

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

LEGISLATIVE COUNCIL

Wednesday, May 20, 2009
Prairie Room, State Capitol
Bismarck, North Dakota

Representative Al Carlson, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Al Carlson, Merle Boucher, Chris Griffin, Gary Kreidt, Shirley Meyer, David Monson, Bob Skarphol, Robin Weisz, Lisa Wolf; Senators Robert S. Erbele, Tony S. Grindberg, Ray Holmberg, David O'Connell, Tracy Potter, Larry J. Robinson, Bob Stenehjem, Rich Wardner

Others present: Jay E. Buringrud, Allen H. Knudson, Jason J. Steckler; Legislative Council, Bismarck

RaeAnn G. Kelsch, State Representative, Mandan

See attached [appendix](#) for additional persons present.

Chairman Carlson welcomed the attendees and outlined the procedure to be followed. He said there are 84 studies under consideration, 13 of which are required and 71 are discretionary studies. He said during the 2007-08 interim there were 53 studies approved and his goal is to have 50 or fewer studies for the 2009-10 interim. He said that means about 34 of the discretionary studies should not be approved. He said the procedure he planned to follow was to take up the various studies for consideration and to place them on lists to be approved, not approved, or in a "maybe" category for further consideration. He said at the end of the day the Legislative Council will take a recorded roll call vote on those discretionary studies that are to be approved. He said Mr. Jay E. Buringrud, Assistant Director, will be categorizing the studies for consideration of interim committee structure. He said last interim there were 26 interim committees.

Chairman Carlson called on the director of the Legislative Council to review the documents that had been distributed and to make some announcements. The director said the memorandum entitled

[2009 Legislation Directly Affecting the Legislative Council and the Legislative Assembly](#) has been distributed to members of the Legislative Council. He said there is one new interim statutory committee--the nine-member Water-Related Topics Overview Committee--and there are 12 additional statutory established or recognized committees. He said the staff has also distributed a numeric listing of [studies to be considered](#) with a short description of the subject matter and a binder which includes detailed information on legislation calling for the studies again in numeric order. He said the primary [memorandum](#) that the committee should use in determining the priority of Legislative Council studies lists in numeric order each proposed study, including information regarding related legislation from the 2009 session, notes regarding related information, rationale if available for the study, and prior Legislative Council study information. The director said the agenda also includes establishment of the membership of the Budget Section for the 2009-10 interim to allow for the committee to meet before June 30 and a motion authorizing the chairman to send questionnaires to members of the Legislative Assembly regarding committee preferences. He said the June 16, 2009, Legislative Council meeting will be the meeting where the Legislative Council determines the actual committee membership for the selected designated committees. The information regarding committee preferences will be sent by e-mail and hardcopy to all legislators.

Chairman Carlson reviewed each of the proposed studies in the document listing the studies numerically. The Legislative Council then proceeded to discuss each study, including the merits and reasons for proposed studies. The following is a chart listing the Legislative Council's preliminary action on each of the 84 studies:

Bill or Resolution No.	Study Description	Approved for Study	Not Approved for Study	Maybe (Further Consideration)
1003 § 7	Penalties for felonies	1003 § 7		
1005 § 4	Salaries for state elected officials	1005 § 4		
1009 § 6	Agreements between the Agriculture Commissioner and the United States Department of Agriculture Wildlife Services Program - Wildlife damage control	1009 § 6		
1011 § 3	Fees charged by the Securities Commissioner		1011 § 3	
1012 § 9	Child support enforcement program	1012 § 9		
1012 § 10	Long-term care services study	1012 § 10		
1012 § 16	Traumatic brain injury study	1012 § 16		

Bill or Resolution No.	Study Description	Approved for Study	Not Approved for Study	Maybe (Further Consideration)
1015 § 22	Capitol complex master plan		1015 § 22	
1129 § 4	Auditing of political subdivisions	1129 § 4		
1263 § 2	Regulation of basic care and assisted living in the state	1263 § 2		
1269 § 3	Registry for certified nurse assistants	1269 § 3		
1280 § 1	Application by administrative agencies of standards that have not been adopted as administrative rules	1280 § 1		
1309 § 1	Interstate Compact on Educational Opportunity for Military Children		1309 § 1	
1322 § 3	Livestock feeding facilities			1322 § 3
1324 § 33	Corporate income taxes		1324 § 33	
1324 § 34	Homestead tax credit	1324 § 34		
1338 § 1	Solid waste management, siting and zoning of landfills	1338 § 1		
1341 § 1	State employee tuition reimbursement pool program	1341 § 1		
1391 § 1	Unmet health care needs	1391 § 1		
1400 § 61	Accreditation of schools, approval of public and nonpublic schools	1400 § 61		
1400 § 62	Length of school days, weather-related closures		1400 § 62	
1400 § 63	School closings and student transfers - Impact of disasters	1400 § 63		
1403 § 1	Capitol grounds study	1403 § 1		
1412 § 2	911 fee structure	1412 § 2		
1425 § 1	County foster care costs paid by the state		1425 § 1	
1449 § 3	Development of wind resources	1449 § 3		
1459 § 4	Weed control by the Army Corps of Engineers			1459 § 4
1489 § 2	Tax incentives for the promotion of value-added agriculture		1489 § 2	
1497 § 1	Responsibility of the cost of providing legal counsel for sexually dangerous individuals	1497 § 1		
1509 § 2	Wind easement and wind energy leases	1509 § 2		
1545 § 1	Creation of a low-profit limited liability company			1545 § 1
1562 § 1	Administrative leave program for state employees	1562 § 1		
1573 § 1	Voucher use for various human services clients	1573 § 1		
1577 § 1	Factors influencing the cost of health insurance	1577 § 1		
2001 § 7	Classified state employee compensation study	2001 § 7		
2003 § 31	Option for funding higher education institutions	2003 § 31		
2003 § 32	Impact of higher education tuition waivers	2003 § 32		
2003 § 33	Creation of a department to oversee all education entities		2003 § 33	
2003 § 34	Higher education student trust fund	2003 § 34		
2004 § 10	State immunization program	2004 § 10		
2012 § 24	Relocation of the Department of Transportation Fargo office			2012 § 24
2012 § 25	Highway construction funding options	2012 § 25		
2018 § 18	Entrepreneurship and economic development best practices	2018 § 18		
2018 § 19	State's system for addressing workforce needs	2018 § 19		
2021 § 8	Information Technology Department's Criminal Justice Information Sharing Initiative			2021 § 8
2032 § 13	Property tax reform and property tax relief	2032 § 13		
2038 § 6	Utilization of the North Dakota University System to meet workforce needs	2038 § 6		
2038 § 9	Higher education study	2038 § 9		
2050 § 5	Emergency medical services (EMS) funding			2050 § 5
2051 § 2	Taxation issues related to the production of mineral resources	2051 § 2		
2267 § 2	Whistleblower protection laws in the state	2267 § 2		
2324 § 31	Determining residency status under state law		2324 § 31	
2336 § 1	Legislative overview committee for water-related topics	2336 § 1		
2342 § 2	Impact of Johnes disease			2342 § 2
2355 § 4	At-risk children and youth service needs			2355 § 4
2370 § 1	Transferring the cost of expert examinations for mental health commitments from counties to the state	2370 § 1		

Bill or Resolution No.	Study Description	Approved for Study	Not Approved for Study	Maybe (Further Consideration)
2390 § 1	Establishment and development of certified technology parks	2390 § 1		
2394 § 2	Educational and human services for minors who are pregnant	2394 § 2		
2401 § 1	Bid requirements for public improvements	2401 § 1		
2417 § 1	Landfill waste reduction program		2417 § 1	
2420 § 1	Child support determination, ombudsman program	2420 § 1		
2420 § 2	Ombudsman program - Child and family services	2420 § 2		
2421 § 3	Involuntary mental health commitment procedures	2421 § 3		
2422 § 1	Purchasing of goods and services by political subdivisions		2422 § 1	
3001	Agriculture Century Code rewrite	3001		
3003	Tribal social services needs-related state program	3003		
3004	Indian education issues	3004		
3005	Adopting of the Revised Uniform Limited Liability Company Act	3005		
3006	Adopting of the Uniform Debt-Management Services Act	3006		
3008	Workers' compensation laws relating to prior injuries and conditions	3008		
3013	Legal representation to injured employees for Workforce Safety and Insurance decisions		3013	
3019	Article X, Section 18, of the Constitution of North Dakota		3019	
3023	Monetary amount triggers for criminal offenses	3023		
3044	Allocation of wind rights	3044		
3045	Severed and abandoned mineral rights, oil discounts			3045
3048	Bonding requirements placed on grain warehouses and buyers	3048		
3051	Penalties, fines, and fees imposed by administrative rule	3051		
3061	Educational delivery to Indian students	3061		
4002	State workforce system	4002		
4006	Professional development opportunities for teachers		4006	
4009	Adequacy of governmental services		4009	
4010	Transportation issues in the state		4010	
4027	Leasing of state lands	4027		
4028	Charitable gaming laws	4028		

The Council recessed at 12:00 noon for lunch and reconvened at 1:00 p.m. and continued its consideration of prioritization of studies.

At the conclusion of the first time through the studies, Chairman Carlson announced that 59 of the studies had been approved for committee study, 16 had been denied, and 9 remained for additional Legislative Council consideration.

The Council then considered Section 3 of House Bill No. 1322 which provides for a study of livestock feeding facilities and the use of byproducts for biofuels production. **It was moved by Representative Boucher, seconded by Representative Meyer, and carried on a voice vote that the Legislative Council give approval to the study in Section 3 of House Bill No. 1322.**

The Council considered Section 4 of House Bill No. 1459 relating to a study of the weed control program of the Army Corps of Engineers on federal land. **It was moved by Representative Meyer, seconded by Senator Erbele, and carried on a voice vote that the Legislative Council give approval to the study in Section 4 of House Bill No. 1459.**

The Council discussed Section 1 of House Bill No. 1545 relating to the study of the feasibility and

desirability of creating a new type of limited liability company called a low-profit limited liability company. Representative Boucher said this study area has potential as it would allow certain entities, in lieu of providing grants, to provide financial support in return for an investment. Senator Potter said he does not believe there is any need for this study as nonprofits can currently do many things, including purchasing for-profit businesses. Chairman Carlson announced the study would not be given priority.

The Council discussed the provisions of Section 24 of Senate Bill No. 2012 dealing with the review of the Department of Transportation's Fargo office. Chairman Carlson said the location is a concern as it is in a prime retail development area and there are other places available for sand and salt storage. Representative Monson suggested the Council not do the study. Representative Meyer indicated there is a need for it as there are additional considerations. Chairman Carlson announced that as there was no motion to approve this study the study would not be given priority.

The Council discussed Section 8 of Senate Bill No. 2021 dealing with the value of the Information Technology Department's Criminal Justice Information Sharing Initiative. Representative Skarphol said there

is no question of the value of the Criminal Justice Information Sharing Initiative. He said the only potential would be to review this system's potential value relating to the replacement of the State Radio communications system. Chairman Carlson announced that as there was no motion to approve the study this study would not be given priority.

The Council considered Section 5 of Senate Bill No. 2050 providing for a study of the EMS funding system within the state. Representative Kreidt said a potential value of the study would be to look at how local political subdivisions are funding EMS, including ambulances, as there is a wide variation in the availability of funds for local ambulance services. **It was moved by Representative Kreidt, seconded by Senator O'Connell, and carried on a voice vote that the Legislative Council give approval to the study called for in Section 5 of Senate Bill No. 2050.**

The Council considered the study called for in Section 2 of Senate Bill No. 2342 regarding the impact of Johnes disease on livestock producers in the state. Representative Meyer said this study was needed as this disease has a potential significant impact on livestock producers in North Dakota. **It was moved by Representative Meyer and seconded by Representative Wolf that the Legislative Council give priority to this study. The motion failed.**

The Council considered the study pursuant to Section 4 of Senate Bill No. 2355 relating to the statewide need for short-term shelter, assessment, and intervention services for at-risk youth. Senator Wardner said this is an issue that needs to be considered, but in light of the passage of House Bill No. 1044, which requires the Department of Human Services to develop a program for services to transition-aged youth at risk and the provision of Senate Bill No. 2355, which appropriates \$200,000 for a pilot program for short-term shelter, assessment, and intervention services for at-risk youth, he believes this study is not necessary. Chairman Carlson announced that as there was no motion to approve this study the study would not be given priority.

The Council considered House Concurrent Resolution No. 3045 dealing with the study of severed and abandoned mineral rights and methods to reduce the discount for oil produced in North Dakota. Representative Meyer said this needs to be looked at because there was not significant time during the 2009 session. Representative Skarphol suggested the study not include the methods to reduce the discount for oil produced in North Dakota as that was a transportation issue separate from the issue of severed mineral rights. Representative Meyer said the discount issue related to instances where oil companies have onsite storage and royalties are not being paid to the mineral owners because the product is not marketed. She said that is the issue that needs to be studied relative to the effect of discounted oil. **It was moved by Senator O'Connell, seconded by Representative Meyer, and carried on a voice vote**

that the Legislative Council give priority to the study called for in House Concurrent Resolution No. 3045.

The Council reconsidered the study provisions of Section 62 of House Bill No. 1400 relating to the cancellation of school and early dismissal as a result of severe weather or other emergency conditions. The Council had previously decided not to approve this study. Representative Wolf said she supported this study citing an issue in Minot when the school superintendent did not cancel school due to a winter storm, resulting in the Minot Police Department requiring the closure of the school. **It was moved by Representative Wolf and seconded by Representative Boucher that the Legislative Council give priority to Section 62 of House Bill No. 1400. The motion failed.**

The Council reconsidered its action regarding Senate Concurrent Resolution No. 4009 regarding the study of adequacy of governmental services, including judicial services to respond to issues relating to an aging population. The Council had previously decided not to study this area. Representative Wolf indicated that this issue was before the House Judiciary Committee, was supported by Chief Justice Gerald W. VandeWalle, and was to address in part an unfunded mandate on local political subdivisions. **It was moved by Representative Wolf and seconded by Representative Boucher that the Legislative Council give priority to the study pursuant to Senate Concurrent Resolution No. 4009. The motion failed.**

The Council reconsidered the provisions of Section 4 of House Bill No. 1005 relating to the study of the salaries of state elected officials. The Council had previously approved this study area. Senator Potter said this study was not necessary as elected officials should be treated like other state employees. **It was moved by Senator Potter and seconded by Senator O'Connell that the Legislative Council do not study the salaries of state elected officials pursuant to Section 4 of House Bill No. 1005. The motion failed.**

Senator Erbele discussed the Council's potential reconsideration of the study provisions in House Bill No. 1425 relating to the feasibility and desirability of transferring from the county to the state the responsibility for the funding of foster care costs.

It was moved by Representative Skarphol, seconded by Senator Grindberg, and carried on a voice vote that the Legislative Council revise the study provisions of Senate Concurrent Resolution No. 4028 to include pari-mutuel racing laws and the administration of pari-mutuel racing.

Regarding the studies approved, Legislative Council members had additional directives or comments summarized as follows:

- Regarding Section 7 of House Bill No. 1003, Senator Stenehjem suggested the review of felonies should include the issue considered in the 2009 session of providing a cellular phone

to an inmate of the Department of Corrections and Rehabilitation.

- Regarding the study pursuant to Section 25 of Senate Bill No. 2012 regarding highway funding, **it was moved by Senator Robinson, seconded by Senator Holmberg, and carried on a voice vote that the study be changed to read "the study of potential options for highway construction funding"**.
- Senator Stenehjem said the reports regarding the use by the Department of Transportation of funding provided for the 2009-11 biennium from state, federal, emergency, and other highway funding; reports from the Department of Emergency Services regarding emergency snow removal grants distributed to counties, townships, and cities, and emergency disaster relief grants awarded to political subdivisions; and reports from the Tax Commissioner regarding political subdivision transportation projects and programs should be received by a Legislative Council transportation-related committee. The reports from the Department of Transportation and the Department of Emergency Services are also to be provided to the Budget Section. Senator Stenehjem said a concern for the Legislative Assembly in 2011 will be the expectations to continue the level of transportation funding provided for the 2009-11 biennium.

It was moved by Senator Robinson, seconded by Representative Skarphol, and carried on a roll call vote that the Legislative Council give approval to the list of studies placed in the approved category. Representatives Carlson, Boucher, Griffin, Kreidt, Meyer, Monson, Skarphol, Weisz, and Wolf and Senators Erbele, Grindberg, Holmberg, O'Connell, Potter, Robinson, Stenehjem, and Wardner voted "aye." No negative votes were cast.

It was moved by Senator Grindberg and seconded by Senator Robinson that the membership of the Budget Section would consist of the same membership as before, including members of the House and Senate Appropriations Committees, the majority and minority leaders and their assistants from both houses, and the Speaker of the House.

A substitute motion was moved by Senator Potter and seconded by Senator O'Connell that the Budget Section consist of the senator from each of the 47 legislative districts and the most senior representative from each of the 47 legislative districts based on years of service in the House of Representatives, and in case of

equal seniority within a district, the member from that district is determined by alphabetical order. Senator Potter said this would address two of the concerns regarding the constitutionality of the Budget Section acting as a "minilegislature." He said it would provide broader representation as each district would have two representatives. He said it also would provide a better balance between the House and Senate as each chamber would have equal representation on the Budget Section. Representative Monson said this would result in even more of a "minilegislature" as there would be at least 94 members on the Budget Section. Representative Skarphol said the Budget Section currently does not approve additional spending that has not been appropriated by the Legislative Assembly. Senator Potter said the Budget Section can approve spending and can therefore also disapprove spending. He said although the Budget Section typically may approve Emergency Commission requests, it does have the authority to not approve those requests.

The chairman called for a roll call vote. Representatives Boucher, Griffin, Meyer, and Wolf and Senators O'Connell, Potter, and Robinson voted "aye." Representatives Carlson, Kreidt, Monson, Skarphol, and Weisz and Senators Erbele, Grindberg, Holmberg, Stenehjem, and Wardner voted "nay." **The motion failed.**

The Council considered Senator Grindberg's motion. Chairman Carlson called for a roll call vote. Representatives Carlson, Boucher, Griffin, Kreidt, Meyer, Monson, Skarphol, Weisz, and Wolf and Senators Erbele, Grindberg, Holmberg, O'Connell, Robinson, Stenehjem, and Wardner voted "aye." Senator Potter voted "nay."

It was moved by Senator Robinson, seconded by Representative Skarphol, and carried on a voice vote that the chairman be authorized to prepare a proposed interim committee structure and a questionnaire containing the proposed committee structure and to send the questionnaire to legislators to indicate their preference for service on interim committees.

Chairman Carlson announced the next meeting of the Legislative Council for Tuesday, June 16, 2009.

No further business appearing, Chairman Carlson adjourned the meeting at 3:30 p.m.

Jim W. Smith
Director

ATTACH:1