
NOTES TO THE FINANCIAL STATEMENTS

NOTE 21: COMMITMENTS AND CONTINGENCIES

A. No Commitment Debt

The State, by action of the General Assembly, created the North Carolina Medical Care Commission which is authorized to issue tax-exempt bonds and notes to finance construction and equipment projects for nonprofit and public hospitals, nursing homes, continuing care facilities for the elderly and related facilities. The bonds are not an indebtedness of the State and, accordingly, are not reflected in the accompanying financial statements. Each issue is payable solely from the revenues of the facility financed by that issue and any other credit support provided. Therefore, each issue is separately secured and is separate and independent from all other issues as to source of payment and security. The indebtedness of each entity is serviced and administered by a trustee independent of the State. Maturing serially and term to calendar year 2052, the outstanding principal of such bonds and notes as of June 30, 2021, was \$5.45 billion with interest rates varying from .75% to 6.25%.

The North Carolina Capital Facilities Finance Agency (Agency) is authorized by the State to issue tax-exempt bonds and notes to finance industrial and manufacturing facilities, pollution control facilities for industrial (in connection with manufacturing) or pollution control facilities and to finance facilities and structures at private nonprofit colleges and universities, and institutions providing kindergarten, elementary and secondary education, and various other nonprofit entities. The Agency's authority to issue bonds and notes also includes financing private sector capital improvements for activities that constitute a public purpose. The bonds issued by the Agency are not an indebtedness of the State and, accordingly, are not reflected in the accompanying financial statements. Each issue is payable solely from the revenues of the facility financed by that issue and any other credit support provided. Therefore, each issue is separately secured and is separate and independent from all other issues as to source of payment and security. The outstanding principal of such bonds and notes as of June 30, 2021, was \$1.5 billion carrying both fixed interest rates and variable interest rates which can be reset periodically.

The North Carolina Department of Transportation (NCDOT) is authorized by General Statute 136-18(39) and General Statute 136-18(39a) to enter into private partnership agreements to finance by tolls and other financing methods the cost of constructing transportation infrastructures. Such an agreement was entered into on June 26, 2014 with I-77 Mobility Partners LLC to design, build, finance and operate the I-77 High Occupancy Toll (HOT) Lanes Project. The NCDOT, as a conduit issuer, issued \$100 million of senior private activity bonds (PABs) on behalf of I-77 Mobility Partners LLC and will provide additional direct funds of \$119.3 million. The PABs are not an obligation of the Department or the State. The NCDOT has a contingent obligation up to a maximum of \$75 million over the life of the project in the event of certain revenue shortfalls.

B. Litigation***Hoke County Board of Education et al. v. State of North Carolina et al.* — Right to a Sound Basic Education (formerly *Leandro*)** —

In 1994, students and boards of education in five counties in the State filed suit in Superior Court requesting a declaration that the public education system of North Carolina, including its system of funding, violates the State constitution by failing to provide adequate or substantially equal educational opportunities, by denying due process of law, and by violating various statutes relating to public education. Five other school boards and students therein intervened, alleging claims for relief on the basis of the high proportion of at-risk and high-cost students in their counties' systems.

The suit is similar to a number of suits in other states, some of which resulted in holdings that the respective systems of public education funding were unconstitutional under the applicable state law. The State filed a motion to dismiss, which was denied. On appeal, the North Carolina Supreme Court upheld the present funding system against the claim that it unlawfully discriminated against low wealth counties, but remanded the case for trial on the claim for relief based on the Court's conclusion that the constitution guarantees every child the opportunity to obtain a sound basic education. Trial on the claim of one plaintiff-county was held in the fall of 1999. On October 26, 2000 the trial court, in Section Two of a projected three-part ruling, concluded that at-risk children in North Carolina are constitutionally entitled to such pre-kindergarten educational programs as may be necessary to prepare them for higher levels of education and the "sound basic education" mandated by the Supreme Court. On March 26, 2001, the Court issued Section Three of the three-part ruling, in which the judge ordered all parties to investigate certain school systems to determine why they are succeeding without additional funding. The State filed a Notice of Appeal to the Court of Appeals, which resulted in the Court's decision to re-open the trial and call additional witnesses. That proceeding took place in the fall of 2001. On April 4, 2002, the Court entered Section Four of the ruling, ordering the State to take such actions as may be necessary to remedy the constitutional deficiency for those children who are not being provided with access to a sound basic education and to report to the Court at 90-day intervals remedial actions being implemented. On July 30, 2004, the North Carolina Supreme Court affirmed the majority of the trial court's orders, thereby directing the executive and legislative branches to take corrective action necessary to ensure that every child has the opportunity to obtain a sound, basic education. Thereafter, the State took steps to respond to the trial court's orders.

NOTES TO THE FINANCIAL STATEMENTS

On June 15, 2011, the General Assembly enacted legislation which placed certain restrictions on the North Carolina pre-kindergarten program which had been established by the General Assembly in 2001. Following a hearing requested by the plaintiffs, the trial court entered an order prohibiting the enforcement of legislation having the effect of restricting participation in the program. On appeal, the North Carolina Court of Appeals affirmed the trial court's order prohibiting the State from denying any eligible "at risk" children admission to the program. The State appealed this decision, and in November 2013, the North Carolina Supreme Court held that amendments to the 2011 legislation had rendered the appeal moot. The case was remanded to the Superior Court.

On March 13, 2018, the Superior Court issued an Order appointing WestEd to serve as the Court's independent, non-party consultant to make recommendations for specific actions necessary to achieve sustained compliance with the constitutional mandates of Leandro. On October 4, 2019, WestEd submitted its final report and recommendations to the Court. The WestEd report estimated that over the eight-year period beginning in the 2019-2020 fiscal year, it could take as much as \$6.86 billion in additional funding beyond 2018-2019 appropriations for the State to meet its Leandro obligations. On January 21, 2020, the Court entered a Consent Order Regarding the Need for Immediate, Systemic Action for the Achievement of Leandro Compliance. In that Order, the Court found that many children across North Carolina are still not receiving the constitutionally-required opportunity for a sound basic education and the State had to make systemic changes and investments to fulfill its obligations. Consistent with that decision, the Court ordered the State Defendants, in consultation with the plaintiff parties, to develop a comprehensive remedial plan to provide all children with the opportunity for a sound basic education. The Court did not order the State to appropriate any funds but ordered the State to remedy the deficiencies identified in its Order of January 21, 2020.

In June 2020, the parties submitted a Joint Report to the Court on Sound Basic Education for All: Fiscal Year 2021 Action Plan For North Carolina. That Joint Report detailed the actions the State and NC SBE were committed to taking in the first year (Fiscal Year 2021) of an eight-year Plan. The parties agreed that the actions outlined in the Joint Report were the necessary and appropriate actions needed in Fiscal Year 2021 to begin to adequately address the constitutional violations in providing the opportunity for a sound basic education to all children in North Carolina. The State Defendants estimated that the costs of the action steps detailed in the Joint Report would require an additional State investment of \$426.99 million in Fiscal Year 2021. The Court thereafter ordered the parties to formalize the commitments in the Joint Report in a Consent Order which the Court entered on September 11, 2020.

On March 15, 2021, the State Defendants submitted the Comprehensive Remedial Plan required under the January and September Consent Orders. The State Defendants, including the NC State Board of Education, agreed that the actions outlined in that Plan were the necessary and appropriate actions needed over the next eight years to address the constitutional violations and provide the opportunity for a sound basic education to all children in North Carolina. Attached to the Plan was an Appendix which detailed the implementation timeline for each action step, as well as the estimated additional State investment necessary for each of the actions described in the Plan. The State Defendants estimated that the actions steps in the Plan would cost an additional \$5.5 billion in recurring funds at the end of the eight year implementation period.

On June 7, 2021, the Court entered an Order directing the State Defendants to implement the Comprehensive Remedial Plan in full and in accordance with the timelines contained therein. The Court further ordered the State Defendants to seek and secure "such funding and resources as are needed and required to implement in a sustainable manner the programs and policies set forth in the Comprehensive Remedial Plan." The Court held open the possibility of entering judgment in the future "granting declaratory relief and such other relief as needed to correct the wrong" if the State fails to implement the actions described in the Plan. Finally, the Court ordered State Defendants to submit a report no later than August 6, 2021, regarding progress toward fulfilling the terms and conditions of the Order and stated that it would hold a hearing in September 2021 to address issues raised in that report.

On August 6, 2021, the State Board of Education and the State of North Carolina filed separate Reports on Progress on the Comprehensive Remedial Plan. On August 27, 2021, the Plaintiffs and the Plaintiff Intervenors filed Responses to those Reports. The Court has scheduled a hearing on September 8, 2021, to "address issues raised in the reports and responses."

The Court entered an Order on November 10, 2021, following a hearing held on October 18, 2021. Among other things, the November 10, 2021 Order directs the Office of State Budget and Management and the current State Budget Director, the Office of the State Controller and the current Controller, and the Office of the State Treasurer and the current State Treasurer to "take the necessary actions to transfer the total amount of funds necessary to effectuate years two & three of the Comprehensive Remedial Plan, from the unappropriated balance within the General Fund to the state agents and state actors with fiscal responsibility for implementing the Comprehensive Remedial Plan as follows:

- (a) Department of Health and Human Services (DHHS): \$189,800,000;
- (b) Department of Public Instruction (DPI): \$1,522,053,000.; and
- (c) University of North Carolina System: \$41,300,000."

The November 10, 2021 Order included a provision staying the order for 30 days (i.e., until December 10, 2021) "to permit the other branches of government to take further action consistent with the findings and conclusions" of the Order. On November 24, 2021, the State Controller petitioned the Court of Appeals to issue a writ of prohibition, temporary stay and writ of supersedeas. On November 29,

NOTES TO THE FINANCIAL STATEMENTS

2021, the Court of Appeals set a deadline of November 30, 2021, for the parties to respond to the petition for writ of prohibition, temporary stay and writ of supersedeas.

On November 30, 2021, the Court of Appeals (JJ, Dillon and Griffin) allowed the petition and issued a writ of prohibition restraining the trial court from enforcing the portion of its order requiring the Controller “to treat the \$1.7 billion in unappropriated school funding identified by the court ‘as an appropriation from the General Fund as contemplated within N.C. Gen. Stat. s. 143C-6-4(b)(2)(a) and to carry out all action necessary to effectuate those transfers.’” Judge Arrowood dissented.

Halikierra Community Services, LLC; Dwaylon Whitley; Michael Scales v. NC DHHS, DHB; Medical Review of North Carolina, Inc. d/b/a Carolinas Center for Medical Excellence; Kay Cox in her individual capacity; Patrick Piggott in his individual capacity. Two State Constitutional claims are asserted against DHHS: 1) Violation of Substantive Due Process (Art. I, Sec. 19); and 2) Violation of Equal Protection (Art. I, Sec. 19). Plaintiffs also sued two DHHS employees (Cox and Piggott) in their individual capacities; both employees requested AGO representation, which has been approved. The claims against Cox and Piggott in their respective individual capacities are Conspiracy in Restraint of Trade, Civil Conspiracy, and Punitive Damages. Damages requested are in excess of \$100,000,000.

DHHS disputes the claims and damages. Motions to Dismiss and Answers were filed on behalf of Defendants DHHS, Patrick Piggott, and Brenda Kay Cox. The hearing on Defendants’ Motions to Dismiss occurred on November 18, 2020. Per the judge’s request, Defendants submitted supplemental briefing on December 16, 2020 and Plaintiffs submitted supplemental briefing on January 4, 2021. By order dated March 25, 2021, the trial court granted in part our motions to dismiss, but many claims remain. Discovery was extended until November 1, 2021 and we anticipate filing Motions for Summary Judgment on behalf of DHHS and the DHHS employees on December 1, 2021. This matter is dealing with more than \$20 million in controversy and it is possible that we may lose on the merits and have to issue refunds of that amount.

Lake v. State Health Plan — The main issue is whether the State wrongfully charged a monthly premium to retired State employees for the State’s 80/20 coinsurance health plan. The general theme of the complaint is that the State established vesting requirements under which if the employee fulfilled the requirements, the State contracted with each employee to provide 80/20 coinsurance insurance coverage at no monthly premium to the retiree for the duration of each retiree’s retirement. Similarly, the plaintiffs allege that the State terminated an optional 90/10 coinsurance health plan to which they allegedly had vested rights. Plaintiffs claim (1) breach of contract; (2) unconstitutional impairment of contract; (3) unconstitutional denial of equal protection; and (4) unconstitutional denial of due process. The plaintiffs also allege a variety of equitable claims (e.g., specific performance, common fund) that piggy-back on the legal claims.

The State moved to dismiss and, after a hearing, the trial court denied the motion. On May 19, 2017, the trial court issued an order granting plaintiffs’ motion for partial summary judgment and denying defendants’ motion for summary judgment as to liability. The trial court held that plaintiffs, and all class members, are entitled to the version of the 80/20 coinsurance plan in existence in September 2011, or its equivalent, with no premium for their lifetime. The trial court’s order would provide damages for retirees who remained on the 80/20 coinsurance plan at the amount of premiums they actually paid. Any method for determining damages for retirees who switched to the zero-premium 70/30 coinsurance plan is yet to be determined.

The State appealed. On March 5, 2019, a panel of the Court of Appeals unanimously reversed the order of the superior court and remanded for entry of summary judgment in favor of the State. The plaintiffs have petitioned to the North Carolina Supreme Court for discretionary review of the decision of the Court of Appeals. The petition for discretionary review was allowed. The case was briefed and oral arguments were held on October 4, 2021. The parties are awaiting a ruling from the Supreme Court.

The State Treasurer has stated that if the trial court’s ruling stands – which would require reversal of the Court of Appeals – the costs to the State could exceed \$100 million, not including the cost to the State Health Plan of complying with the plaintiffs’ demands going forward.

Map Act Litigation (Kirby v. North Carolina Department of Transportation and subsequent cases) — The Transportation Corridor Official Map Act (Map Act) was enacted in 1987 to provide the NCDOT with the authority to record corridor maps that imposed restrictions on a landowner’s rights to improve, develop, and subdivide property within the corridor, under which restrictions may remain indefinitely. The Map Act did not require NCDOT to purchase the property at the time of the filing of a future corridor map. Starting in 1989, NCDOT filed 27 separate maps that affected approximately 8,500 parcels of land. In June of 2016, the North Carolina Supreme Court ruled that the filing of a transportation corridor map pursuant to the Map Act resulted in a taking of the property owners’ rights to improve, develop, and subdivide their property. Under state law, whether a property owner should be paid for the property, and how much, are determined on a case-by-case basis.

NCDOT completed 15 road projects involving approximately 3,500 of these parcels more than two years ago, which should bar any claims for damages due to the statute of limitations. Of the 5,000 parcels that remained vulnerable to an inverse condemnation claim due to Map Act restrictions, NCDOT has acquired approximately 3,990 parcels through either direct acquisition of the property or settlement

NOTES TO THE FINANCIAL STATEMENTS

of inverse condemnation lawsuits at a total cost of approximately \$915 million. Of the remaining Map Act parcels, approximately 68 parcels have pending lawsuits. At this time, it is not possible to project the amount of the total Map Act liability; however, NCDOT currently estimates that it will cost approximately \$50 million to settle the remaining filed claims. The acquisition of additional parcels through the normal right of way process and the settlement of any additional claims that may be filed are not accounted for within that estimate. To date, Map Act acquisitions have been paid from the Highway Trust Fund.

Recently, landowners' attorneys have moved for, and been granted, "enhanced" attorney's fees on cases which are still in litigation. They have proceeded on the theory that they spearheaded the Map Act litigation and deserved more compensation.

Landowners' attorneys have also filed inverse condemnation suits raising a new theory of recovery for Map Act damages where NCDOT has previously acquired right of way or other interests from properties in a Map Act corridor. In these cases, the landowners have asserted that a claim for Map Act damages survives either a voluntary purchase or condemnation and is not extinguished by entry of a judgment by a prior condemnation. In the first of these cases to be heard by a trial court, the court has indicated in open court that it will order NCDOT to pay certain additional damages for areas within the corridor but not previously acquired by NCDOT. The general ruling has not been reduced to a written order, and the particulars are not entirely clear at this time. Depending on the details of the order and potential subsequent appellate rulings, NCDOT's potential liability will be expanded beyond the current number of known cases.

Buffkin v. Hooks — The American Civil Liberties Union of North Carolina and North Carolina Prisoner Legal Services, Inc., filed this class action on June 15, 2018, on behalf of three named individual offenders infected with hepatitis-C (HCV) against the North Carolina Department of Public Safety (DPS) and four individual state employees, including the Secretary of DPS. The suit seeks class certification for "all current and future prisoners in DPS custody who have or will have HCV and have not been treated with direct-acting antiviral drugs." The plaintiffs seek relief in the form of a declaratory judgment that DPS' policy for treating inmates infected with HCV violates the Eighth Amendment, and that failure to screen all persons in DPS for the virus violates the Eighth Amendment and the Americans with Disabilities Act. To that end, plaintiffs are requesting injunctive relief from the court ordering DPS to (1) formulate and implement an HCV treatment policy that meets the current standard of medical care, including identifying and monitoring persons with HCV; (2) treat the class members with appropriate direct-acting antiviral drugs; and (3) provide named plaintiffs and class members with an appropriate and accurate assessment of their level of fibrosis or cirrhosis, counseling on drug interactions, and ongoing medical care for complications and symptoms of HCV. The three individual plaintiffs are seeking compensatory and punitive damages. If the plaintiffs are successful in their suit, the defendant may be responsible for costs and attorneys' fees.

The plaintiffs moved for class certification, which was granted March 20, 2019. The plaintiffs also moved for preliminary injunctive relief, which was denied through the same March 20 order. The parties are currently engaged in the discovery process. Ranges of infected inmate populations vary greatly from state to state. More than 30,000 inmates are incarcerated in North Carolina prisons, with more than 30,000 being introduced into the system each year. If the certified class is successful in the litigation, potential costs of complying with the injunctive relief ordered could exceed \$200 million.

The parties resolved this litigation through a negotiated resolution which the Court recently approved and entered as a consent decree. Plaintiffs' counsel are now seeking attorneys' fees just under \$1 million.

Pasquotank Prison Litigation. In October 2017, four inmates at Pasquotank Correctional Institution murdered four employees and injured additional employees during an escape attempt. The estates of the four employees who were killed and two injured employees have brought multiple lawsuits in the Industrial Commission, state court, and federal court against individual state defendants as well as against state officials, the Department of Public Safety, and Correction Enterprises (a division of the Department of Public Safety). The State is defending the individual State defendants under the Defense of State Employees Act. While the State has limited insurance coverage for claims against individual defendants in excess of \$1 million, the potential exposure to the State is nonetheless significant if the State does not prevail on available legal defenses. The State also is separately defending a claim involving the murder of a correctional officer by an inmate at a different state prison (Bertie).

Tetra Tech Construction, Inc. v. NCDOT. On September 14, 2021, Tetra Tech filed a Complaint against NCDOT for a claim of approximately \$28 million. Tetra Tech is a highway contractor which was awarded a contract to construct approximately 13 miles of US-220 in Guilford and Rockingham Counties. The total project cost was approximately \$100 million. Tetra Tech alleges that it incurred a loss of \$28 million due to a delay of approximately 53 months in completion of the Project. The delays were allegedly caused by, but not limited to, changes in the scope of work, delays to access of the Project site, changes in sequencing of the work, and other alleged delays caused by NCDOT. NCDOT has denied these allegations and will vigorously defend the lawsuit. The matter is currently pending in the N.C. Business Court. NCDOT has filed an Answer and Motion to Dismiss. A Case Management Order is expected in the near future. Potential exposure to the State is approximately \$28 million plus possible interest and other costs should the Plaintiff prevail in whole.

Vidant Hospital, UNC Hospitals, DHB/Provider Audit. Vidant filed annual cost reports for fiscal years 2010 through 2016. Provider Audit disagreed with certain issues on the cost reports and made audit adjustments in Notices of Program Reimbursements dated January 12, 2017, April 13, 2018, March 18, 2019, and May 31, 2019. Vidant appealed all in 2017 through 2019 by requesting reconsideration.

NOTES TO THE FINANCIAL STATEMENTS

The parties were not able to resolve one issue, known as “zero paid claims.” Vidant has appealed this issue for all seven fiscal years. Vidant and DHB have both submitted position papers to the hearing officer. On July 2, 2021, the parties requested, and the hearing officer agreed to hold the matter in abeyance while the parties exchange information that may clarify some issues. DHB’s defense is based on the State Medicaid Plan, the CMS Provider Manual, informal guidance received from CMS, and concurrence from DHB’s outside auditing firm. The approximate value of Vidant’s claims in dispute is \$25 million, which would be part federal and part state dollars. Note also that UNC has appealed the same “zero paid claims” issue for multiple cost years, and DHHS leadership has participated in several high-level discussions with UNC. UNC estimates the value of these claims as about \$13 million. The situation with UNC is complicated as UNC may have received some overpayments from DHB. This matter is dealing with more than \$20 million in controversy and it is possible that we may lose on the merits and have to issue refunds of that amount.

Other Litigation. The State is involved in numerous other claims and legal proceedings, many of which are normal for governmental operations. A review of the status of outstanding lawsuits involving the State by the North Carolina Attorney General did not disclose other proceedings that are expected to have a material adverse effect on the financial position of the State.

C. Federal Grants

The State receives significant financial assistance from the federal government in the form of grants and entitlements, which are generally conditioned upon compliance with terms and conditions of the grant agreements and applicable federal regulations, including the expenditure of the resources for eligible purposes. Under the terms of the grants, periodic audits are required and certain costs may be questioned as not being appropriate expenditures. Any disallowance as a result of questioned costs could become a liability of the State.

An audit conducted by the United States Department of Health and Human Services Office of Inspector General concluded that the State did not comply with Federal and State requirements when making Medicaid cost-sharing payments for professional medical services during fiscal years 2012 and 2013. Based on the audit, the Office of Inspector General recommended that the State refund \$41.2 million to the federal government for non-compliant payments. The State disagrees with the findings and recommendation. The State received a demand letter from Centers for Medicaid Services (CMS) on December 3, 2020 and intends to appeal.

An audit conducted by the United States Department of Health and Human Services Office of Inspector General concluded that the State did not comply with Federal and State requirements when making Medicaid claims for school-based Medicaid administrative costs. Based on the audit, the Office of Inspector General recommended that the State refund \$53.8 million to the federal government for non-compliant claims. The State disagrees with the findings and recommendation. Once a final determination of liability is made, the amount will be paid to CMS. As of June 30, 2021, the State had not received a demand for recovery from CMS.

For the fiscal years 2011-2013, the State received more than \$34.8 million in unallowable performance bonus payments under the Children’s Health Insurance Program Reauthorization Act. The overpayments were the result of the overstatement of the enrollment numbers in its request. CMS has issued a disallowance and a demand for recovery. The State disagrees with the findings and has appealed. Other states also appealed, and the matters were consolidated for a decision by the Departmental Appeals Board (DAB). The DAB issued its decision on, finding that CMS had erred in its interpretation of the statute, but also remanded the case to CMS to determine if there were overpayments made. The State is awaiting further information and guidance from CMS.

As of June 30, 2021, the State is unable to estimate what liabilities may result from additional audits of Federal grants and entitlements.

The State refunds federal shares of drug rebate collections to CMS. As of June 30, 2021, the amount due to CMS was \$160 million.

D. Highway Construction

The State has placed on deposit in court \$208.73 million for a potential liability to property owners for contested rights-of-way acquisition costs in condemnation proceedings. The State may also be liable for an additional \$63.01 million in these proceedings. Also, the State is contingently liable for outstanding contractors’ claims in the amount of \$28.79 million. These costs have not been included in project-to-date costs.

E. Construction and Other Commitments

At June 30, 2021, the State had commitments of \$4.703 billion for construction of highway infrastructure. Of this amount, \$2.84 billion relates to the Highway Fund, \$319 million relates to the N.C. Turnpike Authority, and \$1.544 billion relates to the Highway Trust Fund. The other commitments for construction and improvements of state government facilities totaled \$137.21 million, including \$54.4 million for the Department of Environmental Quality, \$33.31 million for the Department of Natural and Cultural Resources, \$14.39 million for the Department of Public Safety, \$6.57 million for the Department of Justice, \$6.12 million for the Department of Agriculture, and \$5.62 million for the Department of Military and Veterans Affairs.

NOTES TO THE FINANCIAL STATEMENTS

At June 30, 2021, the University of North Carolina System (component unit) had outstanding construction commitments of \$814.51 million (including \$327.23 million for UNC Health Care System, \$89.19 million for Western Carolina University, \$86.29 million for the University of North Carolina at Chapel Hill, \$78.83 million for North Carolina State University, \$53.64 million for North Carolina Central University, and \$53.63 million for Appalachian State University).

At June 30, 2021, community colleges (component units) had outstanding construction commitments of \$126.07 million (including \$29 million for Central Piedmont Community College, \$25.29 million for Wake Technical Community College, \$23.2 million for Fayetteville Technical Community College, \$13.43 million for Sandhills Community College, \$9.43 million for Cleveland Community College, \$4.28 million for Sampson Community College, and \$3 million for Durham Technical Community College).

The Department of Environmental Quality has other significant commitments of \$450.06 million for clean water and other cost reimbursement grants. At June 30, 2021, the Department of Natural and Cultural Resources had outstanding commitments of \$45.23 million for clean water grants to nongovernmental organizations and local and state government. The Department of Public Instruction has other significant commitments of \$304.17 million for needs-based public school building capital fund cost reimbursement grants awarded to Local Education Agencies (LEAs) for school capital projects.

The 911 Board (Board), part of the Department of Information Technology Services, sets aside a portion of its fund balance annually to support local Public Safety Answering Points (PSAPs). The PSAPs apply to the Board for the funds with improvement project proposals that the Board evaluates and either approves or denies. At June 30, 2021, the 911 Fund (special revenue fund) had outstanding commitments on these cost-reimbursement grants and contracts to the PSAPs totaling \$26.84 million.

At June 30, 2021, the Administrative Office of the Courts had outstanding software in development contract commitments of \$34.94 million.

The State Treasurer has entered into contracts with external fund managers of several investment portfolios within the North Carolina Department of State Treasurer External Investment Pool (External Investment Pool), where the State Treasurer agrees to commit capital to these investments. More detailed information about the External Investment Pool is available in a separate report (See Note 3A).

The UNC Investment Fund, LLC (UNC Investment Fund) at the University of North Carolina at Chapel Hill has entered into agreements with limited partnerships to invest capital. These agreements represent the funding of capital over a designated period of time and are subject to adjustments. As of June 30, 2021, the UNC Investment Fund had approximately \$1.55 billion unfunded committed capital.

F. Tobacco Settlement

In 1998, North Carolina, along with 45 other states, signed the Master Settlement Agreement (MSA) with the nation's largest tobacco companies to settle existing and potential claims of the states for damages arising from the use of the companies' tobacco products. Under the MSA, the tobacco companies are required to adhere to a variety of marketing, advertising, lobbying, and youth access restrictions, support smoking cessation and prevention programs, and provide payments to the states in perpetuity. The amount that North Carolina will actually receive from this settlement remains uncertain, but projections are that the State will receive approximately \$4.74 billion from the inception of the agreement through the year 2025. Since the inception, the State has received approximately \$3.62 billion in MSA payments. In the early years of MSA, participating states received initial payments that were distinct from annual payments. The initial payments were made for five years: 1998 and 2000 through 2003. The annual payments began in 2000 and will continue indefinitely. However, these payments are subject to a number of adjustments including an inflation adjustment and a volume adjustment. Some adjustments (e.g., inflation) should result in an increase in the payments while others (e.g., domestic cigarette sales volume) may decrease the payments. Also, future payments may be impacted by continuing and potential litigation against the tobacco industry and changes in the financial condition of the tobacco companies. At year-end, the State recognizes a receivable and revenue in the government-wide statements for the tobacco settlement based on the underlying domestic shipment of cigarettes. This accrual estimate is based on the projected payment schedule in the MSA adjusted for historical payment trends.

G. Other Contingencies

The Civil Rights Division of the U.S. Department of Justice investigated the state's mental health system and found the State to be in violation of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sec 12131, and the following, as interpreted by the U.S. Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and Section 504 of the Rehabilitation Act of 1973 (Rehab Act), 29 U.S.C. Sec 794(a). On August 23, 2012, the Civil Rights Division and the State entered into an agreement that addresses the corrective measures that will ensure that the State will willingly meet the requirements of the ADA, Section 504 of the Rehab Act, and the *Olmstead* decision. Through the agreement, it is intended that the goals of community integration and self-determination will be achieved. Both parties of the agreement have selected a reviewer to monitor the State's implementation of this agreement. The reviewer has authority to independently

NOTES TO THE FINANCIAL STATEMENTS

assess, review, and report annually on the State's implementation of and compliance with the provisions of this agreement. The potential liability to the State cannot be reasonably estimated. If the State fails to comply with this agreement, the United States can seek an appropriate judicial remedy. To date, the State has demonstrated good faith effort by providing sufficient funding essential to meeting the settlement requirements. The State is responsible for determining and identifying the amount of appropriation funding that is needed to fulfill this agreement which was originally going to be phased in over eight years (2013-2020). The settlement agreement was first extended for an additional year to July 1, 2021 in order to give the State more time to meet the requirements. In March of 2021, the parties signed an agreement acknowledging the State's compliance in some areas of the agreement, but extending other items for an additional two years. In Session Law 2012-142 Section 10.23A.(e), \$10.3 million was appropriated as recurring funds to support the Department of Health and Human Services in the implementation of its plan for transitioning individuals with severe mental illness to community living arrangements, including establishing a rental assistance program. In Session Law 2013-360, additional money was appropriated in the expansion budget for \$3.83 million for fiscal 2014 and \$9.39 million for fiscal 2015. Funding has continued each budget year at appropriate levels to meet the terms of the agreement.

In Session Law 2015-241, the North Carolina Housing Finance Agency (NCHFA), in consultation with the Department of Health and Human Services (DHHS), was authorized to administer the Community Living Housing Fund (CLHF) in order to provide permanent community-based housing in integrated settings appropriate for individuals with severe mental illness and severe and persistent mental illness. The funds are first transferred from DHHS and then must be appropriated by the General Assembly in order for the NCHFA to expend the funds. DHHS transferred \$2.89 million to the Community Living Housing Fund in fiscal 2015. House Bill 1030 authorized the NCHFA to expend receipts of \$5.52 million transferred from DHHS to the CLHF in fiscal 2017. Session Law 2017-57 and Session Law 2018-5 provided funds of \$4.2 million and \$3.96 million, respectively, transferred from DHHS to the CLHF. In fiscal years 2019 through 2021, DHHS transferred \$10.47 million to the CLHF and Session Law 2020-97 appropriated those funds for the State to meet its commitment to the supported housing requirements of the agreement. At present, the work continues with the funds available through continuing budget provisions.

The State is liable for an ongoing worker's compensation claim for a former employee who was severely injured and will require care for life. As of June 30, 2021, the total amount of the liability cannot be reasonably estimated.