Prepared by the North Dakota Legislative Council staff for the Public Safety Committee
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STUDY OF THE DEPARTMENT OF EMERGENCY SERVICES - BACKGROUND MEMORANDUM

Section 8 of 2007 Senate Bill No. 2016 (Appendix A) provides for a Legislative Council study of the Department of Emergency Services, including the Division of Homeland Security and the Division of State Radio and potential changes to the 911 fee structure to continue salary equity funding provided in the 2007-09 biennium. The Public Safety Committee has been assigned this responsibility for the 2007-08 interim.

DEPARTMENT OF EMERGENCY SERVICES

North Dakota Century Code (NDCC) Section 37-17.1-02.1 provides for the Department of Emergency Services consisting of a Division of Homeland Security and a Division of State Radio. The Adjutant General serves as the director of the Department of Emergency Services and provides for shared administration of both divisions.

In September 2003 the Governor moved the operations of State Radio from within the Office of Management and Budget to the control of the Department of Emergency Services. The intent of the consolidation was to incorporate security and emergency operations with the state's communications network into an integrated State Operations Center. The new structure provides a single point of contact for emergency services--the Adjutant General's cabinet office. The consolidation was agreed to under a memorandum of understanding between the Office of Management and Budget, the Division of Emergency Management, and the Information Technology Department.

The 2005 Legislative Assembly approved House Bill No. 1016, which removed language related to the Division of Emergency Management and created the Department of Emergency Services. Prior to the agency reorganization, the agency director reported to the Adjutant General. Under the new organization, two deputy directors--one in charge of the Division of State Radio and the other in charge of the Division of Homeland Security--will each report directly to the Adjutant General and be appointed by the Adjutant General. The Adjutant General is named in statute as the director of the agency.

The mission of the Department of Emergency Services is to conduct planning, coordination, communications, and operations for the safety and security of all citizens of North Dakota. The Department of Emergency Services is responsible for:

- Managing the State Operations Center on a 24-hour, seven-day-a-week basis to ensure a statewide coordinated response to emergencies or disasters.
- Operating the State Radio Communications Center which provides services to all first responders, emergency operations, and citizens in North Dakota.
- Implementing North Dakota's homeland security and emergency management programs.

Department of Emergency Services 2007-09 Biennium Appropriation

The 2007-09 biennium appropriation for the Department of Emergency Services is $54,923,504, of which $8,031,945 is from the general fund and $46,891,559 is other funds. The 2005-07 biennium appropriation for the Department of Emergency Services was $62,985,952, of which $5,115,672 is from the general fund and $57,870,280 is other funds. The $10,978,721 reduction in the other funds 2007-09 appropriation as compared to the 2005-07 biennium is primarily due to a reduction in funding from federal grants. The $2,916,273 increase in the general fund appropriation as compared to the 2005-07 biennium is primarily for a computer-aided dispatch project ($980,000) and for a portion of the lease payments to Motorola for upgrading state-owned radio towers from analog to digital ($1,084,970).

The 2007 Legislative Assembly appropriated $300,000 from the general fund for salary equity and pay grade adjustments for State Radio employees based on a compensation plan established by the Adjutant General. The increases were provided to make State Radio communications specialist salaries comparable to those offered in other communications centers in North Dakota.

Division of Homeland Security

North Dakota Century Code Section 37-17.1-06 establishes the Division of Homeland Security. The Division of Homeland Security consists of the state emergency operations center, the disaster recovery section, and the homeland security section. The Division of Homeland Security is to prepare and maintain a state disaster plan, including provisions for:

1. Averting or minimizing the injury and damage caused by disasters or emergencies.
2. Providing prompt and effective response to a disaster or emergency.
3. Providing emergency relief.
4. Identifying areas particularly vulnerable to a disaster or emergency.
5. Recommending zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures,

and other mitigation and preparedness measures.
6. Assisting local officials in developing and maintaining local emergency management systems.
7. Authorizing construction of temporary works designed to protect against or mitigate danger, damage, or loss from any disaster or emergency.
8. Preparing and distributing emergency management assistance program guidance to appropriate state and local officials.
9. Organizing manpower and chains of command.
10. Coordinating federal, state, and local emergency management activities.
11. Coordinating state disaster or emergency operations plans with the disaster or emergency plans of the federal government.
12. Providing any other necessary matters.

The Division of Homeland Security is to assist in the development and revision of local disaster or emergency operations, including:

1. Coordinating the procurement of supplies, materials, and equipment during disaster or emergency operations.
2. Providing guidance and standards for local disaster or emergency operational plans.
3. Periodically reviewing local disaster or emergency operational plans.
4. Coordinating state or state and federal assistance to local emergency management organizations.
5. Assisting local emergency management organizations to establish and operate training programs and programs for emergency public information.
6. Detailing industries, resources, and facilities, within the state, both public and private, necessary for emergency operations. The use of sensitive and proprietary logistical data submitted to the state in confidence by individual industries and suppliers must be accorded full confidentiality and can be released only in aggregate form.
7. Planning and making arrangements for the availability and use of any private facilities, services, and property, and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.
8. Establishing access to a register of persons with types of training and skills important in prevention, mitigation, preparedness, response, and recovery.
9. Establishing access to a register of equipment and facilities available for use in a disaster or emergency.
10. Preparing, for issuance by the Governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
11. Coordinating and entering agreements with the federal government and any public or private agency or entity in implementing programs for disaster mitigation, preparation, response, and recovery.
12. Being the state search and rescue coordinating agency, establishing access to a register of search and rescue equipment and personnel in the state, and planning for its effective utilization.
13. Doing other things necessary, incidental, or appropriate for the implementation of the North Dakota Disaster Act.

Division of State Radio

North Dakota Century Code Chapter 54-23.2 provides for the State Radio broadcasting system as managed by the Division of State Radio for the purpose of transmitting state business and information. The Division of State Radio provides voice and data communications to federal, state, local, and tribal public safety entities through a number of different systems, including:

1. **The State Radio emergency services communications system** - Provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
2. **Mobile data terminal services** - Provides law enforcement with mobile communications (primarily laptop computers in vehicles) to access data bases and vehicle information.
3. **Law enforcement telecommunications system** - Provides information on wanted felons, state-to-state information on crimes, and everyday police activities.

The Division of State Radio operates a public safety answering point (PSAP), which is a 24-hour communications center that receives 911 calls from individuals within a 911 service area and, as appropriate, directly dispatches public safety services or extends, transfers, or relays 911 calls to appropriate public safety agencies. State Radio serves as the PSAP for 22 small population counties. A 911 call made in one of these counties is routed to State Radio. State Radio staff is responsible for collecting the necessary information and dispatching appropriate units and personnel. In addition to the PSAP operated by State Radio, there are 22 locally operated PSAPs. The majority of the 22 locally operated PSAPs are physically located and operated within law enforcement buildings and others are located in courthouses and commercial buildings. The PSAP operated by the Division of State Radio is located in the basement of a building at Fraine Barracks. Attached as Appendix B is a schedule summarizing North Dakota emergency communications coverage.

State Radio serves as the state dispatch center for the Highway Patrol and provides dispatching services

for other state entities, such as the Game and Fish Department and the Attorney General's office. State Radio provides dispatching services for various federal entities, such as the National Park Service, the United States Border Patrol, and the United States Marshals Service. In addition, State Radio coordinates road closures, answers the security line for the Governor's residence and office, and answers "report all poacher" calls.

State Radio Fees for Services Provided

North Dakota Century Code Section 54-23.2-09 provides the requirements relating to the establishment and charging of fees for mobile data terminal and 911 emergency services provided by State Radio. The Division of State Radio may charge fees to the 22 small population (less than 20,000 residents) counties for providing 911 emergency dispatching services. The fee to be paid by the political subdivisions is to be at least 20 cents per telephone and wireless access line for 911 dispatching services provided to political subdivisions (this is the current rate charged by State Radio).

The fees for providing mobile data terminal services to participating local law enforcement agencies must be based on actual costs incurred by the division in providing the service. State Radio's fee for mobile data terminals is $100 per initial hookup and then $25 per month, billed on a quarterly basis.

North Dakota Century Code Section 54-23.2-08 established in 1987 fees that State Radio is to charge for the law enforcement telecommunications system. Counties are responsible for "approximately 50 percent" of the system's cost based on the following schedule of charges:

- Counties with a population of less than 5,000 are to pay $30 per month.
- Counties with a population of 5,000 to 9,999 are to pay $60 per month.
- Counties with a population of 10,000 to 14,999 are to pay $90 per month.
- Counties with a population of 15,000 to 24,999 are to pay $100 per month.
- Counties with a population of 25,000 or more are to pay $160 per month.

North Dakota Century Code Section 54-23.2-08 provides that the director of State Radio may adjust fees for the law enforcement system to reflect changes in economic conditions and the general economy after consulting with representatives of state and local government. The current rates are $10 more for each category than provided in Section 54-23.2-08, based on a $10 per month increase implemented by the director of State Radio in 1993.

The fee for other law enforcement agencies to participate in the law enforcement telecommunications system is to be based on the actual cost of providing this service. State agencies are charged $265 per month and city police departments are charged $285 per month for the first terminal. An extra $20 per month fee is charged to departments "outside" the state firewall. Second terminals are $75 per month and any additional terminals are $50 per month for both state agencies and city police departments.

Department of Emergency Services Advisory Committee

North Dakota Century Code Section 37-17.1-02.2 provides that the Adjutant General shall create one or more advisory committees to the Department of Emergency Services. An advisory committee may consist of not more than 11 members representing local and state interests in the department. Members must be appointed to four-year staggered terms. An advisory committee is to advise the department regarding collaboration with political subdivisions, and each member of an advisory committee shall report to the local interest each member represents concerning recommendations approved by the committee. Attached as Appendix C is the current membership of the Department of Emergency Services Advisory Committee.

Section 6 of 2007 Senate Bill No. 2016 provides legislative intent that the Adjutant General consider changing the membership of the Department of Emergency Services Advisory Committee to remove the representatives of the Information Technology Department and the InfraGard and include representatives of the North Dakota Healthcare Association and North Dakota Sheriffs Association. The Adjutant General is in the process of changing the membership of the advisory committee pursuant to Senate Bill No. 2016.

City and County Fees for 911 Services

North Dakota Century Code Chapter 57-40.6 establishes the requirements relating to the authority of cities and counties to impose 911 fees on the users of telephone and wireless access lines. A governing body of a city or county may provide by resolution, subject to the vote of the electors, for the imposition of a fee of up to $1 per month per communication connection for providing an emergency services communication system, and in the case of wireless, an enhanced 911 service. The 911 fees are collected by telephone providers who submit the fees, less an administration cost, to respective political subdivisions. The 911 fees received by political subdivisions are to be used for implementing, maintaining, or operating the emergency services communication system.

The telephone service providers are required to submit the 911 fees within 30 days of collection to the appropriate political subdivisions. The telephone service providers are allowed to retain actual costs of administration in collection of the fee, not to exceed 5 percent of collections.

In order to implement wireless 911 within the state, all political subdivisions receiving 911 fees contracted

with the North Dakota Association of Counties to coordinate the implementation of the networking, nonpremise equipment upgrades, testing, and ongoing services necessary for wireless 911. The North Dakota Association of Counties entered a contract with telephone service providers for the wireless 911 project. The counties are to submit 40 percent of the amount received from wireless carriers, or approximately $1.7 million per year, for the wireless 911 project. The current fund balance available for the wireless 911 project is approximately $1 million. The contracts between the North Dakota Association of Counties and the political subdivisions will expire on June 30, 2008. Any fund balance remaining upon completion of the project will be reimbursed to the counties.

There are approximately 400,000 landlines and 380,000 cell phones in North Dakota, which results in $9,360,000 per year in total communication services fee collections. Attached as Appendix D is a summary of the amounts collected and uses of the $1 per month communication services fee.

The 2007 Legislative Assembly approved Senate Bill No. 2169 (Appendix E) providing that prepaid wireless service and Voice over Internet Protocol service are subject to fees for emergency services communication systems. For prepaid wireless service, the provider of the service is to remit a monthly fee based upon each active prepaid wireless telephone associated with North Dakota for each active prepaid wireless telephone customer that has a sufficient positive balance as of the last day of each month or upon a 2 percent assessment on the gross revenue received from the sale of prepaid wireless services each month. For assessed communication services that involves a monthly billing, in the billing statement or invoice to the subscriber, the provider is to state the fee separately. According to the fiscal note prepared by the Adjutant General's office, the revenue impact from Senate Bill No. 2169 cannot be determined.

North Dakota Century Code Section 57-40.6-12 provides that the governing body of each city or county which has adopted a fee on assessed service for 911 services is to make an annual report of income, expenditures, and status of its emergency services communication system. The annual report is submitted to the Emergency Services Coordinating Committee. The Emergency Services Coordinating Committee is composed of three members--one appointed by the North Dakota 911 Association, one appointed by the North Dakota Association of Counties, and one appointed by the Adjutant General, representing the Division of State Radio. The Emergency Services Coordinating Committee is to file its report with the Legislative Council by November 1 of each even-numbered year. The interim Energy Development and Transmission Committee has been assigned the responsibility to receive this report. In addition, Senate Bill No. 2169 amended Section 57-40.6-12 to provide that the Emergency Services Coordinating Committee is to:

- Recommend to the Legislative Council changes to the operating standards for emergency services communications, including training or certification standards for dispatchers.
- Develop guidelines regarding the allowable uses of 911 fee revenues collected by political subdivisions.
- Periodically evaluate the state emergency services communication system and recommend changes to the Legislative Council (assigned to the Energy Development and Transmission Committee).

North Dakota Disaster Act

North Dakota Century Code Section 37-17.1-05 provides that the Governor is responsible to minimize or avert the adverse effects of a disaster or emergency. The Governor is authorized to issue effective orders and proclamations which have the effect of law. If the Governor determines a disaster has occurred or a state of emergency exists, the Governor may declare a disaster or emergency by executive order or by proclamation. The executive order or proclamation must indicate the nature of the disaster or emergency, the area or areas threatened, and the conditions that have brought it about. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances prevent or impede such dissemination, and it must be promptly filed with the Department of Emergency Services, the Secretary of State, and the county or city auditor of the jurisdictions affected.

Homeland Security Funding

The federal Department of Homeland Security grant funding is to enhance the capability of state and local agencies to respond to incidents of terrorism as well as natural disasters through coordinated training, exercises, equipment, and technical assistance. Approximately $6.7 million in federal Homeland Security funding is anticipated to be received by the Department of Emergency Services in 2007. The Department of Emergency Services received approximately $61.8 million of federal homeland security funding from 1999 through 2006 as detailed below:

Year	Total Funding Received
1999-2001	$1,200,000
2002	$2,700,000
2003	$13,200,000
2004	$19,400,000
2005	$14,600,000
2006	$10,700,000

According to federal guidelines, 80 percent of the federal homeland security funding received by North Dakota designated for homeland security uses must be distributed to local governments. The local share

of homeland security funds is distributed to counties based upon the population of the county and the assessment of the county's security needs. Each county is required to develop a homeland security spending plan in association with the state plan and that allocates the homeland security funds to entities within the county based upon the county plan.

Total federal homeland security funding distributed to counties during 2006 and for the period from 1999 through 2006 is:

Use	Total Allocation to Counties - 2006	Total Allocation to Counties - 1999 to 2006
Chemical, biological, radiological, nuclear, and explosives detection and protective equipment	$3,909,624	$22,916,984
Interoperable communications	3,341,311	21,849,756
Administration	0	236,179
Training	721,777	3,137,759
Planning	300,740	1,890,283
Exercises	150,370	630,680
Total	$8,423,822	$50,661,641

Section 7 of 2007 Senate Bill No. 2016 provides legislative intent that political subdivisions place a greater influence on allocations of federal homeland security funding to emergency medical services and hospitals.

PERFORMANCE AUDITS

The State Auditor's office was directed, pursuant to Section 5 of 2005 House Bill No. 1016, to conduct a performance audit of the Department of Emergency Services, including State Radio, and a performance audit of fees collected for 911 services and the utilization of fees. The reports were presented to the Legislative Audit and Fiscal Review Committee on January 10, 2006. The performance audits covered the period July 1, 2003, through April 30, 2005. The goals of the performance audits were:

1. Has management established effective processes and procedures to fulfill the Department of Emergency Services purposes, functions, and responsibilities?
2. Are 911 fees properly used and sufficient for the costs incurred with operating the 911 system?

The performance audit report of the Department of Emergency Services, including State Radio, included 22 audit recommendations, of which 18 related to the department's management processes and procedures and 4 related to establishing, collecting, and using fees by the department. It was noted in the report that significant improvements were needed in how the Department of Emergency Services, including State Radio, establishes, collects, and uses fees. As a result of the performance audit, the Department of Emergency Services contracted with Maximus, Inc., to do a complete review of State Radio costs and to provide a recommendation for an appropriate fee schedule for services provided, based on State Radio's costs.

The performance audit report of the collection and use of 911 fees included four audit recommendations. The audit report noted significant improvements were needed in the collection process of 911 fees and how 911 fees are being used by political subdivisions.

PREVIOUS RELATED STUDIES AND REPORTS

2003-04 Emergency Services Committee

During the 2003-04 interim, the Legislative Council's Emergency Services Committee studied the state's emergency management system, the impact of federal emergency reorganization on the state's emergency operations plan, and the emergency management preparedness of state agencies and local governments. In addition, the committee received a report from State Radio on the operation of and recommended changes in the emergency 911 telephone system standards and guidelines.

The committee received extensive testimony regarding the organization, structure, responsibilities, and operation of the Department of Emergency Services. Since the terrorist attacks in September 2001, the Department of Emergency Services changed the focus of the emergency management infrastructure to enhanced homeland security efforts. The Department of Emergency Services has worked to form partnerships with state agencies, political subdivisions, and private entities to raise security awareness and improve the ability to mitigate and to respond to emergencies.

The committee received testimony from representatives of various political subdivisions and other first responders regarding the use of homeland security funds at the local level. The testimony indicated that a great deal of the local funding was dedicated to purchases of personal protection equipment and decontamination equipment and radio communications equipment to provide interoperability among fire, police, and other first responders.

Representatives of entities, such as hospitals, ambulance services, and other emergency medical services in some areas of the state, testified that they were not provided the opportunity to participate in the decisions regarding allocations of the homeland security funding and that those entities did not receive funding necessary to ensure that those entities will be prepared to respond to a large-scale emergency or disaster.

After the September 2001 terrorist attacks, Congress passed the Homeland Security Act, which consolidated 22 federal domestic agencies under the Department of Homeland Security. The first priority of the department is to protect the nation against further terrorist attacks. In addition to providing a better-coordinated defense of the homeland, the department

is responsible for protecting the rights of American citizens and enhancing public services, such as natural disaster assistance and citizenship services, by dedicating offices to those missions.

The committee received a report regarding city and county fees on telephone exchange access service and wireless service. The 57th Legislative Assembly (2001) authorized the extension of 911 service to wireless telephones. Extension of 911 service to wireless telephones is being done through a two-phased process. The first phase provides a callback number and the cellular site information. During the second phase, latitude and longitude information will be provided. The project was scheduled to be completed in 2005 with a total cost of approximately $6.8 million.

The Emergency Services Committee made no recommendation regarding the study of the state's emergency management system, the impact of federal emergency reorganization on the state's emergency operations plan, and the emergency preparedness of state agencies and local governments.

1999-2000 Advisory Commission on Intergovernmental Relations

During the 1999-2000 interim, the Legislative Council's Advisory Commission on Intergovernmental Relations considered the issue of creating a disaster relief fund, received reports on the status of Devils Lake flooding, and reviewed the status of disaster relief programs available in the state. The commission received information regarding how other states have addressed the issue of disaster relief. The commission considered bill drafts that would have funded a disaster relief fund through a property insurance premium tax or a property insurance surcharge and would have provided financial relief to taxing districts or to taxpayers. The Advisory Commission on Intergovernmental Relations made no recommendation regarding its review of disaster relief.

RELATED LEGISLATION

The 2007 Legislative Assembly approved Senate Bill No. 2137 (Appendix F), which:

- Provides that one of the purposes of the North Dakota Disaster Act is to reduce loss of life and property resulting from threats to homeland security and provide for a statewide emergency management system incorporating the principles of the National Incident Management System and its incident command system as well as other applicable federal mandates.
- Requires the Division of Homeland Security to provide technical assistance for the development and revision of local disaster or emergency operations plans.
- Removes the requirement for the Division of Homeland Security to publish and keep a list of cities desiring to have an emergency management organization of their own and requires a city and county to coordinate city and county emergency plans if a city provides an emergency management organization of its own.
- Clarifies the prevention role of the Department of Homeland Security and provides technical corrections and definitions.
- Allows the governing body of any county with a tax levy for emergency purposes to use the emergency fund to match federal funds appropriated to mitigate damage to roads related to a federally declared disaster that occurred more than 60 days preceding the determination to expend emergency funds.

PROPOSED STUDY PLAN

The following is a study plan the committee may want to consider in its study of the Department of Emergency Services, including the Division of Homeland Security and the Division of State Radio.

1. Receive testimony from representatives of the Department of Emergency Services, the Division of Homeland Security, and the Division of State Radio regarding the allocation of homeland security funding, the operation of State Radio, and potential changes to the 911 fee structure to continue salary equity funding.
2. Receive a report from a representative of the State Auditor's office regarding the performance audit report conducted on the Department of Emergency Services, including State Radio and fees collected for 911 services and the utilization of fees.
3. Receive testimony from representatives of the Department of Emergency Services Advisory Committee and representatives of political subdivisions regarding the department's collaboration with political subdivisions.
4. Receive testimony from other interested organizations and individuals regarding homeland security funding and the 911 fee structure and related uses of the funding.
5. Develop committee recommendations and any related bill drafts.
6. Prepare a final report for submission to the Legislative Council.

ATTACH:6