

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

**BUDGET COMMITTEE ON GOVERNMENT SERVICES**

Thursday, February 23, 2006  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Al Carlson, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Al Carlson, Randy Boehning, Ron Carlisle, Kari Conrad, Duane DeKrey, Eliot Glassheim, James Kerzman, Joe Kroeber, Ralph Metcalf, Darrell D. Nottestad, Ken Svedjan, Blair Thoreson, Dave Weiler; Senators Aaron Krauter, Ed Kringstad, Elroy N. Lindaas, Stanley W. Lyson, Dave Nething

**Members absent:** Representatives Jeff Delzer, Glen Froseth, Bette B. Grande, Alon C. Wieland; Senator Duaine C. Espegard

**Others present:** See attached appendix

**It was moved by Senator Nething, seconded by Representative DeKrey, and carried on a voice vote that the minutes of the January 24, 2006, committee meeting be approved as distributed.**

**DEPARTMENT OF CORRECTIONS AND REHABILITATION STRATEGIC PLAN**

Mr. Dave Krabbenhoft, Fiscal Affairs Director, Department of Corrections and Rehabilitation, presented information on the number of inmates by location. Mr. Krabbenhoft said for the biennium to date through February 21, 2006, the actual male inmate population has averaged 1,240 inmates, 3 fewer than the estimated average population of 1,243. Mr. Krabbenhoft said for the biennium to date through February 21, 2006, the number of female inmates has averaged 154 inmates, 18 more than the estimated average population of 136. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Metcalf, Mr. Krabbenhoft said the number of additional beds that will become available over the next few months, as budgeted include:

Bismarck Transition Center	58
Assessment center	30
Contract relapse	17
Rugby treatment beds	25
<b>Total</b>	<b>130</b>

In response to a question from Representative Carlson, Mr. Krabbenhoft said the potential effect on the budget, if the number of female inmates continues to exceed projections, could total \$2 million for the biennium. He said this may result in the department

requesting a general fund deficiency appropriation from the 2007 Legislative Assembly.

Mr. Krabbenhoft commented on the availability of federal funds to address North Dakota's correctional and incarceration needs. Mr. Krabbenhoft said a number of federal funding sources that have been available to the department are either expiring or being substantially reduced. Mr. Krabbenhoft said he is not aware of any sources of federal funds that currently may be used for adding beds.

In response to a question from Senator Krauter, Mr. Krabbenhoft said the department did receive federal funds for a portion of the construction costs of the James River Correctional Center from funding designated for use for violent offender programs. He said these federal funds were not renewed by Congress.

Representative Carlson asked the department to provide information to the committee at its next meeting on successful programs that have been receiving federal or other sources of funding for which the funding will no longer be available and which will result in additional general fund dollars being needed to continue these programs. Representative Carlson asked the department to include a narrative explanation of each program and related accomplishments.

Senator Krauter asked for an explanation of the department's decision to eliminate funding for community services grants beginning July 1, 2006. Mr. Krabbenhoft said the department has been providing community services grants to 14 nonprofit organizations across the state. Mr. Krabbenhoft said the department had requested, for the 2005-07 biennium, a total of \$380,000 from the general fund for these community services grants. Although the Legislative Assembly did not specifically reduce this funding, he said, the Legislative Assembly did remove \$226,748 from the general fund added by the Governor to replace a number of federal fund reductions in the Adult Services Division. After the 2005 legislative session, Mr. Krabbenhoft said the department reprioritized its funding available and made the decision to reduce the funding for community services grants from \$380,000 to \$180,000 and as a result is providing the grants for the first year of the biennium only. Mr. Krabbenhoft said the department intends to again request funding for these grants for the entire biennium in its 2007-09 biennium budget request.

Representative Conrad suggested inviting representatives of these private organizations to a future committee meeting to discuss the activities they provide to cities, counties, and the state.

Senator Nething suggested the committee receive additional information on the state's responsibility to provide funding to these organizations.

Ms. Leann K. Bertsch, Director, Department of Corrections and Rehabilitation, commented on the development of the department's 2007-09 biennium budget request. Ms. Bertsch said the department has begun its strategic planning process and has identified the following core issues for the department:

1. Infrastructure plan and needs, including projecting the number of inmates to 2017.
2. Employee work experience.
3. Internal communications.
4. Sex offender program.

Ms. Bertsch said the department will begin developing more specifics regarding its budget request when the budget guidelines are released by the Office of Management and Budget which is usually in March.

Representative Carlson asked that the department provide to the committee at its next meeting detailed information on its facility needs and related costs that may be included in its budget request.

Ms. Bertsch said that mandatory prison sentences are not currently having a major impact on the prison population.

The Legislative Council staff presented a bill draft [\[70048.0100\]](#) providing an exemption from nursing requirements for employees of Grades II and III correctional facilities providing nonprescription medications to inmates.

Senator Lyson expressed concern that the bill draft does not exempt Grade I correctional facilities.

Senator Nething suggested that the bill draft also provide an exemption for providing prescription drugs to inmates at Grades II and III correctional facilities.

Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, commented on the bill draft. Mr. Traynor said administrators from nine Grade I jails have reviewed the bill draft and suggest a more broad exemption from the nursing requirements. Mr. Traynor proposed exempting Grade I, Grade II, and Grade III correctional facilities from the nursing requirements relating to the provision of medication similar to the exemption provided in subsection 9 of North Dakota Century Code (NDCC) Section 43-12.1-04 for residential treatment centers for children; treatment or care centers for developmentally disabled persons; group homes, residential child care facilities, and adult foster care facilities; and human service centers. A copy of the testimony is on file in the Legislative Council office.

Senator Nething suggested the bill draft authorize the Department of Corrections and Rehabilitation to prescribe rules for dispensing medications to inmates. Mr. Traynor said he believes the department already has that authority under NDCC Chapter 12-44.1.

In response to a question from Representative Metcalf, Mr. Traynor said the Board of Nursing has not reviewed the proposal.

Chairman Carlson asked the Legislative Council staff to prepare a bill draft based on the Association of Counties suggestion to provide an exemption for correctional facilities from Board of Nursing requirements relating to providing medications and to invite representatives of the Board of Nursing to the next committee meeting to comment on the bill draft.

Mr. Traynor commented regarding the possibility of housing additional state prisoners in expanded county facilities and suggestions for changes in state policies and payment levels when contracting for housing state prisoners. Mr. Traynor said currently approximately 45 state inmates are housed in county facilities. He said the counties are interested in continuing these contracts.

Regarding expanded facilities, Mr. Traynor said Pierce and Barnes Counties have indicated their plans for expanding facilities to include space for housing additional state prisoners. He said Barnes County is planning to increase the number of beds available for state inmates from the current 8 or 10 beds to approximately 20 beds. He said Pierce County is planning for both treatment and jail beds for state prisoners. Mr. Traynor said the Department of Corrections and Rehabilitation has indicated that additional work release/transition beds at county facilities could be used by the state. However, Mr. Traynor said current county facility expansion plans include few beds of this type.

Mr. Traynor said most state inmates have treatment needs. He said providing treatment in small group settings, such as county facilities, is not as cost-effective as in large groups. He said county jails anticipate the cost to house an inmate in a new county jail to range from \$60 to \$75 per day without treatment and approximately \$80 per day with treatment. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Carlisle, Ms. Elaine Little, Director, North Central Correctional Regional Center, Rugby, said the center is planning to open September 1, 2006, and is planning to house 25 state inmates in its treatment program and will have at least an additional 25 jail beds available to state inmates.

Mr. Randy McClaffin, Barnes County Sheriff, said Barnes County is planning an 80- to 100-bed correctional facility, of which 20 beds would be available for state prisoners and 10 to 15 beds for federal prisoners.

In response to a question from Representative Carlson, Mr. Krabbenhoft said the state currently pays counties \$50 per day for housing a state inmate. He said the daily rate for all Department of Corrections and Rehabilitation facilities is \$64 per day.

Representative Conrad said Ward County is beginning to plan for a new 60-bed jail facility but is not planning to house any state prisoners.

Senator Lyson said Williams County is planning to build a multicounty correctional facility consisting of 110 beds.

In response to a question from Senator Nething, Mr. Krabbenhoft said the department did request funding for the 2005-07 biennium for a transition center in the eastern part of the state; however, the funding was not approved. He said the department will again be requesting this funding as part of its 2007-09 biennium budget request.

In response to a question from Representative Glassheim, Mr. Krabbenhoft said if the department would construct a new prison facility, its costs would be more than the current \$64 per day.

Mr. Krabbenhoft said the decision to house state prisoners in county facilities includes more factors than cost alone. He said a central prison facility provides more efficient and effective treatment, education, and rehabilitation for prisoners. He said housing a few prisoners in multiple locations makes it difficult to plan each inmate's rehabilitation process.

### **COMMITTEE COMMENTS REGARDING NORTH DAKOTA CORRECTIONAL FACILITY NEEDS**

Chairman Carlson asked each member of the committee to comment on the future of North Dakota's incarceration and facility needs.

Representative Carlisle suggested the committee recommend a bill draft to address North Dakota's incarceration and facility needs. He suggested the committee develop a plan for the future of the State Penitentiary at its current site, including replacement of the east cellhouse which will result in an additional 123 beds being available and the sale of some of the Missouri River Correctional Center land with a plan to move the Missouri River Correctional Center from its current location at a later date.

Representative Weiler suggested beginning the process of relocating the State Penitentiary from its current location in the middle of Bismarck to a rural section of land in Burleigh County. He said the current facility is not efficient or safe. He also suggested selling all of the Missouri River Correctional Center land.

Representative Thoreson suggested the committee consider all options, including privately operated facilities and develop a solution that will address the long-term needs of the department.

Representative Boehning suggested the committee consider all options, including privatization of the entire system, expanding the use of county jail facilities, building a new facility at a different location, or making improvements to current facilities. He said it will be difficult to find \$120 million to construct a new prison.

Representative Svedjan suggested the committee develop short-term and long-term solutions. He said in the short term, it may be possible to house additional prisoners in county facilities if the state pays

an appropriate rate. For the long term, he said, the committee needs to consider all options available. He said it is difficult to estimate the long-term number of prison beds that will be necessary.

Representative Metcalf suggested the committee make necessary improvements at the State Penitentiary and develop more alternatives to incarceration, such as placing individuals currently being incarcerated for drug offenses into treatment programs rather than incarceration. He said the infirmary and orientation needs at the State Penitentiary need to be addressed.

Representative Glassheim said North Dakota's incarceration issues are similar to other states. He distributed a report on suggested programs that North Dakota should consider. A copy is on file in the Legislative Council office. He suggested developing alternative programs to incarceration in order to decrease the number of jail beds needed, including early release for elderly inmates, expanding reentry programs, parole reform, expanding drug courts, and providing more substance abuse treatment programs.

Representative Kroeber suggested developing alternatives to incarceration to decrease the need for prison beds, such as expanding drug courts. He said it is important to adequately fund the Department of Corrections and Rehabilitation to allow it to appropriately rehabilitate prisoners so they do not return to the system. He said if the state does not own the prison facilities, it will not have an ability to control the prison's costs.

Representative Kerzman suggested the committee address the concerns with the east cellhouse and develop more alternatives to incarceration, such as additional treatment programs, changes in parole and probation, and expanded drug courts.

Senator Krauter suggested the committee recommend making the improvements needed at the State Penitentiary and enable the department to adequately rehabilitate inmates through its inmate case management plan. He said there may be opportunities to partner with counties to utilize the counties' excess capacity by allowing certain county facilities to specialize in certain treatment services.

Senator Lindaas suggested developing alternative programs to incarceration, such as directly placing drug offenders into treatment programs rather than incarcerating them in the State Penitentiary.

Representative Conrad distributed a cost-benefit analysis of a drug treatment alternative to prison program in New York. A copy of the report is on file in the Legislative Council office. Representative Conrad suggested the committee develop a program to provide treatment services to drug offenders rather than incarcerating them in the State Penitentiary. She said the cost-benefit analysis on the New York program indicates that the overall cost was 50 percent less over a six-year period using this alternative program compared to the cost of incarceration.

Senator Lyson suggested the Legislative Assembly adequately fund the Department of Corrections and

Rehabilitation to allow it to adequately rehabilitate the inmates and a plan be developed to construct a new prison facility that is cost-efficient, labor-efficient, and safe.

Representative Nottestad said although it would be ideal to build a new facility, realistically, the committee should consider making the improvements at the State Penitentiary relating to the east cellhouse, infirmary, and orientation center. He said the state should make a long-term commitment to continue utilizing the women's prison in New England, plan to relocate the Missouri River Correctional Center in the future and sell the land, and appropriate adequate funding for the department.

Representative DeKrey suggested the committee consider recommending housing some additional prisoners in county jails, creating more transitional centers across the state, making needed facility improvements at the State Penitentiary, and appropriating adequate funding for the department.

Senator Nething suggested the committee make the necessary improvements to the existing facilities and develop additional transition centers across the state based on the projected number of inmates that would be appropriate for transitional settings.

Senator Kringstad suggested the committee recommend the necessary improvements at the State Penitentiary and provide more treatment centers as an alternative to incarceration for appropriate offenders. He said a new prison is not feasible, there are good buildings at the State Penitentiary, and selling the Missouri River Correctional Center land will not generate very much money.

Representative Carlson suggested there may be opportunities for the state and the counties to collaborate to address a number of North Dakota's incarceration and facility needs. He said the east cellhouse is a concern and needs to be addressed. He suggested the committee develop a long-term, comprehensive solution that will address the state's incarceration needs.

Mr. Warren Emmer, Field Services Director, Department of Corrections and Rehabilitation, said transition services are a very important part of the rehabilitation process. He said contracting with private organizations and developing partnerships with counties for transition programs would be beneficial.

Mr. Tim Schuetzle, Prisons Division Director, Department of Corrections and Rehabilitation, said most counties do not want long-term state prisoners. He suggested the state contract with counties to provide transition centers for inmates serving their final six months prior to release. He said dormitory-type facilities at county jails would be appropriate for this transition. In addition, he said, the east cellhouse at the State Penitentiary needs to be replaced.

The committee recessed for lunch at 12:15 p.m. and reconvened at 1:15 p.m.

## **MISSOURI RIVERBANK STABILIZATION**

Mr. Ken Sorenson, Assistant Attorney General, Attorney General's office, provided information on the procedures involved in approving a bank stabilization project on the Missouri River Correctional Center land and the process involved in granting an easement on the property.

Mr. Sorenson said approval for the bank stabilization project involves primarily two agencies--the State Water Commission and the United States Army Corps of Engineers. He said the Army Corps of Engineers accepts applications for these types of projects on navigable waters under its control. He said although the application process takes a number of months to complete, applications are rarely denied. Mr. Sorenson distributed copies of the application and related forms.

Mr. Sorenson said the project would require an easement to be granted on state land under the control of the Department of Corrections and Rehabilitation. Because of the type of project, he said, the easement would either need to be indefinite or at least 99 years. Although state agencies are authorized to grant utility and similar types of easements, he said, the type of easement that would need to be granted for this project does not fall within state agency authority and therefore would need to be approved by the Legislative Assembly.

In response to a question from Representative Carlisle, Mr. Sorenson said the Department of Corrections and Rehabilitation may sell land either by introducing a bill and having it approved by the Legislative Assembly or with the Governor's approval; however, he said, the Department of Corrections and Rehabilitation does not intend to sell any Missouri River Correctional Center land without legislative approval.

## **PERFORMANCE AND ACCOUNTABILITY SYSTEM PILOT PROJECT**

Mr. David Sprynczynatyk, Director, Department of Transportation, provided information on the department's strategic planning and performance measurement process which it began in 2001. Mr. Sprynczynatyk said the department has developed a six-year strategic plan which contains 5 goals and 29 objectives. He said the department continually monitors its progress in achieving its objectives and goals. Every two years, he said, the department prepares a performance report card which presents the department's performance trends. He said managers within the department monitor and report more detailed performance measures relating specifically to their programs. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Carlson, Mr. Sprynczynatyk said the department hired a local consulting firm to assist the department in the preparation of its initial strategic plan and performance

measures. Since that time, he said, the department updates and revises its system internally.

Representative Carlson asked whether the process is beneficial for the department. Mr. Sprynczynatyk said that at times the system is a challenge but believes it is cost-effective for the department because it results in more efficient programs and services.

Colonel Bryan Klipfel, Superintendent, Highway Patrol, presented information on the Highway Patrol's system of performance and accountability.

Colonel Klipfel said the Highway Patrol began monitoring performance in the 1990s and in 2004 began a strategic planning process that resulted in the following operational goals:

1. Concentrate efforts toward patrolling highways and being visible.
2. Reduce crashes and investigate when they do occur.
3. Impact alcohol abuse relating to driving under the influence and underage consumption and the tragedies that happen on our highways as a result.
4. Impact drug abuse relating to possession, use, manufacturing, and transportation of illegal drugs occurring on our highways.
5. Protect highway infrastructure and provide for the safe movement of goods and services through an effective motor carrier system.
6. Provide quality service to the public.
7. Hold individuals, not groups or districts, accountable for their actions, good or bad.

Colonel Klipfel said the Highway Patrol monitors its progress in achieving its goals through monthly performance reports completed by district commanders. He said the Highway Patrol is currently in the process of updating its strategic plan and goals.

Colonel Klipfel said the Highway Patrol hired a facilitator to assist it in planning the initial strategic plan. He said the Highway Patrol receives input from its employees as well as the public as it develops and updates its strategic plan. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Carlson, Colonel Klipfel said the outside assistance received in the development of its initial strategic plan was valuable.

Mr. Doug Prchal, Director, Parks and Recreation Department, provided information on the department's performance and accountability system. The department began its strategic planning and performance measurement system in 2000 by hiring a consultant to assist it in developing a five-year strategic plan. He said the department reviews its strategies and progress in meeting performance each month. He said the department sets goals and objectives annually based on its strategic plan. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Carlson, Mr. Prchal said the assistance from the

consultant in initially developing its strategic plan was important but not critical to the success of its system.

In response to a question from Representative Carlson, Ms. Pam Sharp, Director, Office of Management and Budget (OMB), said OMB does not have a staff member qualified to assist agencies in the development of strategic plans and performance measurement systems. Representative Carlson asked whether it would be useful for OMB to have a staff member providing this type of assistance. Ms. Sharp said OMB could either hire a new staff member to provide this assistance or train its budget analysts to provide assistance to their assigned agencies.

Mr. Bob Hanson, Commissioner, Department of Veterans Affairs, provided information on the status of the department's strategic plan and performance measures. Mr. Hanson said with the assistance of a consultant, the department completed its strategic plan in October 2004. He said the department prepared the plan based on the recommendation contained in a performance audit of the department conducted by the State Auditor's office in 2003-04.

Mr. Hanson said the department has also prepared its operational plan, which is the department's performance measurement document and is used to implement the goals and objectives of its strategic plan. He said the operational and strategic plan will be continually monitored and updated to improve services and benefits to veterans. A copy of the testimony and the department's strategic and operational plan is on file in the Legislative Council office.

## STATE-OWNED REAL ESTATE

The Legislative Council staff presented a bill draft [\[70047.0100\]](#) requiring the Office of Management and Budget to compile and maintain an inventory of all state-owned real property.

Ms. Sharp commented on the bill draft. She said OMB does maintain an inventory of state-owned buildings but would need to add land to comply with the provisions of the bill draft.

Representative Carlson questioned whether there is a need to place this requirement in the North Dakota Century Code. He said it appears OMB would be willing to update the current document and it could be available as requested by legislators.

Representative DeKrey asked whether the Governor may sell real property of the state without the approval of the Legislative Assembly as NDCC Section 54-01-05.1 seems to indicate. The Legislative Council staff said it would research the question and provide a response at the next committee meeting.

Chairman Carlson said the bill draft will be discussed further at a future committee meeting.

## OTHER RESPONSIBILITIES

The legislative budget analyst and auditor presented a memorandum entitled [History of Bistate](#)

Authority Legislation. He said discussions regarding bistate authorities with South Dakota began in 1996. He said the 1997 Legislative Assembly approved provisions authorizing North Dakota and South Dakota state agencies to form bistate authorities subject to approval by the Legislative Assembly or Legislative Council if the Legislative Assembly is not in session. Since that time, he said no proposals have been submitted for approval to the Legislative Assembly or Legislative Council to form a bistate authority with the state of South Dakota.

In response to a question from Representative Carlson, the legislative budget analyst and auditor said the committee is authorized to respond to proposals submitted to it by a state agency for a specific bistate authority agreement. He said under current law, the committee is not authorized to initiate bistate authority agreements.

The Legislative Council staff presented a memorandum entitled Bistate and Multistate Agreements - Other States. The Legislative Council staff said the memorandum contains examples of other states' bistate or multistate agreements. The Legislative Council staff cited examples, including a New York bistate planning agreement relating to health regulations, a South Carolina multistate lottery agreement, and a West Virginia multistate agreement for purchasing prescription drugs for the state's Medicaid program.

Chairman Carlson announced the next committee meeting is tentatively scheduled for Thursday, March 30, 2006, in Bismarck.

The committee adjourned subject to the call of the chair at 3:15 p.m.

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Allen H. Knudson  
Assistant Legislative Budget Analyst  
and Auditor

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Jim W. Smith  
Legislative Budget Analyst and Auditor

[ATTACH:1](#)