehensive report from the State Board of Higher Education regarding grants awarded from the economic diversification research fund. The report must include information on how the research efforts by each institution align with the state's priorities, how the institutions collaborate when appropriate, and how the outcomes of the research meet established performance expectations. The State Board of Higher Education is required to develop reporting requirements for the institutions under the control of the board, including criteria for assessing performance outcomes related to grants awarded from the economic diversification research fund. (Higher Education Committee)

NDCC Citation	Subject Matter (Committee)
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 an annual report from the North Dakota State University Extension Service on full-time equivalent position adjustments made. (Budget Section)
12.1-27.1-03.5	Receive a compliance report from each public library before May 1, 2024, regarding the implementation of collection development and relocation of materials policies to ensure explicit sexual material is not maintained in the public library's children's collection inventory. (Juvenile Justice Committee)
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)
15-10-66	Receive a report from the State Commissioner of Higher Education on State Board of Higher Education policies regarding communications between board members and board member access to current and historic board information. (Higher Education Committee)
15-10-71	Receive an annual report from the State Commissioner of Higher Education regarding trends in higher education, including state and regional student enrollment, North Dakota University System institution reserves, state and regional tuition rates, state and regional student financial assistance, and the University System's response to the trends and changes, including new or expanded educational programs, closed programs, and future budget requests. (Higher Education Committee)
15-10-75	Receive a biennial program report from the State Board of Higher Education by September 1 of each even-numbered year regarding awards under the workforce education innovation program. The report must include information per educational institution regarding the number, amount, and type of awards; the name of each educational program created, enhanced, or promoted; the amount and percentage of funds used for leadership and coordination costs; and detailed expense reports, including the type of equipment and technology purchased and the number of instructors hired or trained. (Higher Education Committee)
15-11-40	Receive a report annually by the State Energy Research Center on all research activities and accomplishments. (Energy Development and Transmission Committee)
15-12.1-05	Receive annual report from the North Dakota State University 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 Board of Trustees of the Teachers' Fund for Retirement of necessary or desirable changes in statutes relating to the administration of the Teachers' Fund for Retirement fund. (Employee Benefits Programs Committee)
15-39.1-10.11	Receive annual report from the Board of Trustees of the Teachers' Fund for Retirement regarding annual test of actuarial adequacy of statutory contribution rate. (Employee Benefits Programs Committee)
15-39.1-35	Approve terminology adopted by the Board of Trustees of the Teachers' Fund for Retirement to comply with applicable federal statutes or rules. (Employee Benefits Programs Committee)
15-52-04	Receive a biennial report and recommendations from the University of North Dakota School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the University of North Dakota School of Medicine and Health Sciences. (Higher Education Committee)

NDCC Citation	Subject Matter (Committee)
15-54.1-02	Receive a biennial report from the State Board of Higher Education 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)
15.1-01-04(9)	Receive an annual report from the Kindergarten Through Grade Twelve Education Coordination Council on the activities of the council. (Education Committee)
15.1-02-04	Receive a report from the Superintendent of Public Instruction on any updates to the strategic vision and the collaborative report of the strategic plans of each steering committee member entity receiving state education funds. (Education 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 Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports. (Education 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 Committee)
15.1-02-23	Receive an annual report from the Superintendent of Public Instruction regarding the implementation of intervention measures for chronically low-performing schools. (Education 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 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 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 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 Committee)
15.1-07-35	Receive biennial reports from the Superintendent of Public Instruction regarding proposals to allow students enrolled in grades 6 through 12 to earn course credit through educational opportunities with a sponsoring entity. (Education Committee)
15.1-07-36	Receive a report from the Superintendent of Public Instruction before December 1 of each year on the categories and amount spent by each school district on school safety and security measures during the previous school year. (Education 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 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 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 Committee)
15.1-32-26	Receive a report from the Superintendent of Public Instruction before July 1, 2024, regarding dyslexia screening and intervention. (Education Committee)
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)

NDCC Citation	Subject Matter (Committee)
19-03.1-23.5	Receive a report from the Department of Health and Human Services by November 1 of each year summarizing the number of deaths that occurred in the state caused by or related to fentanyl consumption during the preceding calendar year, including the county in which the deaths occurred and the age and gender of the deceased individuals. (Health Services 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)
19-03.1-36.8(4)	Receive a report from the Attorney General by November 1 of each year summarizing activity of any civilly forfeited property. (Judiciary Committee)
19-24.1-39	Receive annual reports from the Department of Health and Human Services 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 Health and Human Services, 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 Department of Health and Human Services 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)
24-02-37.3	Approve any Department of Transportation project that utilizes more than $10 million from the flexible transportation fund, except for projects that match federal or private funds and the amount utilized from the fund is 50 percent or less of total project costs. Any request considered by the Budget Section must comply with Section 54-35-02.9. (Budget Section)
24-02-45.4	Receive a report from the Department of Transportation before July 1, 2024, regarding an update on the deployment and administration of electric vehicle charging stations. (Energy Development and Transmission 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)
28-32-07	Approve extension of time for administrative agencies to adopt rules. (Administrative Rules Committee)
28-32-10	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking. (Administrative Rules Committee)
28-32-10	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking. (Administrative Rules Committee)
28-32-18	Determine whether an administrative rule is void. (Administrative Rules Committee)

NDCC Citation	Subject Matter (Committee)
28-32-42	Receive notice of appeal of an administrative agency's rulemaking action. (Administrative Rules Committee)
29-08-03.1	Receive a report from the Supreme Court before September 1, 2024, on the implementation of a uniform bail schedule and the standard amount of bail for each state offense. (Judiciary 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)
37-07.2-01.1	Receive a report from the National Guard before June 1, 2024, on the award of out-of-state postsecondary tuition grants to qualifying members of the national guard, including the number of grants awarded for use at out-of-state institutions and grants awarded for online or remote coursework. (Higher Education Committee)
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, 54-52.6-23	Approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements. (Employee Benefits Programs 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)
48-01.2-25	Approve the change or expansion of, or any additional expenditure for, a state building construction project approved by the Legislative Assembly, but if within 6 months before or 3 months after a regular session the authorization is limited to changes in project scope and related expenditures resulting from an unforeseen emergency event. (Budget Section)
50-06-05.1	Approve termination of federal food stamp or energy assistance program. (Budget Section)
50-06-31	Receive report from the Department of Health and 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 Commissioner of the Department of Health and Human Services. (Judiciary Committee)
50-06-37	Receive a report from the Department of Health and Human Services and the steering committee for developmental disabilities system reimbursement project on development activities and status information for the project. (Human Services Committee)
50-06-43.1	Receive an annual report from the Children's Cabinet regarding the activities and findings of the cabinet. (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. (Juvenile Justice Committee)
50-06-45	Receive a report from the North Dakota Legislative Health Care Task Force by October 1 of each year on its activities and any recommendations to improve health care in the state. (Health Care Committee)

NDCC Citation	Subject Matter (Committee)
50-06-47	Receive an annual report from the Department of Health and Human Services regarding the progress of the pay for success program developed by the department to improve educational, social, or emotional achievements of at-risk children, improve the health of children, and increase participation in the workforce by individuals who qualify for governmental assistance. The section creating the pay for success program becomes effective January 1, 2024. (Human Services Committee)
50-06.3-08	Receive annual report from the Department of Health and Human Services on writeoff of recipients' or patients' accounts. (Legislative Audit and Fiscal Review Committee)
50-24.1-37	Receive a report from the Department of Health and 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 Health and Human Services on the tribal health care coordination fund and tribal government use of money distributed from the fund. (Human Services Committee)
50-24.1-47	Receive periodic reports from the Department of Health and Human Services on the impact, usage, and costs associated with the family caregiver service pilot project. (Human Services Committee)
50-29-02	Receive annual report from the Department of Health and Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan. (Human Services Committee)
50-36-04	Receive an annual report from the Department of Health and Human Service on the status of the opioid settlement fund and of spending decisions made by the department and political subdivisions under Chapter 50-36. Each political subdivision that recovers and retains moneys as a result of opioid litigation is required to submit to the department an annual report detailing the decisions of the governing body of the political subdivision regarding use of the moneys. (Budget Section)
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 Lottery regarding the operation of the lottery. (Judiciary Committee)
54-03-20	Establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session. (Legislative Procedure and Arrangements Committee)
54-03-26	Determine the fee payable by legislators for use of personal computers. (Legislative Procedure and Arrangements Committee)
54-03-26	Establish policy under which a legislator may purchase the computer used by that legislator upon replacement of the computer by the Legislative Council. (Legislative Procedure and Arrangements Committee)
54-03-28	Contract with a private entity, after receiving recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of every legislative measure mandating health insurance coverage of services or payment for specified providers of services, or an amendment that mandates such coverage or payment. (Health Care Committee)
54-03-28(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)
54-03-35	Review any legislative, initiated, or referred measure for asset allocation and investment policy affecting the legacy fund for purposes of requesting the Retirement and Investment Office arrange for the preparation and submission of a cost-benefit analysis. The Legislative Management shall append a cost-benefit analysis to any measure affecting the legacy fund before it is referred to a committee of the Legislative Assembly. The Legislative Management shall adopt a procedure for identifying measures and proposed measures affecting the legacy fund. (Legacy and Budget Stabilization Fund Advisory Board)
54-06-26	Establish guidelines defining reasonable and appropriate use of state telephones by legislative branch personnel. (Legislative Procedure and Arrangements Committee)

NDCC Citation	Subject Matter (Committee)
54-06-31	Receive periodic reports from Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. (Employee Benefits Programs Committee)
54-06-32	Approve, with the State Personnel Board, rules adopted by Human Resource Management Services authorizing service awards to employees in the classified service. (Administrative Rules Committee)
54-06-32	Receive biennial report from the Office of Management and Budget summarizing reports of state agencies providing service awards to employees in the classified service. (Employee Benefits Programs Committee)
54-06-33	Approve, with the State Personnel Board, rules adopted by Human Resource Management Services authorizing state agencies to provide employer-paid costs of training or educational courses to employees in the classified service. (Administrative Rules Committee)
54-06-33	Receive biennial report from the Office of Management and Budget summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service. (Employee Benefits Programs Committee)
54-06-34	Receive biennial report from the Office of Management and Budget summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state. (Employee Benefits Programs Committee)
54-06-37	Approve purchase or lease of an airworthy aircraft not otherwise replacing an aircraft with only insurance proceeds by a state agency or entity of state government, other than the Adjutant General or the University of North Dakota School of Aviation, if the Legislative Assembly is not in session. (Budget Section)
54-10-01	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)
54-10-01(1)(e)	Receive a quarterly report from the State Auditor regarding communication processes with audited entities and any changes to the processes; billing practices and procedures, including the use of cost estimates for audits, an itemized invoicing methodology, and a defined change order process for audits that exceed the original estimate; information on audits completed, including the name of the audited organization, organization type, audit type, audit period, estimated and actual hours and costs, and total audit costs and cost as a percentage of the audited organization's operating budget; and audit schedules, including audits performed by private firms and audits performed by the State Auditor's office. (Legislative Audit and Fiscal Review Committee)
54-10-01(1)(g)	Receive a report from the State Auditor regarding final report distribution policies and practices and any final audit reports released to the public prior to distribution of the final audit report to all individuals charged with the governance of the audit client. (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)

NDCC Citation	Subject Matter (Committee)
54-16-04.1	Approve Emergency Commission authorization of a state officer's expenditure of federal funds in excess of $50,000 if the acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.1(4)	Approve, with the Emergency Commission, acceptance of any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent before the next regular legislative session for deposit in a special fund until the Legislative Assembly appropriates the funds. (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of a state officer's acceptance of funds in excess of $50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of a state officer's expenditure of funds in excess of $50,000 if the acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.3	Approve, on the advice of the Office of Management and Budget and the recommendation of the Emergency Commission, a state officer to employ full-time equivalent positions in addition to those authorized by the Legislative Assembly. (Budget Section)
54-16-09	Approve Emergency Commission authorization of transfer of spending authority from the state contingencies appropriation in excess of $50,000 if the transfer is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-17-40	Receive report from the Housing Finance Agency at least once per biennium regarding the activities of the housing incentive fund. (Budget Section)
54-17-42	Receive report from the Industrial Commission if any order, regulation, or policy of the Industrial Commission has an estimated fiscal effect on the state in excess of $20 million in a biennium. (Budget Section)
54-17.7-13	Receive biennial report from the North Dakota Pipeline Authority on its activities. (Energy Development and Transmission Committee)
54-17.8-07	Receive biennial report from the North Dakota Outdoor Heritage Advisory Board. (Budget Section)
54-23.3-11	Receive report from the Department of Corrections and Rehabilitation annually on the department's prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing. (Budget Section)
54-27-22	Approve use of the preliminary planning revolving fund. (Budget Section)
54-27-23	Approve use of cashflow financing. (Budget Section)
54-27-27	Receive report from the Office of Management and Budget at each meeting of the Budget Section regarding the reports received from state agencies, other than entities under the control of the State Board of Higher Education, that have applied for federal grants estimated to be $25,000 or more. (Budget Section)
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 Services 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)
54-29-23(3)	Receive a report from any agency that encounters a cost or time completion issue on a project regarding the corrective measures taken by the agency regarding the project. A report under Section 54-59-23(2) must specify corrective measures being undertaken to address any cost or time of completion issue. (Information Technology Committee)
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)

NDCC Citation	Subject Matter (Committee)
54-35-02.4	Consider and report on the legislative proposals over which the committee takes jurisdiction and which fiscally impact the retirement programs of state employees or employees of any political subdivision, and health and retiree health plans of state employees or employees of any political subdivision. A majority of the members of the committee has sole authority to determine whether a legislative proposal affects a program. The committee shall make a thorough review of each proposal the committee takes under its jurisdiction, including an actuarial report. The committee shall take jurisdiction over a proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval. The committee shall include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The Chairman and Vice Chairman of the committee shall request an actuarial report from the program affected by a legislative measure if a measure is introduced in either house without an actuarial report, or if an amendment is made to the measure, and provide the report to the standing committee to which the measure is referred. (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 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)
54-35-18	Develop a comprehensive statewide energy policy that supports the long-term development of the energy opportunities in the state and to engage industry stakeholders to develop a regulatory environment that allows for responsible growth while resolving conflicts and developing synergy between energy and agriculture programs. (Energy Development and Transmission 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	Study of selected state agency fees. (Government Finance Committee)

NDCC Citation	Subject Matter (Committee)
54-35-27	Receive reports associated with the study of state agency fees, including a report by July 1, 2024, from each agency that has fees indicating whether any fees were added, deleted, or changed during the course of the biennium; a report by July 1, 2024, from each state agency that is authorized to impose more than 40 fees regarding 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; and a report by September 1, 2024, from the Office of Management and Budget compiling into a single report the reports from state agencies authorized to impose more than 40 fees. (Government Finance Committee)
54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority. (Government Services 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 Committee)
54-44-04(23)	Receive a report from the Director of the Office of Management and Budget on the status of tobacco settlement funds and related information. (Budget Section)
54-44-16	Receive report from the Office of Management and Budget regarding any purchase of oil put options by the State Investment Board to offset reduced general fund oil and gas tax revenues due to oil and gas prices falling below selected levels. (Budget Section)
54-44.1-07	Prescribe form of budget information prepared by the Director of the Budget. (Budget Section)
54-44.1-12.1	Object to any allotment by the Director of the Budget, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the action or failure to act is contrary to legislative intent. (Budget Section)
54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action. (Budget Section)
54-44.4-02.2	Receive report from the Office of Management and Budget in December of even-numbered years regarding commodities and services exempted from state procurement requirements. (Budget Section)
54-52-06	Receive an annual report from the Retirement Board regarding the contributions necessary, as determined by the actuarial study, to maintain the retirement fund's actuarial soundness. (Employee Benefits Programs Committee)
54-52.5-04	Receive a report from the State Retirement and Investment Office each interim regarding the status of the incentive compensation program for full-time equivalent investment and fiscal operations positions, including the provisions of the program; the total amount of incentives paid out to employees each year; and the minimum, maximum, and average payout per eligible full-time equivalent position. (Budget Section)
54-52.6-22	Receive an annual report from the Retirement Board regarding the status of the defined contribution retirement plan under Chapter 54-52.6. (Employee Benefits Programs 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)
54-60-03	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 the University of North Dakota, the Aeronautics Commission, Adjutant General, and private parties appointed by the Governor. (Government Finance Committee)

NDCC Citation	Subject Matter (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)
57-39.2-04.19	Receive a report from the Tax Commissioner by June 1 of each year summarizing the information provided by taxpayers that received a sales tax exemption for raw materials, single-use product contract systems, and reagents used for biologic manufacturing. The report must include a comparison of the information received in the current calendar year with data received in the preceding calendar year. (Taxation Committee)
57-39.2-26.4	Receive at least one report from each county or city that receives a distribution from the large facility development fund on the use of the funding. The report must include the amount of funding received and spent by the county or city, including an itemized list of the amounts spent and a description of how the funding was used by the county or city. (Government Finance 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 a 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 a biennial report 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)
61-02-14.4	Receive quarterly reports from the State Water Commission on 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)
65-08.1-02	Authorize establishment of casualty insurance organization to provide extraterritorial workforce safety and insurance. (Budget Section)

2019 Session Laws Citation	Subject Matter (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)

2021 Session Laws Citation	Subject Matter (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)

2023 Session Laws Citation	Subject Matter (Committee)
Chapter 1 § 6	Receive a report from the Legislative Council regarding the use of funding from the new and vacant FTE funding pool including information on new FTE positions, including the date hired; vacant FTE positions, including the dates the positions are vacated and filled; and additional salaries and wages funding needed due to savings from vacant positions being less than anticipated. (Budget Section)
Chapter 2 § 5	Receive a report from the Supreme Court regarding the use of funding from the new and vacant FTE funding pool including information on new FTE positions, including the date hired; vacant FTE positions, including the dates the positions are vacated and filled; and additional salaries and wages funding needed due to savings from vacant positions being less than anticipated. (Budget Section)
Chapter 3 § 38	Receive a report from the State Board of Higher Education regarding any appropriation authority transferred from the operations to the capital assets line items within subdivisions 2 through 14 of Section 1 of House Bill No. 1003 (2023) for the biennium beginning July 1, 2023, and ending June 30, 2025. (Higher Education Committee)
Chapter 4 § 3	Receive a report from the Department of Health and Human Services after June 30, 2024, on any transfer made in excess of $50,000 between line items within Section 1 of House Bill No. 1004 (2023), subdivisions 1, 2, and 3 of Section 1 of Senate Bill No. 2012 (2023), and any other appropriation authority for the Department of Health and Human Services approved by the 68th Legislative Assembly for the biennium beginning July 1, 2023, and ending June 30, 2025. (Budget Section)
Chapter 4 § 4	Receive a report from the Department of Health and Human Services after June 30, 2024, on any transfer made in excess of $50,000 between line items within Section 1 of House Bill No. 1004 (2023), subdivisions 1, 2, and 3 of Section 1 of Senate Bill No. 2012 (2023), and any other appropriation authority for the Department of Health and Human Services approved by the 68th Legislative Assembly to subdivision 4 of Section 1 of Senate Bill No. 2012 (2023), for the biennium beginning July 1, 2023, and ending June 30, 2025. (Budget Section)
Chapter 7 § 6	Receive a report from the Veterans' Home by January 1, 2024, on the status of implementing recommendations included in the Veterans' Home strategic plan. (Government Services Committee)
Chapter 10 § 5	Receive a report from the Council on the Arts after June 30, 2024, on any transfer made in excess of $50,000 between line items in Section 1 of House Bill No. 1010 (2023). (Budget Section)
Chapter 12 § 17	Receive a presentation from the Department of Transportation before August 1, 2024, of the department's plan to complete the US Highway 85 four-lane project. (Government Finance Committee)
Chapter 14 § 14	Receive at least one report from the State Energy Research Center during the 2023-24 interim regarding the center's study of prospective in-state resources of economically feasible accumulations of critical minerals, including rare earth elements and other high-value minerals or materials that may be suitable for extraction and enrichment. (Energy Development and Transmission Committee)
Chapter 14 § 15	Receive at least one report from the State Energy Research Center during the 2023-24 interim regarding the status and results of its salt cavern underground energy storage and research project. (Energy Development and Transmission Committee)
Chapter 14 § 17	Receive at least one report from the Energy and Environmental Research Center during the 2023-24 interim regarding the status of the center's study of future lignite electrical generation facilities. (Energy Development and Transmission Committee)
Chapter 14 § 25	Receive a report from the Industrial Commission by March 31, 2024, regarding the Industrial Commission's findings and recommendations regarding its study of the feasibility and desirability of creating an employee recruitment and retention incentive program for the Bank of North Dakota. (Workforce Committee)
Chapter 18 § 30	Receive from the Department of Commerce one report by December 31, 2023, and no fewer than two reports during the period beginning January 1, 2024, and ending October 31, 2024, regarding the status of each grant program identified in Section 2 of House Bill No. 1018 (2023) derived from the general fund or state special funds, including funding spent to date, the number of individuals or businesses awarded funding, the name and amount of funding awarded to each individual and business, the date funding was awarded, criteria used when awarding funding, and a detailed listing of how the funding has been used. (Government Finance Committee)
Chapter 20 § 10	Receive an annual report from the State Board of Higher Education on adjustments to full-time equivalent positions. (Budget Section)

Chapter 21 § 10	Receive a report from the Department of Career and Technical Education during the 2023-24 interim regarding the amount of funding provided per project to defray inflationary costs of existing projects approved under the statewide area career center initiative grant program during the 2021-23 biennium and the construction status of each project. The Office of Management and Budget is required to report to the Legislative Management regarding any uncommitted federal Coronavirus Capital Projects Fund appropriation authority transferred from the Information Technology Department to the Department of Career and Technical Education. (Government Finance Committee)
Chapter 32 § 1	Receive at least one report from the Department of Career and Technical Education during the 2023-24 interim regarding grants awarded to a workforce training center for the purposes of uncrewed aircraft system, autonomous vehicle, or other autonomous technology. The report must include a list of grant recipients, the amounts awarded, and a description of the use of the grant funding. (Government Finance Committee)
Chapter 32 § 2	Receive at least one report from the Agriculture Commissioner during the 2023-24 interim regarding grants awarded to individuals and entities in the agriculture industry for the purposes of uncrewed aircraft system, autonomous vehicle, or other autonomous technology. The report must include a list of grant recipients, the amounts awarded, and a description of the use of the grant funding. (Government Finance Committee)
Chapter 33 § 3	Approve Emergency Commission authorization of the Governor's expenditure of federal funds accepted by the Governor's office. (Budget Section)
Chapter 33 § 3	Receive a report from the Governor regarding the source, amount, and purpose of any additional income from other funds, excluding federal funds, which become available to the Governor's office during the period beginning July 1, 2023, and ending June 30, 2025. (Budget Section)
Chapter 35 § 7	Receive a report from the Attorney General during the 2023-24 interim on the status and results of the human trafficking victims grant program. (Juvenile Justice Committee)
Chapter 44 § 5	Receive a report from the Department of Health and Human Services after June 30, 2024, on any transfer made in excess of $50,000 between line items within subdivisions 1, 2, 3, and 4 of Section 1 of Senate Bill No. 2012 (2023), Section 1 of House Bill No. 1004 (2023), and any remaining appropriation authority for the Department of Health and Human Services approved by the 68th Legislative Assembly for the biennium beginning July 1, 2023, and ending June 30, 2025. (Budget Section)
Chapter 44 § 7	Receive a report from the Department of Health and Human Services regarding the use of funding for the full-time equivalent position block grant program. (Government Finance Committee)
Chapter 44 § 55	Receive a report from the Supreme Court by June 1, 2024, regarding the Supreme Court's findings and recommendation and any legislation required to implement the statutory change of drug court to wellness court. (Judiciary Committee)
Chapter 44 § 56	Receive a report from the Department of Health and Human Services during the 2023-24 interim regarding the status of early childhood programs managed by the department. (Human Services Committee)
Chapter 47 § 6	Receive a report from the Department of Commerce by October 1, 2024 regarding workforce development grants awarded to a tribally controlled community college. (Workforce Committee)
Chapter 47 § 10	Receive a report from the Office of Management and Budget regarding the transfer on December 1, 2024, of any uncommitted federal State Fiscal Recovery Fund appropriation authority from the state agency that received the appropriation authority to the Department of Corrections and Rehabilitation and the transfer of any uncommitted accumulated interest and earnings of the federal State Fiscal Recovery Fund to the Department of Corrections and Rehabilitation during the biennium beginning July 1, 2023, and ending June 30, 2025. (Budget Section)
Chapter 47 § 17	Receive a report from the Office of Management and Budget before September 30, 2024, regarding the findings and recommendations from its study of improving the cash management practices of the state. (Government Finance Committee)
Chapter 47 § 20	Receive a report from the Office of Management and Budget regarding the statewide plan for providing targeted market equity compensation adjustments to executive branch state employees, any changes to the plan presented to the 68th Legislative Assembly, and the appropriation authority transferred from the targeted market equity pool. (Budget Section)
Chapter 47 § 22	Receive a report from the Office of Management and Budget at each meeting of the Budget Section regarding salaries and wages, vacant position information, and the use of funding from the new and vacant FTE funding pool. (Budget Section)
Chapter 52 § 19	Receive a report from the Department of Water Resources by October 1, 2024, regarding the Department of Water Resources' research, in coordination with the Garrison Diversion Conservancy District, into identifying options for the use of the Missouri River intake constructed near Washburn. (Water Topics Overview Committee)
Chapter 52 § 21	Approve Emergency Commission authorization of requests by the Department of Water Resources to increase carryover spending authority of funds appropriated in the 2021-23 biennium into the 2023-25 biennium. (Budget Section)

Chapter 54 § 7	Receive a report from the State Retirement and Investment Office before implementation of the incentive compensation program and after approval of the program by the State Investment Board regarding the provisions of the incentive compensation program for full-time equivalent investment and fiscal operations positions. (Budget Section)
Chapter 56 § 4	Receive reports from the Ethics Commission during the 2023-24 interim on the activities and operations of the commission, including information regarding the number of complaints received by the commission, education and outreach efforts, and the status of the commission's budget. (Judiciary Committee)
Chapter 61 § 1	Receive a report from the Department of Emergency Services on grants awarded before June 30, 2023, to tribal governments, counties, cities, and townships for emergency snow removal. (Government Finance Committee)
Chapter 148 § 7	Receive a report from the Department of Health and Human Services by January 1, 2024, and every 6 months thereafter during the 2023-25 biennium, on the department's findings and recommendations regarding the its foster care and adoption child welfare redesign. (Human Services Committee)
Chapter 173 § 18	Receive a quarterly report from the Superintendent of Public Instruction on the implementation and effectiveness of the appropriation provided to the Department of Public Instruction for the purposes of supporting professional learning related to the science of reading and implementing systematic direct literacy instruction to improve educational outcomes. The report must include the number of teachers trained, an anticipated timeline of results trends, and any results trends available. (Education Committee)
Chapter 280 § 5	Receive a report from the Bank of North Dakota before June 1, 2024, on the Bank's findings and recommendations regarding its study on environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state. (Energy Development and Transmission Committee)
Chapter 280 § 5	Receive a report from the Bank of North Dakota before June 1, 2024, on the Bank's findings and recommendations regarding its study on environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state. (Workforce Committee)
Chapter 317 § 2	Receive periodic reports from the Labor Commissioner on the status of the Commissioner's review and meetings with each occupational board under Title 43, the Education Standards and Practices Board, and the State Board of Law Examiners to establish a strategy to expediate licensure of out-of-state practitioners and revise continuing education requirements. (Workforce Committee)
Chapter 433 § 20	Receive a report from the Department of Health and Human Services before August 1, 2024, on the progress of the study being conducted with the assistance of the Supreme Court, human service zone directors, and the North Dakota Association of Counties, to review the option of reinstating parental rights that have been terminated by a court. (Juvenile Justice Committee)
Chapter 483 § 1	Receive a report from the Department of Transportation before August 1, 2024, on the department's findings and recommendations on the department's study of the feasibility and impact of imposing an electronic vehicle charging tax to offset lost revenue from gas tax sales. (Energy Development and Transmission Committee)
Chapter 500 § 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, 2025, the task force shall submit a final report. (Juvenile Justice Committee)
Chapter 505 § 1	Establish and provide staffing and administrative services to a school funding task force facilitated by a nonpartisan leadership organization. The Chairman of the Legislative Management may add additional, temporary nonvoting members to the task force, as deemed necessary by the task force chair, to serve without compensation. The task force may include public school administrators or business managers, public school teachers, five members of the Legislative Assembly appointed by the Legislative Management, parents of public school students, representatives from the Department of Public Instruction, a representative from the Governor's office, and a representative from a regional education association. The school funding task force shall review litigation the state was a party to relating to school funding and the resulting implications for school funding models; analyze higher education funding sources to determine whether the sources may be used in whole or in part for the K-12 system; review school payment formulas to determine whether education costs can be equalized across the state; study the size, student population, and economics of school districts and the number of facilities within the district per square mile compared with student population; develop and study sliding-scale models within school districts based on size, student populations, and economics; assess the negative impacts of the current funding formula; study school funding formulas used by other states; determine the benefits of and incentives to promote school district consolidation; review school transportation costs considering location, size, and student enrollment; study high-cost student and special education student costs as those costs relate to the formula weighting factors; and analyze the cost of distance education, comparing the costs of different methods of instruction delivery, including synchronous as compared to asynchronous instruction. The task force may study the funding of school building maintenance and repairs considering location and whether buildings are located in a rural or urban area; and review ending fund balances and analyze how the current funding formula impacts ending fund balances. (School Funding Task Force)

Chapter 506 § 1	Receive a report from the Department of Health and Human Services before July 1, 2024, on the department's findings and recommendations on the department's study and implementation of a standard framework for youth services for children impacted or potentially impacted by human trafficking. (Juvenile Justice Committee)
Chapter 527 § 5	The Legislative Management shall appoint a legislative tax relief advisory committee, which must consist of three members of the Finance and Taxation Standing Committee of the House of Representatives and three members of the Finance and Taxation Standing Committee of the Senate, appointed by the respective Majority Leaders of the House of Representatives and Senate. The committee shall study tax relief, including income and property tax relief. Based on information provided by the Tax Department, the study must include consideration of historical income and property tax relief provided by the Legislative Assembly, including the estimated and actual fiscal impact of the tax relief; an analysis of the tax relief provided by the 68th Legislative Assembly through individual income tax rate changes, a primary residence credit, and an expansion of the homestead credit, including the estimated fiscal impact for each method of tax relief and the effect of the income tax rate changes on passthrough income related to income reported on K-1 forms and royalty income reported on 1099-MISC forms; options to implement a flat individual income tax rate, including the estimated fiscal impact of the options; options to adjust the individual income tax structure, including the estimated fiscal impact of the options; and an update on the progress of implementing the primary residence credit, including the status of information technology changes and the amount spent on advertising the credit. The committee may consider input from local taxing districts regarding the administration of the primary residence credit and the homestead credit. (Tax Relief Advisory Committee)
Chapter 533 § 3	Receive a report from the Tax Commissioner, State Supervisor of Assessments, and the Chairmen of the Finance and Taxation Standing Committees of the House of Representatives and the Senate before June 1, 2024, regarding their findings and recommendations on a study of property tax transparency. (Taxation Committee)
Chapter 577 § 2	Approve payment by the State Water Commission to the Bank of North Dakota in the amount of the default certified to the Budget Section by the Bank of North Dakota if the Western Area Water Supply Authority defaults on its payment of principal or interest on the infrastructure revolving loan under the new section to Chapter 61-40. (Budget Section)
Chapter 581 § 9	Receive a report from Workforce Safety and Insurance before July 1, 2024, on Workforce Safety and Insurance's findings and recommendations for statutory changes regarding its study of Section 65-04-26.2 regarding the liability of a general contractor or the payment of premiums for subcontractors and independent contractors who do not secure required coverage or pay premiums owed. (Workforce Committee)
Chapter 636 § 6	Approve any Department of Transportation project that utilizes more than $10 million from the flexible transportation fund, except for projects that match federal or private funds and the amount utilized from the fund is 50 percent or less of total project costs. Any request considered by the Budget Section must comply with Section 54-35-02.9. (Budget Section)
Chapter 636 § 7	Receive a biennial report from the Retirement and Investment Office regarding the amount of legacy fund earnings above the percent of market value that would have been transferred to the legacy earnings fund had Senate Bill No. 2330 (2023) not been passed by the 68th Legislative Assembly. (Government Finance Committee)

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 need to modernize the fleet of state-owned aircraft, determine the adequate number of aircraft necessary for official government travel, and the feasibility and desirability of establishing an aircraft pool similar to the state motor pool. The study may exclude the ownership and use of specialized aircraft used by the Game and Fish Department, the Highway Patrol, the Department of Transportation, and the Aeronautics Commission, and aircraft owned or leased by the University of North Dakota School of Aviation. (Legislative Management directive)	Government Finance Committee
Study the feasibility and desirability of creating a statutory committee to assist in the design and oversight of the remodel or construction of state-owned buildings, including consideration of who should serve on such a committee, the authority the committee should exercise over projects, and which projects should be subject to the jurisdiction of the committee. (Legislative Management directive)	Government Services Committee

Responsibility	Interim Committee
Study the legislative rules, ethics rules, state statutory provisions, and constitutional provisions relating to potential conflicts of interest by a public official. The study must include a review and assessment of whether the various legislative rules, ethics rules, criminal statutory provisions, and constitutional provisions are comprehensible, consistent, and precise, and serve the purpose and intent for which they were established. The study also must examine options for clarifying ambiguous language and correcting identified inconsistencies among provisions to ensure uniformity. (Legislative Management Chairman directive)	Legislative Audit and Fiscal Review Committee
On December 5, 2023, the Legislative Management appointed the Redistricting Committee in response to the November 17, 2023, order in Turtle Mountain Band of Chippewa Indians, et al. v. Howe, CV 3:22-cv-00022-PDW-ARS. The Redistricting Committee shall develop a plan that is in compliance with Section 2 of the Voting Rights Act of 1965, for use in the 2024 general election.	Redistricting Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Management for study during the 2023-24 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
1007 § 5	Consider studying current and future governance needs of the Veterans' Home. The study must include a review of the report that must be provided to the Legislative Management by the Veterans' Home by January 1, 2024, regarding the status of implementing recommendations included in the Veterans' Home strategic plan. The study must consider the current duties and responsibilities of the Administrative Committee on Veterans' Affairs, the Veterans' Home Governing Board, and the Veterans' Home administrator and any organizational changes necessary to provide services for veterans and veterans' spouses, increase resident census at the Veterans' Home, accomplish goals included in the Veterans' Home strategic plan, and ensure the long-term viability of the Veterans' Home.
1149 § 1	Consider studying the impact of the North Dakota High School Activities Association on students. The study may include a review of the makeup of the board of the association; the association's bylaws and policies, including eligibility and transfer rules; and the role of the state as it relates to the association's performance of a quasi-governmental function.
1183 § 5	Consider studying the retirement system for peace officers and public safety personnel in the state. The study must include consideration of the Public Employees Retirement System retirement plans offered to peace officers and safety personnel; how political subdivisions provide retirement benefits to peace officers and safety personnel; how other states provide retirement benefits to peace officers and safety personnel; the level of benefits and contributions in the state, political subdivision, and other state plans; how peace officers and public safety personnel transition between these retirement plans; and factors unique to retirement plans in the public safety sector.
1413 § 1	Consider studying the impact of third-party payments and accumulator adjustment programs on North Dakota patients' out-of-pocket costs, medications adherence, and health care systems costs and impacts. The study shall assess health benefit participants' usage and prevalence of third-party payments in North Dakota. The study also shall review data from states with accumulator adjustment program bans since 2019 and shall seek input from all relevant stakeholders in the health care industry.
1415 § 2	Consider studying the feasibility and desirability of creating a multijurisdictional sexual predator task force. The study must include input from stakeholders, including representatives from law enforcement, regarding the need for or desire to have a sexual predator task force. The study also must include an analysis of interagency coordination.
1480 § 3	Consider studying the pay for success funding model as a tool to identify ways for state and local government to provide outcomes-based services. The study must include a review of the ways the pay for success model may be implemented at the state and local level, examine pay for success programs of other states, and include input from the Executive Director of the Department of Health and Human Services and the State Treasurer.
1487 § 2	Consider studying the cost to North Dakota retailers for the collection, remittance, and filing of North Dakota sales and use tax. The study must categorize North Dakota merchants into no less than three classes by sales volume and describe any differences in costs related to sales volume.

Bill or Resolution No.	Subject Matter
1512 § 1	Consider studying statutory provisions governing certification of site compatibility for electric energy conversion facilities. The study must include a review of the provisions of the Century Code that allow the Public Service Commission to issue a certificate of site compatibility for electric energy conversion facilities, the certification process for site compatibility for electric energy conversion facilities, and the impact of certifying site compatibility of electric energy conversion facilities in conjunction with subsurface mineral rights for mineral owners or mineral lessees.
1528 § 6	Consider studying the records management policies of state agencies, including boards and commissions. The study must include a review of policy uniformity and training resources; an analysis of technological capabilities and limitations; evaluation of the feasibility of providing electronic mail and file service solutions for statewide public entities, including boards and commissions; and an analysis of the development, implementation, enforcement, and auditing of records management policies and practices.
1529 § 1	Consider studying the provisions of Chapter 16.1-08.1 related to campaign contribution statements for purposes of eliminating duplicative provisions, clarifying inconsistent or unclear provisions, pursuing uniformity for required contribution and expenditure reports, and rearranging provisions in a logical order.
1536 § 4	Consider studying the implementation of Chapter 27-19.1. The study must include a review of federal statutes related to Indian child welfare, relevant case law, and input from stakeholders.
2004 § 7	Consider studying local government audit services and the challenges of political subdivisions to obtain auditing services.
2009 § 23	Consider studying the feasibility and desirability of transferring agriculture education programs in the Department of Career and Technical Education to the Agriculture Commissioner. The study must include an analysis of each program, duties and responsibilities of the programs and Department of Career and Technical Education staff, the potential to gain administrative and resource efficiencies if the programs are transferred to the Agriculture Commissioner, and future staffing, operating, and equipment needs of the programs.
2015 § 64	Consider studying the policies and procedures of state agencies, excluding institutions under the control of the State Board of Higher Education, for managing, maintaining, and leasing state facilities. The study must include consideration of the most efficient and cost-effective organizational structure for managing, maintaining, and leasing state facilities, including a comparison of allocating funding and full-time equivalent positions to various agencies and centralizing funding and full-time equivalent positions under one agency; the costs and benefits of leasing or owning state facilities; and the appropriate use of contracts for service and full-time equivalent positions for custodial services, mechanical services, snow removal, lawn care, and maintenance.
2016 § 15	Consider studying the feasibility and desirability of a Cold War trail project. The study must consider potential sites to include on the trail and options and costs of the construction, addition, maintenance, and equipment for new and existing North Dakota Cold War historic sites; providing educational resources regarding North Dakota's role in the Cold War; and promoting tourism for North Dakota Cold War historic sites.
2018 § 11	Consider studying the records management programs of state agencies and institutions related to records deemed historic in value. The study must include a review of state agencies' and institutions' compliance with the records management programs.
2024 § 3	Consider studying the feasibility and desirability of establishing a rate structure to offset the operating expenses of the Ethics Commission. The study must include a comparison of the funding method for ethics commissions used by other states within the region.
2101 § 1	Consider studying the state's regulation of petroleum products and antifreeze and the relevance of these regulations. The study must include Chapters 23.1-13 on petroleum products and 23.1-14 on antifreeze regulation, the legislative history of these chapters, any other current regulations on petroleum products and antifreeze related to these chapters, and input from interested agencies and industries, including the Department of Environmental Quality.
2145 § 2	Consider studying the statute for the authorization to operate postsecondary career schools.
2201 § 6	Consider studying, in collaboration with the Department of Health and Human Services, the administrative costs involved in certifying a compassion center. The study must include information on the amount and frequency of certification fees, a description of additional costs associated with certification, an explanation of how the department uses the certification fees once they are collected, a recommendation of the best way to lower administrative costs while maintaining the integrity of the department's medical marijuana program, and a prediction on whether the lowering of administrative costs will help to lower consumer costs on medical marijuana purchased from a compassion center.

Bill or Resolution No.	Subject Matter
2284 § 12	Consider studying the composition of the State Board of Public School Education. The study must include an analysis of the State Board of Public School Education boundaries, including a comparison of methodologies for creating the boundaries; an analysis of the inclusion of representatives from small, large, urban, and rural schools on the board; an evaluation of term limits for board members, including staggering terms to ensure continuity of knowledge; an evaluation of the benefits and consequences of requiring the composition of the board to include two school district superintendents, two members of a board of a school district, and two citizens at large; an evaluation of the benefits and consequences of requiring a minimum or maximum number of candidates to be submitted to the Governor and permitting the Governor to request a new list of potential candidates once; and an analysis of the role and practices of the County Superintendent of Schools.
2284 § 14	Consider studying employer recruitment needs, applicable state regulations, and benefit options for K-12 educators within the state, including potential barriers to military personnel and spouses teaching in the classroom. The study should identify immediate and long-term public policy strategies to address teacher shortages and support for military families and spouses.
2291 § 1	Consider studying the utilization of federal temporary assistance for needy families block grant funding received by the state. The study must include a review of the recent history of the use of the funds and an assessment and determination of the appropriate use of the funds for administrative costs, direct and indirect client financial and other support, and other purposes.
2321 § 1	Consider studying the state's policies and relevant case law regarding open adoptions to determine the feasibility and desirability for legislation relating to clarifying communication and the rights of biological parents. The study must include existing state policies regarding open adoptions; the current practices of collection and storage of personal, contact, and medical information of biological parents; benefits and consequences of adopting legislation that would extend legal enforceability to open adoption agreements; best practices for keeping birth children and their adoptive parents aware of health complications in biological family members over time; any information relevant to open adoption or open adoption agreements that the Legislative Management deems important in understanding the totality of the issue; the potential financial costs to adoptive families, adoption agencies, and the court system; and any barriers to extending legal enforceability to open adoption agreements in North Dakota. The Legislative Management may seek the assistance of the Department of Health and Human Services and adoption agencies that partner with the State of North Dakota.
2327 § 1	Consider studying, with the assistance of the Department of Health and Human Services and the North Dakota Commission on Uniform State Laws, the parentage and adoption practices currently in statute. The study must include a review of current policies on determining and notifying a biological parent of parentage or a hearing on a petition for adoption; the current practices of collection and storage of personal information of parents; best practices for protecting the privacy of individuals involved in the adoption process, including those regarding the adequate storage of personal data, methods of notifying a parent of parentage or of a hearing on a petition for adoption, and collecting and keeping correct contact and personal information from involved individuals; the feasibility and desirability of adopting certain language from the 2017 Uniform Parentage Act, particularly those relating to more modern practices with the handling of personal data and the means of notification; any information relevant to the adoption process and its modernization which the Department of Health and Human Services may deem important; the financial costs associated with the establishment and maintenance of a parentage registry within the state; and any barriers to establishment or maintenance of a parentage registry. The Legislative Management may seek the assistance of the North Dakota Commission on Uniform State Laws in the development of recommended policies and procedures.
3018	Consider studying strategies to increase the number of North Dakotans who receive health benefits coverage.
3022	Consider studying and clarifying the roles of the State Board of Public School Education, the Superintendent of Public Instruction, the boards of public school districts, and the North Dakota High School Activities Association, as they relate to proper spectator conduct, including the clarification of expectations and consequences for violating those expectations, and the promotion of good sportsmanship and good citizenship, including embracing diversity. The Legislative Management may receive input from a task force which may include one member of the State Board of Public School Education; the Superintendent of Public Instruction or the Superintendent's designee; three members of the boards of public school districts appointed by the North Dakota School Boards Association; the President of the North Dakota High School Activities Association or the President's designee; one representative from each of the four tribes that have schools located in North Dakota, appointed by each Tribal Chair; and one parent appointed by the Indian Education Director of Bismarck Public Schools.

Bill or Resolution No.	Subject Matter
3025	Consider studying the feasibility and desirability of renovating and constructing an addition to the Liberty Memorial Building or constructing a new building on the grounds of the State Capitol to serve as a new Supreme Court building. The study may include input from the Supreme Court and the Office of Management and Budget. The study also must consider the feasibility and desirability of relocating the State Library or constructing a new building on the grounds of the State Capitol for the State Library, and the relocation of other agencies occupying the Liberty Memorial Building.
4009	Consider studying whether health insurance should provide coverage for diagnostic and supplemental breast examinations without imposing cost-sharing requirements.
4011	Consider studying the program of all-inclusive care for the elderly and the benefits of expanding the program.
4016	Consider studying the availability of adequately accessible housing in the state for individuals with mobility impairments or physical disabilities. The study must include an evaluation of statewide challenges and barriers to expanding the state's inventory of accessible housing, an assessment of the need for and availability of accessible housing for individuals with mobility impairments or physical disabilities, and an evaluation of the effective, long-term home modifications that could support and increase the availability of accessible homes.

2025 NORTH DAKOTA LEGISLATIVE MANAGEMENT BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1025 - Legislative Management Study of Advanced Nuclear Energy. This bill directs the Legislative Management to study the feasibility, siting, and deployment of advanced nuclear power plants in the state. (Energy Development and Transmission Committee)

House Bill No. 1026 - State Bonding Fund Administration. This bill changes the administration of the state bonding fund from the Insurance Commissioner to the Office of Management and Budget, removes obsolete references, provides updates for consistency and clarity, and requires a 2-year contract for administration services with the North Dakota Insurance Reserve Fund or another entity. (Government Finance Committee)

House Bill No. 1027 - State Fire and Tornado Fund Administration. This bill changes the administration of the state fire and tornado fund from the Insurance Commissioner to the Office of Management and Budget, removes obsolete references, provides updates for consistency and clarity, and requires a 2-year contract for administration services with the North Dakota Insurance Reserve Fund or another entity. (Government Finance Committee)

House Bill No. 1028 - Construction Procurement. This bill prohibits any architect or engineer contracted for a project from serving on the construction manager at-risk (CMAR) selection committee for that project, requires CMAR and architect fees to be identified on a standardized form, requires CMAR fees and expenses to be weighted no less than 20 percent in the evaluation of CMAR submissions, and requires the CMAR to bid for general construction work items the CMAR wishes to perform. (Government Services Committee)

House Bill No. 1029 - Facility Construction Oversight. This bill clarifies the authority of the Capitol Grounds Planning Commission over interior areas of facilities on the Capitol grounds. The bill also establishes a statutory facility construction committee to study and review construction projects impacting facilities, including owned and leased facilities, from which the state operates. (Government Services Committee)

House Bill No. 1030 - Drug Court Terminology Change. This bill changes the term drug court to treatment court throughout the Century Code. The bill does not implement any substantive changes to law. (Judiciary Committee)

House Bill No. 1031 - Technical Corrections. This bill makes technical corrections throughout the Century Code. (Judiciary Committee)

House Bill No. 1032 - Municipal Court Structure and Authority. This bill reorganizes and updates municipal courts by providing authority for the district court to hear city ordinance cases for cities of fewer than 5,000 people; allowing two or more cities to create a joint municipal court and share the operating costs; allowing two or more cities to have separate municipal courts, but share resources such as the courtroom and staff; and implementing two options when a defendant's fitness to proceed is questioned. (Judiciary Committee)

House Bill No. 1033 - Concurrent Jurisdiction on Military Installations. This bill establishes concurrent jurisdiction among the federal government and the state regarding criminal prosecutions on military installations. (Juvenile Justice Committee)

House Bill No. 1034 - Parental Rights Reinstatement Process. This bill establishes a court process for reinstating parental rights that have been terminated; allows the court to consider the child's preference regarding the re-establishment of parental rights and the child's age, maturity, and ability to express a preference; requires the appointment of counsel for the child regardless of income; imposes as the burden of proof a "clear and convincing" evidence standard for the petitioner; and allows the court to issue a written order barring the filing of subsequent petitions by the genetic parent if the court denies a petition after a hearing. (Juvenile Justice Committee)

House Bill No. 1035 - Adoption of Social Work Licensure Compact. This bill adopts the Social Work Licensure Compact, which enables regulated social workers with a bachelor's, master's, and clinical licenses to serve clients in every compact member state. (Workforce Committee)

House Bill No. 1036 - Creation of the Division of Apprenticeship. This bill creates the Division of Apprenticeship within the Department of Labor and Human Rights. The bill creates three full-time employee positions to assist the state director from the Office of Apprenticeship of the United States Department of Labor to administer the federal apprenticeship system within the state. (Workforce Committee)

House Bill No. 1037 - Appropriation to Support Autonomous Systems Infrastructure. This bill appropriates funds to the Attorney General, the Department of Career and Technical Education, the Department of Health and Human Services, and the Department of Transportation to increase the use of uncrewed aircraft systems, autonomous vehicles, or other autonomous technologies in the state. (Workforce Committee)

SENATE

Senate Bill No. 2026 - Regulating Foreign Countries of Concern. This bill prohibits the governing body of a city or county from approving a development plan with a foreign country of concern or a foreign organization of concern. The bill requires a person purchasing property to certify that the person may own the property legally and requires a foreign country of concern or foreign organization of concern to file ownership interest statements with the Secretary of State. The bill prohibits a foreign country of concern or foreign organization of concern from owning property unless certain criteria are met. The bill requires all entities mandated to file a report under the federal Agricultural Foreign Investment Disclosure Act of 1978 also file the report with the Agriculture Commissioner. (Agriculture and Natural Resources Committee)

Senate Bill No. 2027 - Local Floodplain Management Authority. This bill requires all cities, counties, and townships exercising floodplain management to enact and enforce its floodplain management ordinance. The bill requires the Department of Water Resources to establish and maintain a publicly accessible database to track all cities, counties, and townships participating in the National Flood Insurance Program. (Agriculture and Natural Resources Committee)

Senate Bill No. 2028 - Department of Financial Institutions Appropriation Process. This bill provides a continuing appropriation to the Department of Financial Institutions, requires the State Banking Board and State Credit Union Board to approve the budget for the department, and requires the department to report to the Appropriations Committees during each legislative session. (Government Finance Committee)

Senate Bill No. 2029 - Office of Guardianship and Conservatorship. This bill creates an office of guardianship and conservatorship under the judicial branch to consolidate the state's guardianship programs, authorizes the office to develop policies and procedures for guardians and conservators, repeals the Task Force on Guardianship Monitoring, and provides an appropriation of $18.3 million from the general fund to the judicial branch for the office. (Government Finance Committee)

Senate Bill No. 2030 - Homelessness Funding and Study. This bill appropriates $10 million from the general fund to the Housing Finance Agency for the North Dakota Homeless Grant program to provide a total of $12.5 million for the program for the 2025-27 biennium, appropriates $50,000 from the general fund to the Housing Finance Agency to contract with a consultant to assist with a 2025-26 interim committee study of homelessness in the state, appropriates $1 million from the general fund to the Department of Public Instruction to provide grants for homelessness liaison services, and appropriates $200 million from the general fund to be transferred to the housing incentive fund to increase affordable housing in the state. The bill also provides for a Legislative Management study of homelessness in the state during the 2025-26 interim. (Government Services Committee)

Senate Bill No. 2031 - Nursing Services Agencies. This bill establishes a regulatory framework for nursing services agencies to be implemented and administered by the Department of Health and Human Services. (Health Care Committee)

Senate Bill No. 2032 - Dissolution of the Comprehensive Health Association of North Dakota. This bill ceases enrollment in the Comprehensive Health Association of North Dakota (CHAND) program effective May 1, 2025, and terminates all existing CHAND benefit plans effective December 31, 2025. The bill requires current CHAND enrollees to be transitioned to a comparable benefit plan or Medicare supplement policy. (Health Services Committee)

Senate Bill No. 2033 - Distressed Ambulance Program Creation. This bill creates a distressed ambulance program in the Department of Health and Human Services to administer a process to address ambulance services that are not complying with state or federal law or are likely to fail to respond to requests for service. (Health Services Committee)

Senate Bill No. 2034 - Higher Education Funding Formula. This bill amends the higher education funding formula to ensure institutions with increasing enrollment do not receive reduced funding due to reductions in the credit completion factor. The bill also provides legislative intent that wind energy technology and law enforcement credits be weighted under the career and technical education instructional program classification factor formula. (Higher Education Committee)

Senate Bill No. 2035 - Definition of Public-Spirited Organization. This bill clarifies the definition of a public-spirited organization by removing vague categories from the definition to better align the definition with the intended purpose for allowing charitable gaming. (Judiciary Committee)

Senate Bill No. 2036 - Juvenile Fitness to Proceed and Remediation of Juveniles. This bill codifies due process rights in juvenile adjudications, provides a method for juvenile competency remediation, and allows the court to deflect cases based on prior judicial findings of a lack of fitness to proceed. (Juvenile Justice Committee)

Senate Bill No. 2037 - Juvenile Court Proceedings. This bill amends several statutory juvenile provisions relating to age-based sex offenses, sexual offender registration, child offender registration, domestic violence laws, and criminal responsibility to improve and simplify the adjudication of juvenile offenders. (Juvenile Justice Committee)

Senate Bill No. 2038 - Tax Commissioner Incentive Data Disclosure. This bill expands the requirement for the Tax Commissioner to disclose the amount of a tax incentive, including a credit, deduction, or exemption, claimed or earned by a taxpayer upon receiving a written request from the Chairman of the Legislative Management or the chairman of a standing committee of the Legislative Assembly. (Taxation Committee)

Senate Bill No. 2039 - Definition of Agricultural Property. This bill amends the definition of "agricultural property" for property taxation purposes to include property used to store harvested crops until the crop is delivered to the first end-point user. (Taxation Committee)

Senate Concurrent Resolution No. 4001 - Federal Block Grant Hearings. This resolution authorizes the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 69th Legislative Assembly through September 30, 2027. (Budget Section)