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SUMMARY

BRIEFLY - - - THIS REPORT SAYS

AGRICULTURE

The Council studied the feasibility of reorganizing agriculturally related functions of state government, and believes there is unnecessary duplication in the Grade "A" and Grade "B" milk testing program which should be eliminated. A Council committee considered a bill to eliminate this duplication, but it rejected it upon the stipulation that a bill would be jointly prepared by the Agriculture, State Laboratories, and State Health Departments on this subject for the 1977 Legislature.

The Council studied alternative methods of providing supplemental financing to rural water supply systems and recommends a bill establishing a \$10 million revolving fund administered by the Bank of North Dakota in cooperation with the Farmers Home Administration. The bill provides supplemental financing in conjunction with federal moneys for community water facilities serving rural areas and communities under 10,000 population.

The Council studied the programs and policies of the U.S. Fish and Wildlife Service and their compatibility with the agricultural use of surrounding land. The Council recommends three bills requiring submission of proposed land, wetland, and water acquisitions by the Department of the Interior or the State Game and Fish Department to the board of county commissioners of the affected county for approval or disapproval. The bills require inspection and public comment on proposed acquisition areas. Environmental impact statements would be required, and leases, easements, or servitudes would automatically terminate upon a change in ownership of the affected land or upon the landowner's death. The landowner would be allowed to restrict a lease, easement, or servitude to the wetlands, water, or land areas sought, and would be allowed to drain any expanded wetland or water area. Failure by the federal government or the State Game and Fish Department to accept the conditions would nullify state consent to certain congressional actions given under Sections 20.1-02-17 and 20.1-02-18.

BUDGET

The Council, during the 1975-77 interim, approved Social Service Board requests for funding of 37 social service projects calling for \$2.9 million in federal funds to be matched by private and governmental agencies. It also approved requests from the North Dakota Agricultural Experiment Station to spend additional income; and approved the disbursement of moneys from the preliminary (construction) planning revolving fund to plan a Supreme Court building and other major construction and remodeling projects in the state.

The Council reviewed the Federal Comprehensive Employment and Training Act (CETA) under which 463 persons are employed in 50 state agencies and institutions. The Council recommends that in the future Employment Security Bureau funds be appropriated in the same manner as are funds of other state agencies. The Council's Budget Section also conducted tours of various state agencies and institutions.

The possibility of tying the level of state expenditures to the level of personal income in the state was studied by the Council, and it does not recommend placing the state under this type of an expenditure limitation. The Council studied the level of transfer payments from the state general fund to local governments and contracted with the NDSU Department of Agricultural Economics for forecasts of the state's personal income and income and sales tax revenues for the next biennium.

Program priorities of state agencies and institutions were studied, and the Council monitored the status of appropriations of major state agencies and institutions during the 1975-77 biennium. The Council heard about budget problems of the State Board of Higher Education, the State Penitentiary, and the North Dakota Weather Modification Board. It also considered the possibility of adopting zero growth budget forms and conducted a food cost survey at the state charitable and penal institutions.

The Council studied state agency and Supreme Court space needs, and recommends a bill authorizing the Board of University and School Lands to invest \$6.25 million from the permanent common school trust fund in construction of a state office building. The Council recommends that the Library Commission be moved to the Liberty Memorial Building once that building is no longer occupied by the Historical Board. The Council recognized the need for additional Supreme Court space and recommends that the Supreme Court prepare alternative cost estimates for the 1977 Legislature on construction of a Supreme Court building and cost estimates for expansion of Supreme Court space in the Capitol.

The Council conducted performance reviews of the State Historical Board, State Library Commission, and the State Fair Association; studied higher education building needs; and reviewed Central Personnel Division operations.

The Council reviewed 69 audit reports presented by the State Auditor's office. The action taken on these reports pursuant to various audit recommendations are included in the report of the Council's Budget "A" Committee. Among the audit reports heard was that for the State Auditor's office for the period beginning January 1, 1973, and ending June 30, 1976.

The Council recommends a bill authorizing the State Auditor to accept, in lieu of an audit every two years, financial reports from school districts with less than 100 enrolled students, and from other political subdivisions with less than \$75,000 of annual receipts. Other interim activities included a study of state employee fringe benefits.

CONSTITUTIONAL REVISION

The Council's primary goal in constitutional revision during the interim was to prepare measures to repeal as many of the clearly obsolete provisions, or so-called deadwood, as possible. In this regard, the Council is proposing 20 resolutions repealing 50 sections and articles of the constitution. These include several sections dealing with corporations that are now covered by state and federal laws; the state's original congressional and legislative apportionment; authorization for bonuses for World War II, Korea, and Vietnam veterans; articles authorizing the state to operate grain elevators in North Dakota, Minnesota, and Wisconsin; and the transition schedule from territorial to state government.

In other areas of constitutional revision, the Council recommends creating a new elective franchise article; and amendments allowing the legislature to adjust elected state officials' salaries during their terms, and permitting the Lieutenant Governor to vote in the Senate only in tie votes on procedural matters.

Three other amendments proposed by the Council would somewhat liberalize leasing restrictions for state school lands, increase political subdivisions' bonding limits from five to eight percent, and remove restrictions on the state taxing, via the property tax, large energy development plants.

The Council also recommends the creation of a Joint Constitutional Revision Committee as a regular standing committee during legislative sessions, and the establishment of a permanent interim Constitutional Revision Committee to conduct an ongoing study. Finally, the Council recommends a bill directing the Secretary of State to publish a version of the State Constitution that is short, easy to read, and easy to obtain.

EDUCATION

The Council recommends the continuation of the basic concepts of educational finance with increases in per-pupil payments and in transportation aid, and with an additional weighting factor for preschool age special education pupils. The Council also recommends bills to provide for an Indian education curriculum, payment of the excess costs of special education, and fewer restrictions on school districts borrowing from the State School Construction Fund coupled with more available funds.

The Council examined the practice of school districts charging textbook and activity fees and recommends that these fees be eliminated over a period of five years. School districts will be partially reimbursed by the state for eliminating these fees.

The Council recommends a bill to establish a uniform accounting system to provide the legislature with adequate information on educational costs. The bill also provides assistance and mini-grants to school districts and establishes a data base from which future decisions about implementing various other accountability programs may be made.

The Council recommends two resolutions directing a Council study of the needs and financing of adult and vocational education; and commending school districts for raising teachers' salaries during the last biennium and urging them to continue giving teachers' salaries first consideration.

FINANCE AND TAXATION

The Council studied the methods of valuation and the levels of assessment of property and found widely varying relationships between assessments and actual value. The Council recommends a bill to require all county directors of tax equalization to hold a current assessor's certificate issued by the State Supervisor of Assessments. The Council also found assessments based on market value of agricultural lands located near urban growth areas constitute a hardship for farmers wishing to keep such lands in agricultural use. The Council recommends a bill providing for preferential assessments on agricultural lands with an incentive feature to encourage farmers to continue farming the land.

The Council also studied the **taxation of power transmission lines** and recommends three bills and one resolution intended to benefit landowners having transmission towers on their land. One bill provides landowners with optional annual payments for transmission line easements, with ten-year renewal clauses and arbitration of annual payment renewal disputes. Another bill provides a property tax credit on the land on which there are large transmission towers, and a general fund appropriation to reimburse political subdivisions for the loss of property tax revenue. The third bill would increase the per-mile tax on large cooperative transmission lines. The resolution urges Congress to enact legislation to reimburse political subdivisions for loss of property tax revenue resulting from federally owned transmission lines.

HIGHER EDUCATION

The Council studied the development and improvement of higher education and recommends a bill creating a **Postsecondary Education Commission** and abolishing the Higher Education Facilities Commission. The commission would receive federal moneys for coordinating comprehensive planning of postsecondary education and for conducting comprehensive inventories and studies of all the state's public and private postsecondary educational resources.

The Council also recommends the **Postsecondary Educational Authorization Act** to prevent academic and vocational **diploma mills** from operating in the state. The proposed legislation regulates academic, vocational, technical, home study, business, and professional schools, and requires compliance with minimum standards and criteria relating to quality of education, ethical and business practices, health and safety, and fiscal responsibility.

As part of its **junior college study**, the Council recommends amending Section 15-18-08 to require junior colleges to provide copies of their budgets in the same format as the colleges and universities. The budgets would be given to the House and Senate Appropriations Committees. In addition, each junior college would be required to provide the Legislative Audit and Fiscal Review Committee with an official audit of their expenditures and activity on a biennial basis.

The Council makes no recommendations concerning **overlap and duplication** of courses and programs since it believes the Board of Higher Education is aware there should not be any unnecessary duplication.

The Council likewise makes no recommendations concerning **teaching loads and hours**. Although there is some faculty criticism in this area, it does not appear to be a serious situation at this time.

INDUSTRY, BUSINESS & LABOR

The Council reviewed the ratemaking authority and jurisdiction of the **Public Service Commission** and is recommending nine bills. The bills relating to ratemaking authority concern the appointment of PSC hearing examiners and the expense of conducting rate proceedings. Other bills remove PSC jurisdiction over air carriers and other selected public utilities, transfer auctioneer licensing to a professional licensing board, authorize the assessment of civil penalties for violating PSC rules, provide for a notice of noncompliance to be given prior to the suspension or revocation of surface mine permits, clarify certificate of public convenience and necessity requirements, eliminate the

requirement for PSC approval of certain public utility securities sales, and allow installation of special scales. The Council also recommends support for the establishment of a PSC pricing division to enable the PSC to conduct research on utility and transportation pricing policies and to analyze proposed or needed rate changes.

The Council reviewed problems encountered by **mobile home owners** and is recommending two bills. One bill clarifies and extends the authority of the State Laboratories Department over mobile home parks, trailer parks, and campgrounds, and requires such facilities to be licensed and inspected by either the department or by appropriate local agencies. The second bill establishes an appeals process for mobile home tax assessments similar to the appeals procedure for real property tax assessments.

The Council reviewed the operation of the **Bank of North Dakota** and recommends three bills. One bill expands the bank's present Advisory Board of Directors to nine members appointed by the Governor and confirmed by the Senate. The second bill places responsibility upon the Advisory Board to take an active role in bank operations. The third bill prohibits the bank from accepting deposits from individuals and private businesses, and provides a timetable for withdrawal of deposits from prohibited sources.

The Council considered the operation of the **Department of Banking and Financial Institutions** and state banking laws. Four bills are recommended. One bill replaces the requirement that state banks be examined by the department at least twice a year with the requirement that state banks be inspected at least once a year. The second bill repeals the statute providing for additional compensation to the Commissioner of Banking and Financial Institutions for terminating insolvent banks. The third bill eliminates obsolete statutory references to savings banks and changes the definition of a credit union to reflect credit union activities. The fourth bill eliminates statutory citations to repealed or replaced statutes and inserts appropriate references to replacement statutes.

The Council received extensive information on the economic feasibility of **fertilizer manufacturing plants** using lignite coal to produce anhydrous ammonia. The Council makes no recommendation concerning state action to encourage development of such facilities faster than would be accomplished by unassisted private enterprise.

The Council reviewed the operation of the **feed department of the North Dakota Mill and Elevator Association**. After concluding the department has an adverse effect on private industry serving the same area and is an operation which may become unprofitable in the future, the Council recommends a bill to require the State Mill and Elevator to discontinue its feed department operation and to dispose of any inventory and equipment unnecessary for other Mill operations.

The Council recommends several bills regarding **insurance laws** including bills to modernize and update insurance laws, to provide an index with insurance policies, and to prohibit discrimination in group insurance policies regarding optometric services. The Council recommends a bill to establish a statutory court action against health care providers which would limit their liability in **medical malpractice** cases. The Council recommends other bills to eliminate the **ad damnum** clause in civil pleadings, to require the reporting of medical malpractice claims, to define the rights of patients receiving health

care, and to establish medical review panels to screen medical malpractice claims.

The Council, as a result of its labor law study, recommends bills regarding the payments of terminated employees' wages, the definition of employment agencies, licensing fees of employment agencies, and powers of the State Labor Commissioner to conduct certain elections for public employees. The Council also recommends bills to establish a State Equal Employment Opportunity Act and to prohibit political activities by public employees while on duty or in uniform.

JUDICIARY

The Council studied the state's election laws to revise and modernize the election system, and recommends a bill that provides a completely redrafted and organized election code, including all phases of the election process.

Included in its study of election law were areas that provoked controversy, so the Council is submitting separate bills on voter registration, reimbursement of counties' election expenses, and encouragement of voter turnout.

The Council determined that changes are needed in the state's prosecutorial system to help counties and state's attorneys cope with increasing criminal caseloads, particularly in light of the possible population impacts from energy development. At present prosecution is handled in 49 of the state's 53 counties by state's attorneys who are part-time in the sense they are also allowed to practice law. The four largest counties (over 35,000) have full-time state's attorneys. One bill the Council recommends would allow any county, regardless of its population, to decide, by resolution of its board of county commissioners, to have a full-time state's attorney.

Another Council recommendation establishes the office of prosecutor coordination within the Attorney General's office. The coordinator and his or her staff would assist state's attorneys in all phases of their work but actual trials, would prepare and conduct training sessions, would maintain a brief bank, would disseminate information about the latest criminal law rulings and Attorney General's opinions, and would provide research for state's attorneys.

A Council recommendation regarding the privacy and security of criminal records stems from United States Justice Department guidelines on the subject. North Dakota is exempt from the guidelines, but the Council determined that portions of them should be enacted. The Council's bill would establish procedures to assure that criminal records are accurate and complete, that information from these records is disseminated only in certain instances, that individuals can inspect and challenge the records kept on them by law enforcement agencies, and that the State Crime Bureau serve as a central repository for all criminal records.

In the field of juvenile justice, the Council recommends establishing a juvenile services coordinator position within the Supreme Court Administrator's office to assist juvenile courts much as the administrator now works with other state courts. Other recommendations require a juvenile to always have counsel in juvenile court; extend the initial probation period under informal adjustment from three months to 12 months; provide "speedy trial" requirements in juvenile court; automatically seal and destroy juvenile

court records after certain periods of time; and clarify the juvenile court's authority to commit a juvenile for mental health treatment and care.

The Council also recommends giving juveniles 16 years old or older **emancipated status** if they are self-supporting and are either married, divorced, or separated, or are living apart from their parents. As emancipated minors, they could enter into legal transactions regarding property or their estate. It is also recommended to allow minors to receive care and treatment for **alcoholism and in life-threatening situations** without their parents' consent.

The Council determined that one of the chief problems in juvenile justice is the lack of parental concern and involvement. Therefore, it recommends giving juvenile courts **limited jurisdiction over adults** to the extent the courts believe necessary.

The Council, as part of its administrative law study, recommends requiring each agency to adopt procedures allowing all interested persons to be heard prior to the adoption, amendment, or repeal of any rule.

Another recommended change requires each agency to include in its rules a description of its organization and functions subject to **Chapter 28-32, (Administrative Agencies Practice Act)**, and stating how the public may obtain information or make submissions or requests.

Further recommendations provide for **legislative review of administrative rules and regulations** and for codification and publication of an administrative code by the Legislative Council staff. In addition, other minor changes are recommended in Chapter 28-32.

A final administrative law recommendation allows a respondent to request a **hearing examiner** assigned by the Attorney General who is independent of the agency bringing the complaint against a respondent.

The Council also recommends allowing a person convicted of a felony in district court to appeal only the sentence imposed or to appeal the sentence with an appeal on the conviction. The Supreme Court may deny permission to appeal the sentence, or upon granting permission to appeal, may substitute for the sentence under review any penalty open to the sentencing court other than probation or conditional release. This includes the possibility of an increased sentence upon appeal.

The Council, under its study of the loss of civil rights and disqualifications resulting from criminal conviction, recommends that a person not be disqualified from any occupation, trade, or profession for which a license, permit, or registration certificate is required solely because of a prior conviction. However, a person could be denied a license because of a prior conviction if not sufficiently rehabilitated, or if the offense has a direct bearing upon a person's ability to serve the public in a specific occupation, trade, or profession. The Council also recommends several other bills on this subject.

The Council also recommends bills relating to prisoner's personal accounts and merit sentence reductions ("good time").

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Council is authorized by law to arrange for the legislative session and to make recommendations for the smooth functioning of the legislature. It has taken action and makes recommendations in numerous areas.

The Council recommends numerous legislative rules amendments dealing with a wide range of legislative procedures. Amended rules would ensure that all bills are placed on the calendar for final passage, with special notation of the committee report on each bill. Conference committee minutes would be required to be kept, and a joint standing Committee on Constitutional Revision would be created.

The Council also recommends continuation of the legislative internship program, and recommends an additional four interns. Finally, the Council recommends the 1977 Legislature operate with the same deadlines and for approximately the same time period as did the 1975 Legislature. This recommendation includes a mandate for a Council study of the legislative process during the 1977-79 interim.

NATURAL RESOURCES

The Council studied the state's water appropriation laws and recommends a bill that amends Century Code Chapter 61-04 by making the appropriation system subject to the management of the state engineer and the State Water Commission. Under the bill, the priorities for water allocation are reordered to place irrigation use above industry. The state engineer is given criteria upon which to base his decision on granting a water permit.

The Council studied alternative energy sources and their use in North Dakota, and recommends a bill creating the office of energy coordinator, with duties including the collection and dissemination of information on alternative energy sources, and advising all state agencies on energy development and conservation matters. The Council also recommends a bill establishing the technical requirements for a valid solar easement.

The Council studied the ownership and disposition of land owned by the state, and recommends a bill requiring the Commissioner of University and School Lands to determine the highest and best use and the appraised value of state land before it is sold by legislative enactment.

POLITICAL SUBDIVISIONS

The Council recommends two bills regarding liability insurance coverage for political subdivisions. One bill continues the present (temporary) state-operated fund, while the other bill requires political subdivisions to purchase minimum levels of coverage or to self-insure. The Council also recommends a bill to extend the sovereign immunity of the state to state employees.

The Council recommends three alternative revenue sharing plans, increased mill levies for certain political subdivisions, and a constitutional amendment to increase the bonding limitations of political subdivisions.

RESOURCES RESEARCH

The statutory **Resources Research Committee** of the Legislative Council, a 13-member joint legislative-executive-higher education-citizen committee, served as a board of directors responsible for creating the **Regional Environmental Assessment Program (REAP)** (House Bill No. 1004—1975). This legislation directed research of North Dakota's resources and the development of the necessary information systems.

Proceeding from a planning effort, a requirements analysis, a conceptual design, and finally a detailed systems analysis effort, REAP has designed a **computer-based information system** capable of data storage, retrieval, presentation, and analysis. This system, when fully operational, will provide comprehensive and current information and analyses for use by the legislative branch, the executive branch, and other public officials.

A major **baseline data acquisition** effort is in progress through 20 contracts valued at \$1.2 million with state agencies, private industry, and state institutions of higher education. This effort is filling key gaps in available data and will integrate all relevant data from a variety of sources. A complete **land cover analysis** of the entire state is the first completed project, and provides essential data for Public Service Commission actions, for regional planning councils, for the BLM regional environmental impact statement, for regional EPA-208 (water quality management) studies, as well as for the REAP data base.

The **REAP Resource Reference System (R³S)**, an on-line computerized information reference system, has been developed and is operational (i.e., available for conducting personnel, data, reference, and project searches).

The **REAP Economic-Demographic (E-D) model**, a computerized model capable of projecting population, business volume, public revenue, and public expenditures on a regional, county, and municipal level, has been developed and is operational for coal development scenarios in a 15-county area of south-western North Dakota. This prototype model is capable of expansion to the entire state, the inclusion of additional development scenarios, and incorporation of a trade-off analysis.

The Council recommends incorporating in the legislative branch appropriation bill an appropriation of \$3,720,000 for **REAP's continued development and operation**. This will permit the establishment of the REAP computer system, a substantial amount of data entry, additional baseline data acquisition, additional model development, considerable environmental and socioeconomic data analysis and projection, and application of the R³S, the E-D model, and the land cover analysis to current issues.

STATE AND FEDERAL GOVERNMENT

The Council studied the Teachers' Fund for Retirement (TFFR) and the Public Employees Retirement System (PERS). The Martin E. Segal Company performed contract actuarial evaluations on both TFFR and PERS and proposed a more uniform benefit formula plan for the TFFR. For PERS, the firm provided information on the cost to fund a benefit formula type plan with employees.

The Council recommends a bill providing for the **uniform benefit formula retirement plan** proposed by the Segal Company for the TFFR. The Council also recommends a bill for an **appropriation** transfer of \$14.5 million to the TFFR to help to reduce the fund's \$68,296,000 unfunded liability. The actuarial firm indicated this appropriation, in addition to the proposed one percent increase in the teachers' and employers' contribution rate, will be sufficient to make the fund actuarially sound in 40 years.

In response to a desire to provide the fund with the necessary flexibility and authority to bring the TFFR to actuarial soundness, the Council recommends a bill amending the law to provide the TFFR Board the authority and responsibility to set **benefit levels** within funding limits as established by law. This bill sets the teacher and employer contribution rate at five percent and removes the \$500 employer contribution limit.

For PERS, the Council recommends a bill for a **benefit formula plan**, as proposed by the actuarial firm, in place of the present "money purchase" plan. The effective date of the proposed plan is July 1, 1977. A member is vested after 10 years of service or upon reaching age 65. Monthly benefits under the proposed plan are calculated by multiplying 1.04 per cent times the average monthly salary times years of service up to 30 years. The last highest 60 consecutive monthly salaries within the last 120 months of employment are used to calculate the final average monthly salary.

After a study which found the state's **mental health commitment laws** are generally not being followed, and may well be unconstitutional, the Council is recommending two mutual exclusive bills dealing with mental health commitment procedures. One authorizes counties to form **multicounty mental health boards** upon the resolution of the respective boards of county commissioners. This would allow several counties to use the same mental health board.

The other bill creates an entirely **new mental health commitment procedure** using a system of hearings before a county judge rather than the present hearings before a county mental health board. The full range of due process rights are afforded prospective patients under this bill. It is designed to meet the requirements for mental commitment procedures laid down in several recent federal court cases.

TRANSPORTATION

The Council conducted a survey on whether **commuter airline service** is desired by the people of the state, and recommends that such a service not be further investigated nor provided because the study survey indicated most people perceive no benefit from it.

The Council reviewed rules and regulations promulgated by the Highway Patrol for random **motor vehicle inspection**, and recommends the current program of inspection be continued unchanged until a committee can decide, during the 1977-79 interim, the future of motor vehicle inspection based on statistics and requirements of the federal government.

REPORT
of the
NORTH DAKOTA LEGISLATIVE COUNCIL

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



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1977

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January 4, 1977

The Honorable Arthur A. Link
Governor of North Dakota

Members, Forty-fifth Legislative Assembly
of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations to the Forty-fifth Legislative Assembly.

Major recommendations include: a revision of the state's election laws; a revision of the state's mental health commitment laws; extensive revision of the water appropriation laws; alternative revenue sharing proposals; a loan program for financing rural water systems; amendments to the Surface Mine Reclamation Act; provision for licensing and inspection of mobile home parks; elimination of private deposits at the Bank of North Dakota; discontinuance of the Feed Department at the State Mill and Elevator; licensing and regulation of postsecondary institutions of higher education; proposed procedures for the handling of medical malpractice claims; fixed benefit formula retirement plans for the Public Employees Retirement System and the Teachers' Fund for Retirement; a proposal to phase out public school textbook and activity fees; two alternative proposals for handling the civil liability of political subdivisions; a revision of the monetary formulae under the Foundation Program; provision for property tax reduction for lands on which transmission line towers are located; publication of a code of administrative regulations; amendment of the elective franchise article of the Constitution; and permissive authorization for all counties to have full-time state's attorneys.

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

Respectfully submitted,

Senator Robert Melland
Chairman
North Dakota Legislative Council

HISTORY AND FUNCTIONS OF THE LEGISLATIVE COUNCIL

HISTORY OF THE COUNCIL

The Legislative Council was created in 1945 as the Legislative Research Committee. Its name was changed by the 1969 Legislature to more accurately reflect the scope of its duties. The legislative council movement began in Kansas in 1933. At present, 45 states have such a council or its equivalent. Five states use varying numbers of special committees.

Legislative councils are the result of the growth of modern government and the increasingly complex problems facing legislators. Although one may not agree with the trend of modern government in assuming additional functions, it is, nevertheless, a fact legislators must face. There is a growing tendency among legislators of all states to want the facts and full information in important matters before making decisions on spending the taxpayers' money.

Compared with the problems facing present legislators, those of but one or two decades ago seem much less difficult. The sums they appropriated were much smaller. The range of subjects considered was not nearly so broad nor as complex. In contrast with other departments of government, however, the legislature in the past was forced to approach its deliberations without its own records, studies, or investigations. Some of its information was inadequate, and occasionally it was slanted because of special interest. To solve these problems, and to expedite its work, the legislature established the Legislative Council.

MAJOR PAST PROJECTS OF THE COUNCIL

The work and stature of the North Dakota Legislative Council has grown yearly. Among its major projects since 1945 have been revision of the House and Senate Rules; soldiers' bonus financing; studies of the feasibility of a state-operated automobile insurance plan; highway engineering and finance problems; oil and gas regulation and taxation; tax assessment; drainage laws; reorganization of state education functions; highway safety; business and cooperative corporations; licensing and inspections; mental health and mental retardation laws; public welfare; credit practices; elementary and secondary education and higher education; special state funds and nonreverting appropriations; homestead exemptions; govern-

mental organization; minimum wages and hours; life insurance company investments; partnerships; republication of the North Dakota Revised Code of 1943; legislative organization and procedure; securities; capitol office space; welfare records; revision of motor vehicle laws; school district laws; investment of state funds;

Mental health program; civil defense; tax structure; school district reorganization; school bus transportation; corporate farming; Indian affairs; legislative postaudit and fiscal review; water laws; constitutional revision; county government reorganization; a complete updating of the state's school district laws; an industrial building mortgage program to encourage new industry in the state; creating a central state microfilm unit in the Secretary of State's office; a uniform insurance group for state employees; a new method of financing elementary and secondary education;

A modified version of no-fault auto insurance; adoption of the Uniform Probate Code; procedures to facilitate the merger of various social and mental health services on the local level; obscenity control; requiring environmental impact statements on certain state projects; major revision of the state's criminal laws; the point system for drivers licenses; a nonsubstantive revision of the state's game and fish laws; formation of countywide water management districts; establishment of a statewide weather modification board; regulation of energy conversion and transmission facility sites; and establishment of the Regional Environmental Assessment Program (REAP).

CURRENT RECOMMENDATIONS

Major Council recommendations of the current biennium include new retirement plans for teachers and public employees; major revisions of the state's election laws, mental commitment laws, and insurance laws; repeal of 50 obsolete sections and articles of the North Dakota Constitution; and constitutional amendments to allow the legislature to adjust salaries of elected state officials during their term of office, and to limit voting powers of the Lieutenant Governor to tie votes on procedural matters. Also recommended are: increased funding of the foundation program; elimination of public school textbook and activity fees; provision of state

revenue sharing to political subdivisions; medical malpractice insurance coverage provisions; creation of a planning commission for private and public postsecondary education; and regulation of postsecondary education to prevent diploma mills.

The recommendations, if adopted, would also create a Joint Constitutional Revision Committee; authorize a study of the interim structure and the use of 80 legislative days; provide the right to an independent hearing examiner in administrative hearings; provide good conduct and meritorious conduct sentence reduction for inmates; eliminate the disqualification effect, for occupational licenses, of a prior criminal offense; repeal prohibitions on marriages between certain persons; provide security and privacy of criminal records; allow a full-time state's attorney option; create an office of prosecutor-coordinator; extend informal adjustment probation periods for juveniles; require counsel in all juvenile hearings; provide automatic sealing and destruction of juvenile records; enact an Emancipated Minors Act; and create an office of juvenile services coordinator.

Other recommendations would establish a state Equal Employment Opportunity Act; prohibit public employees from engaging in political activities while on duty or in uniform; prohibit individual and private business accounts at the North Dakota state bank; require the North Dakota Mill and Elevator Association to discontinue its feed department operation; provide property tax credit on electrical transmission towers; increase the tax on cooperative transmission lines; authorize the construction of a state office building; designate the State Historical Board as the State Archives; require local approval for acquisition of land and water by the United States Department of the Interior; revise ballot forms; reimburse counties for election cost; specify solar easement requirements; allow local participation and weather modification activities; allow State Auditor to require financial reports for certain school districts in lieu of biennial audits; create an office of energy coordinator; provide an orderly procedure for sale of state land; and place responsibility for determining the appropriateness of the sale of state land in the Board of University and School Land.

FUNCTIONS OF THE COUNCIL

In addition to making detailed studies requested by legislative resolution, the Council considers problems of statewide importance that arise between sessions or upon which study is requested by in-

dividual members of the legislature. If feasible, it develops legislation for the next session to meet these problems. The Council provides a continuing research service to individual legislators. The services of the Council staff are open to any senator or representative who needs information about problems that might arise or ideas that come to mind between sessions. The Council staff drafts bills for legislators. In addition, the Council is continually revising the North Dakota Century Code and compiles all the laws after each session for the Session Laws and the Code supplements.

The Council also has on its staff the Legislative Budget Analyst and Auditor and his assistants who provide technical assistance to Council committees and legislators, and who review audit reports for the Legislative Audit and Fiscal Review Committee.

In addition, during the interim the Council staff provides stenographic and bookkeeping services to the Capitol Grounds Planning Commission and the Legislative Compensation Commission.

METHODS OF RESEARCH AND INVESTIGATION

The manner in which the Council carries on its research and investigations varies with the subject matter. In all studies of major importance, the Council appoints committees of legislators to conduct the studies. These studies are in most instances carried on by the committees with the assistance of the Council staff. On some projects the entire Council has participated in the studies and findings. These committees make their reports to the full Legislative Council which may reject, amend, or accept a committee's report. After the adoption of a committee report, the Council as a whole makes recommendations to the Legislative Assembly and prepares the legislation to carry out the recommendations.

During the 1975-77 interim, the Council contracted with several consultants, consulting firms, and accounting firms including Eide, Helmeke, Boelz and Pasch; Martin E. Segal Company; Chase Econometrics & Company; Russell Fridley; the UND Bureau of Governmental Affairs; the UND Bureau of Business and Economic Research; and the NDSU Agricultural Economics Department. In all other instances, the Council's interim studies were handled by the committee and Council staff. On certain occasions, the advice and counsel of local,

state, and federal government personnel, as well as that of various individuals and professional associations, was sought and obtained.

REGIONAL ENVIRONMENTAL ASSESSMENT PROGRAM [REAP]

The 1975 Legislative Assembly established the Regional Environmental Assessment Program (REAP). REAP is an innovative resource, information, and analysis program designed to provide a comprehensive system for environmental, socioeconomic and sociological data acquisition, monitoring, and analysis. It will also conduct integrated assessment of impacts arising from potential development activities. REAP will integrate the results from myriad studies underway, will initiate its own studies where appropriate, and will make the results and analyses available in a usable format to decision makers.

REAP is charged with “. . . establishing and carrying on research in regard to North Dakota’s resources . . . for the purpose of assisting in the development of new laws, political and governmental actions and providing facts and information to the citizens of the state.” Further, REAP is responsible for “. . . the development of necessary data and information systems in regard to the existence of and potential use of North Dakota’s natural resources in order that (North Dakotans) . . . may know . . . the alternatives available to the state in any use and development of resources in order that . . . any such use shall in fact enhance the quality of life of the citizens of the state.”

REGIONAL MEETINGS AND INTERSTATE COOPERATION

The Legislative Council is by law designated the state’s Committee on Interstate Cooperation. In this regard, Council members, the Council staff, and

committee members participated in the activities of the Council of State Governments, the Midwestern Regional Conference, and the Five-State Legislative Conference during the 1975-77 interim.

FORT UNION REGIONAL TASK FORCES

With partial support from the National Science Foundation, North Dakota, South Dakota, Montana, and Wyoming have created seven task forces to study the interstate effects of the development of the Fort Union Coal Formation which underlies parts of each of these states. The North Dakota Legislative Council is responsible for the coordination and administration of the Fort Union Regional Task Forces. In October 1975 the initial meeting of the Fort Union Coal Conference was held in Bismarck. The seven task forces began their work in February 1976, and are expected to continue through the 1977 Legislative Session. The task forces include key legislators, executive branch personnel, academicians, representatives of Indian tribal nations, and citizens representing the general public of each state. Topics of common concern facing the groups include air quality, water quality, water allocation, plant siting, energy development, reclamation, taxation, and social and economic impact. The task forces examine methods to assist member states and problem solving as well as acquainting the members with energy development positions and accompanying laws and regulations of their sister states. Federal and regional information sources are used to obtain current energy environmental data. In summary, these task forces are special interim committees serving to provide each member state with the information materials necessary for sound policy decisions relative to energy environmental issues during the 1977 Legislative Sessions.

REPORT AND RECOMMENDATIONS LEGISLATIVE COUNCIL

AGRICULTURE

The Committee on Agriculture was assigned three studies. House Concurrent Resolution No. 3079 directed a comprehensive study of the agriculturally related functions of North Dakota state government and the feasibility of reorganizing some or all of the functions under one agency. House Concurrent Resolution No. 3086 directed a study of alternative methods of providing supplemental financing to rural water supply systems. Senate Concurrent Resolution No. 4048 directed a comprehensive study of the programs and policies of the U.S. Fish and Wildlife Service and their compatibility with the agricultural use of surrounding land.

Committee members were Senators Francis Barth, Chairman, H. Kent Jones, Kenneth L. Morgan, and Stanley Wright; and Representatives George Benedict, Arnold Gronneberg, Oben Gunderson, Jr., Byron Langley, Bruce Laughlin, Gordon Matheny, Ruth Meiers, Bert Miller, Eugene Nicholas, and Wilbur Vander Vorst.

The report of the Committee on Agriculture was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

AGRICULTURAL REORGANIZATION STUDY

House Bill No. 1551 considered during the 1975 Legislature, would have provided for agricultural consolidation under the Department of Agriculture. The bill was indefinitely postponed by the House Committee on Agriculture because of the lack of time to adequately consider its merits. The bill, however, resulted in passage of House Concurrent Resolution No. 3079.

Prior Studies

The consolidation of the various agriculturally related agencies in state government is not a new idea. In 1942 the Public Administration Service of Chicago prepared a report for the North Dakota Governmental Survey Commission recommending that "all of the services presently performed by the state which are designed primarily for the benefit of farmers should be centralized and coordinated in a department of agriculture."

The question of consolidating state agricultural functions was again studied in the 1959-61 interim by the Legislative Council's Committee on Governmental Organization. That committee's report showed nearly unanimous opposition to any consolidation by the agriculturally related boards, commissions, and agencies. Those agencies opposed consolidation because the Agriculture Commissioner is elected to office, and because no merit system then existed for the concerned agencies or offices. There was therefore a good chance of partisan politics affecting the employment and retention of personnel. For that reason, that committee felt it could not recommend a transfer of any existing agencies to the Agriculture Department even though the consolidation might have resulted in increased efficiency and might have removed some confusion regarding responsibilities in the agricultural area.

Finally, in 1972 a performance review of the Agriculture Department was conducted by Broeker, Hendrickson & Company, Certified Public Accountants, for the Legislative Council's Budget Section. The firm's report contained a number of recommendations concerning the organization and administration of the department; some to be implemented by the Legislative Assembly and some by the department itself through administrative action.

Department of Agriculture Background History

The North Dakota Agriculture Department was originally part of the Department of Agriculture and Labor established by Section 82 of the North Dakota Constitution in 1889. Both offices were held by the state statistician in the years immediately following their creation, and served primarily as an agency for the collection of statistics. In 1965 voters approved a constitutional amendment to Section 82 dividing the agriculture and labor functions into separate departments.

The early Agriculture Department was a small office administering the provisions of only four agriculturally related chapters of law as late as 1942. Over the years, additional chapters were added or removed from the department's administrative responsibility. Today, the Agriculture Commissioner administers 14 separate chapters of law.

Interim Reorganization Study

The following agriculturally related agencies or functions are among those outside the control of the Agriculture Commissioner:

1. The Flax Utilization Fund under the Business and Industrial Development Department.
2. The Livestock Sanitary Board.
3. The North Dakota Dairy Products Promotion Commission.
4. Brand inspection under the North Dakota Stockmen's Association.
5. The North Dakota Beef Commission.
6. The State Wheat Commission.
7. The North Dakota Potato Council.
8. The State Mill and Elevator.
9. The North Dakota State Fair Association.
10. Auctioneers, elevators, warehouses, and weights and measures under the Public Service Commission.
11. Grade "A" milk testing under the State Health Department.
12. Grade "B" milk testing under the State Laboratories Department.
13. The State Soil Conservation Committee.
14. The Milk Stabilization Board.
15. The State Seed Department.
16. The Extension Service under North Dakota State University.
17. The experiment stations under the Board of Higher Education.

As part of the agricultural reorganization study, the committee examined the present structure of the Agriculture Department, the organizational charts of a number of other states' agriculture departments, and considered two reorganization proposals.

The committee also considered a cooperative agreement proposal presented by the North Dakota Crop and Livestock Reporting Service which is a state office of the Statistical Reporting Service of the U.S. Department of Agriculture. The federal program consists of national and state estimates of agricultural prices and the disposition and inventory of basic agricultural items and commodities. The proposal was for a cooperative program for the development and publication of county agricultural statistics between their office and the North Dakota Agriculture Department, with funding for the agreement included as a separate item in the department's appropriation. The North Dakota Crop and Livestock Reporting Service would then become, in effect, the statistical division of the North Dakota Agriculture Department, accountable to the Commissioner of Agriculture for the agreed-upon state program of statistics and publications. The proposal would be for one large probability crop acreage and production survey each fall which also would include the basic livestock inventory questions.

One of the two reorganization proposals was made by Mr. Charles H. LeDuc II, a University of North Dakota student majoring in public administration, who had studied state government as part of a summer internship program. His proposal was based on the recent reorganization of the South Dakota Department of Agriculture. The plan would have placed various agriculturally related agencies and functions under four separate degrees of Agriculture Department control ranging from an annual review of an agency's records along with making recommendations concerning its operations to the complete absorption of an agency and its functions by the department.

Agriculturally related agencies and functions which would have been affected by the plan were the experiment stations, the extension service, the State Soil Conservation Committee, the State Mill and Elevator, the State Fair Association, brand inspection, the Livestock Sanitary Board, the Milk Stabilization Board, the State Seed Department, the Beef Commission, the Flax Utilization Fund, the Potato Council, the State Wheat Commission, auctioneer licensing, warehousing, elevator licensing, weights and measures, Grade "A" milk testing, and the Dairy Products Promotion Commission.

The second reorganization plan was proposed by Representative Lynn Clancy and would have placed

brand inspection, the Livestock Sanitary Board, livestock dealers, the State Seed Department, and the promotion of wheat, beef, potatoes, dairy products, and flax directly under the Agriculture Department.

Opposition to consolidation in any form under the Agriculture Department was expressed by the North Dakota Dairy Products Promotion Commission, the Beef Commission, the Wheat Commission, the Potato Council, and by their affiliated producer groups. Opposition was based on the fact that funds for their operation are derived totally from the producers, that the commissions are responsible directly to the producers, and that the expenditure of such funds and the policy to be followed should be developed by those producers who contribute to such promotion rather than by an elected public official.

The Livestock Sanitary Board's opposition was based primarily on the concern that the board would be opened up to political maneuvering if it were under an elected official, and that a lack of stability may result from the more frequent changes in leadership under an elective office.

The Industrial Commission opposed transfer of the State Mill and Elevator because the Mill does not operate with tax money. The commission contended the administration and operation of the Mill should be vested in the state itself, and that the board of director approach with three persons in charge of decisions makes the Mill more responsible to the public. It was contended that it also avoids making the Mill operation a political football every four years.

The Stockmen's Association opposed transferring brand inspection from its authority because its members have a self-interest in assuring the best possible inspection system at the least cost. It was pointed out no general funds are involved in brand inspection, and it was therefore felt the present arrangement assures the best possible inspection system.

The State Fair Association opposed any change, saying that other state fairs operated under agriculture departments lack stability in management because of the change in leadership every time there is an administrative change in the department.

The Public Service Commission recommended that no action be taken by the committee concerning

auctioneers because legislation providing for an auctioneer's commission was being considered in another committee (The Legislative Council's Industry, Business & Labor "A" Committee is recommending a bill transferring supervision of auctioneers to an Auctioneers Professional Licensing Board). Nor did they recommend any change for warehouses and elevators. They said the PSC is involved with storage rates, railroad transportation rates, bonding of warehouses and elevators, and administering the insolvency provisions. This activity, the PSC representatives said, requires knowledge not only of the grain trade, but also requires accounting and legal knowledge which the PSC already has. No change was recommended by the PSC for weights and measures regulation because elevator scale testing requires correlation between the weights and measures and elevator divisions of the PSC.

The Health Department and the district health units asserted Grade "A" milk testing is a health function and not an agricultural function, so no change was recommended by them.

The Soil Conservation Committee opposed any change because it provides service to the urban landowner as well as to the farmer and rancher. It was stated the Agriculture Commissioner has been a member of the committee since 1937 and his input is always welcome. The Soil Conservation Committee believes the present arrangement allows better coordination of soil conservation and agricultural policies, programs, and actions.

The Milk Stabilization Board said it attempts to stabilize milk prices for consumers, and that it is more credible by not being tied to the producer segment. It was asserted the board should therefore remain an autonomous regulatory agency.

Recommendations

The Agriculture Committee believes there is unnecessary duplication in the milk testing program that should be eliminated. The Dairy Commissioner, under the Agriculture Department, is now responsible for establishing regulations for minimum milk and milk product standards based on the Grade "A" pasteurized milk ordinance of the United States Public Health Service. The State Health Department, meanwhile, tests all Grade "A" milk through its Public Health Laboratory, through district health units, and through the Cass Clay Creamery in Fargo. A third agency, the State Laboratories

Department, is responsible for Grade "B" milk testing.

The committee considered a bill draft placing all Grade "A" milk testing under the State Laboratories Department, thus giving it authority for both Grade "A" and Grade "B" milk testing. Opposition to the proposal was expressed by the Health Department, the district health units, and the State Laboratories Department. They recommended that the Agriculture, State Laboratories, and State Health Departments get together, define the milk testing problems, and then submit a comprehensive piece of legislation to the 1977 Legislature addressing the sampling, surveying, processing, transportation, delivery, and retail sales of Grade "A" and Grade "B" milk.

The committee rejected its bill draft on the stipulation that a bill draft would be jointly prepared by the three departments for introduction during the 1977 Legislature.

RURAL WATER SYSTEMS STUDY

Rural water systems in North Dakota operate as nonprofit cooperatives, associations, or corporations to supply the farmer, rancher, and small communities under 10,000 population with good quality water in adequate quantities.

All such systems in operation or under construction in North Dakota have been financed through loans and grants from the Farmers Home Administration (FmHA). The initial systems are located in areas of the state, principally in the Red River Valley, with an average density of 1.5 to 2 users per mile. The FmHA has provided such systems with \$4,000 loans per user over a 40-year period at five percent interest.

Twenty rural state water associations have applied for FmHA funding since 1969. Four systems are now in operation and three additional systems are under construction. The four operational systems represent nearly 4,000 customers and approximately 1,700 miles of pipeline for a cost of \$12.7 million, with \$300,000 provided in grant money by the FmHA to reduce the average cost per user and meet its feasibility loan limits. The three systems under construction represent 2,200 customers and 1,400 miles of pipeline for a cost of \$10.7 million, with \$1.85 million of that amount provided in the form of grants.

Currently, only seven of the 22 rural water associations in North Dakota have received FmHA

funding, and the possibility of many other associations proceeding with construction is doubtful unless other avenues of supplemental financing are obtained. An average of \$9-\$10 million per year has been available through the FmHA in loans and grants the past three years. Grants in the 1.5 to 2 user per mile density areas of North Dakota have averaged between \$500 and \$1,200 per user in order to make rural water systems feasible within the FmHA loan limit requirements of \$4,000 per user. However, no money has been made available to the FmHA for grants during the 1976-77 fiscal year.

Meanwhile, interest in rural water systems is spreading from the more highly populated areas in the eastern part of the state to the central and western portions where the rural population is much lower. The systems currently under construction are in areas where the density is approximately 1.5 users per mile of pipeline, while areas in western North Dakota with a population density of 1 to 1.2 users per mile are now being studied.

The construction and development costs increase to between \$6,000-\$7,000 per user when the user density decreases to 1 to 1.25 users per mile. To compound the problem, inflation has increased the total cost of developing rural water systems more than 30 percent in the last two years, and the FmHA has more than \$12 million in funding requests before they can even consider the newly organized rural water associations.

Extensive testimony before the committee showed many rural areas and small towns in North Dakota lack safe, dependable water for domestic purposes. In many areas, water contains iron, sulfates, alkali, salt, nitrates, and other hazardous substances which make water unsuitable for human consumption. Many rural residents have been forced to haul water long distances for many years. Many small communities now have no dependable water systems, and have spent considerable sums of money seeking new water supplies without much success. Other small communities had no water systems prior to the organization of rural water associations. The towns of Buxton, Reynolds, Hoople, and Thompson had no water until it was piped in from many miles away. Larger communities such as Hatton, Northwood, Portland, and Casselton have their own distribution systems, but contract for water as bulk users from rural water systems.

Recommendations

The committee believes safe domestic-use water for rural areas and small communities in North

Dakota is as important a priority today as rural electrification was 30 years ago. Committee testimony showed that without supplementary loans and grants in addition to FmHA financing, rural water associations cannot further expand in many areas of the state because of increasing costs and the lessening of population and user density in the central and western portions of the state. The committee therefore recommends two bill drafts to provide supplementary financing in conjunction with FmHA moneys available for the construction, enlargement, extension, or other improvement of community water facilities.

The Community Water Facility Loan Act is intended to improve the health, general welfare, convenience, and prosperity of communities and rural inhabitants presently lacking adequate water supplies. "Community water facility" is defined in the bill as any or all projects for the development, storage, treatment, purification, and distribution of water. Such projects include, but are not limited to, those works necessary for locating, conserving, controlling, treating, and distributing water, including reservoirs, dams, canals, wells, pumps, treatment plants, mains, pipelines, and other associated features necessary to supply water. A revolving fund would be created and would receive an initial transfer of \$10 million from the undivided profits of the Bank of North Dakota. All moneys transferred into the fund, interest upon fund moneys, and collections of interest and principal in the loan fund would be used for the Act's purposes.

Applications for revolving fund loans would be submitted to the Bank of North Dakota which would investigate and consider approval of loans in cooperation with the state FmHA office to comply with the federal requirements relating to community water facilities. The revolving fund and loans would be supervised and administered by the Bank of North Dakota which would make loans from the fund to the extent moneys are available. Payments of loan interest and principal would be made to the Bank and credited to the revolving fund.

The revolving fund moneys would not be used whenever sufficient federal loan and grant moneys were available, except:

1. To make community water facility projects feasible in conjunction with federal moneys when the projected cost is above FmHA's maximum per-user feasibility loan limit, and

2. To provide supplemental financing for community water facility projects in conjunction with federal money when more projects can be completed through combined financing.

The Bank of North Dakota would also be allowed to use money to:

1. Provide loans for necessary services prior to FmHA approval of proposed community water facility projects, and
2. Provide loans to cover operating expenses of community water facility projects when the borrower is unable to pay such expenses.

The Bank would be authorized to defer interest and principal payments on revolving fund loans for up to three years to provide time for a community water facility to become self-supporting.

Revolving fund loans would in no event exceed 50 percent of the cost of the water facility project, and would bear interest at three percent less per annum than the FmHA's loan rate.

Applicants eligible for loans would include associations, cooperatives, and corporations operated on a nonprofit basis which meet FmHA requirements. Applicants would be required to seek to include cities and rural areas, meeting FmHA requirements and located near a proposed service area, as part of a water facility project. Reasons for not including such cities and rural areas would have to be approved jointly by the Bank of North Dakota and FmHA.

FISH AND WILDLIFE STUDY

The U.S. Fish and Wildlife Service, through the Department of the Interior, acquires land in North Dakota under three principal acts. Major acquisitions are under the Waterfowl Production Area Program initially approved in 1958 under which the Fish and Wildlife Service is acquiring wetlands in North Dakota. The Secretary of the Interior is authorized to utilize the migratory bird conservation fund "to acquire, or defray the expense incident to the acquisition by gift, devise, lease, purchase, or exchange of, small wetland and pothole areas, interests therein, and right-of-way to provide access thereto." (16 U.S.C. 718d (c)).

A second Act known as the Migratory Bird Conservation Act calls for a commission "authorized to consider and pass upon any area of land, water, or

land and water that may be recommended by the Secretary of the Interior for purchase or rental The ranking officer of the branch or department of a state to which is committed the administration of its game laws, or his authorized representative . . . shall be a member ex officio of said commission for the purpose of considering and voting on all questions relating to the acquisition, under said section, of areas in his state." (16 U.S.C. 715a).

"The Secretary of the Interior is authorized to purchase or rent such areas as have been approved for purchase or rental by the commission . . . , and to acquire by gift or devise, for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be suitable for such purposes" (16 U.S.C. 715d).

"No deed or instrument of conveyance shall be accepted by the Secretary of the Interior under . . . (the Act) . . . unless the state in which the area lies shall have consented by law to the acquisition by the United States of lands in that state." (16 U.S.C. 715f).

Nor shall land "be acquired with moneys from the migratory bird conservation fund unless the acquisition thereof has been approved by the governor of the state or appropriate state agency." (16 U.S.C. 715k-5).

Two hundred million dollars has been appropriated "to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of important wetlands and other waterfowl habitat essential to the preservation of such waterfowl" (16 U.S.C. 715k-3).

"When any state shall, by suitable legislation, make provision adequately to enforce the provisions of . . . (the Act) . . . and all regulations promulgated thereunder, the Secretary of the Interior may so certify, and then and thereafter said state may cooperate with the Secretary of the Interior in the enforcement of such . . . (Act)." (16 U.S.C. 715p).

The North Dakota Legislature has consented "to the United States acquiring, by purchase, gift, devise, or lease, land or water in this state as the United States may deem necessary to establish migratory bird reservations" in accordance with the required consent provision of the Federal Act. (Section 20.1-02-18, NDCC).

A third Act through which the U.S. Fish and Wildlife Service acquires land is the Hunting Stamp

Tax Act which requires that: "No person who has attained the age of 16 years shall take any migratory waterfowl unless at the time of such taking he carries on his person an unexpired federal migratory-bird hunting stamp" (16 U.S.C. 718a).

All moneys received for such stamps are paid into a special fund known as the migratory bird conservation fund. (16 U.S.C. 718d).

The fund "shall be available for the location, ascertainment, and acquisition of suitable areas for migratory bird refuges under the provisions of the migratory bird conservation Act" (16 U.S.C. 718d (b)).

Additionally, the North Dakota Game and Fish Department receives federal funds for wildlife purposes under the Wildlife Restoration Act (16 U.S.C. 669). Under the Act, the "Secretary of the Interior is authorized to cooperate with the states, through their respective state fish and game departments, in wildlife-restoration projects . . . ; but no money apportioned under this chapter to any state shall be expended therein until its legislature . . . shall have assented to the provision of this chapter and shall have passed laws for the conservation of wildlife The Secretary of the Interior and the state fish and game department of each state accepting the benefits of this chapter, shall agree upon the wildlife-restoration projects to be aided in such state under the terms of this chapter and all projects shall conform to the standards fixed by the Secretary of the Interior."

The term "wildlife-restoration project" shall be construed to mean and include "the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition by purchase, condemnation, lease, or gift of such areas . . . as are suitable . . . therefor" (16 U.S.C. 669a).

If the Secretary of the Interior finds that the projects conform to standards established by him and approves the plans, "he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes" of the chapter. (16 U.S.C. 669e (a) (1)).

The North Dakota Legislature has assented to the Wildlife Restoration Act by Section 20.1-02-17, NDCC, and has provided that: "The (game and fish) commissioner shall conduct and establish

cooperative wildlife and fish restoration projects . . . in compliance with the Acts and with rules and regulations promulgated by the federal agency administering these Acts."

Committee testimony indicated the U.S. Fish and Wildlife Service considers the prairie pothole region of North Dakota the most desirable waterfowl production area in the United States. The Fish and Wildlife Service claims easements for or ownership of almost five million acres of North Dakota land. This acreage consists of 4.6 million acres under easement which encompass 730,000 wetland acres. The Fish and Wildlife Service additionally owns 188,790 acres in fee title for wildlife refuges, and 188,616 acres for waterfowl production areas. The Bureau of Reclamation will additionally be acquiring 146,000 acres in North Dakota under the Garrison Diversion Project for wildlife purposes in cooperation with the Fish and Wildlife Service.

The Department of the Interior's Draft Environmental Statement on the Operation of the National Wildlife Refuge System, prepared by the U.S. Fish and Wildlife Service in November 1975, lists its proposed migratory waterfowl habitat acquisition plans by national priority category for the years 1977 through 1986. The plan lists 33 priorities in the country. The first and second priorities are the prairie pothole regions of North Dakota, South Dakota, and Montana, with the pothole regions of North Dakota admitted by the Fish and Wildlife Service as the most desirable. The Fish and Wildlife Service proposes to acquire a minimum of 275,000 acres in fee title in the three states and 550,000 acres by easement in the next 10 years for a total of 825,000 acres. This total accounts for 42 percent of their proposed national acquisition program in the next decade.

The wetland acquisition program has been recently extended for another seven years and the funding increased by \$95 million. The area manager of the U.S. Fish and Wildlife Service said the intent of Congress in the first such acquisition program passed in 1958 was to protect 75 percent of all wetlands in the United States. Because of the drainage rate in North Dakota, he said every remaining wetland in North Dakota would have to be protected if the intent of the 1958 Act is to be met, even though that cannot be realistically done. He said there are still roughly a million acres which have no type of protection in North Dakota.

The Fish and Wildlife Service agreed their figures do not reflect acreage farmers are maintaining by

themselves as wildlife habitats in North Dakota. The area manager of the Fish and Wildlife Service estimated there are probably 900,000 wetland acres presently protected in North Dakota with another 1.1 million acres in private ownership.

The Draft Environmental Statement also admits the objectives of the National Wildlife Refuge System conflict with maximum utilization of the land for cropping purposes. It states that while 200,000 acres of the National Wildlife Refuge System are currently cropped, an estimated two million acres of land in the refuge system throughout the country could support farming.

The committee also learned that the North Dakota State Game and Fish Department has acquired more than 63,000 acres of North Dakota land and wetland in fee title; has more than 64,000 acres under lease; and has acquired approximately 1,000 acres under easement. Much of this land has been acquired through 75 percent financing by the federal government.

The North Dakota Stockmen's Association appeared before the committee and opposed any further land acquisition in North Dakota by any state or federal wildlife agency. The association claimed 13 million acres in the state are suitable for livestock grazing or haying. Stockmen said this is also the land which is seen as best for wildlife propagation by the Fish and Wildlife Service.

The Stockmen's Association claims there is competition from the Fish and Wildlife Service and the State Game and Fish Department with the farmers and ranchers for prime grazing and haying land. It was claimed farmers and ranchers cannot compete in bidding for the land because the Fish and Wildlife Service and the Game and Fish Department seem to have an unlimited source of income. It was further claimed that vast acreages of land owned and controlled by the Fish and Wildlife Service could be managed in such a way that wildlife and cattle could be compatibly raised there, but there is little attempt by the Fish and Wildlife Service to cooperate. The Stockmen's Association claimed the Fish and Wildlife Service does practically nothing to control leafy spurge, yet state laws force the private landowner to control it. Further claim was made by the Stockmen's Association that considerable crop depredation occurs around Fish and Wildlife Service land and water areas. Similar opposition to any further land acquisition by any state or federal wildlife agency was also expressed by the McKenzie County Grazing Association of Watford City.

Recommendations

The U.S. Fish and Wildlife Service presently has 4.6 million acres in North Dakota under easement for wildlife production areas. However, only 730,000 acres are actual wetlands.

The remaining acres surround the wetlands and are restricted as to use by the easement conveyance which provides that the landowner "will cooperate in the maintenance of the aforesaid lands as a waterfowl production area by not draining or permitting the draining, through the transfer of appurtenant water rights or otherwise, of any surface water including lakes, ponds, marshes, sloughs, swales, swamps, or potholes, now existing or recurring due to natural causes on the above-described tract, by ditching or any other means; by not filling in with earth or any other material or leveling, any part or portion of the above-described tract on which surface water or marsh vegetation is now existing or hereafter recurs due to natural causes; and by not burning any areas covered with marsh vegetation."

The committee believes that much of the land surrounding the wetlands could be used for agricultural purposes, and the restriction by the Fish and Wildlife Service and the easement conveyance prevents effective use of the surrounding lands. The committee believes the Fish and Wildlife Service should delineate, through mutual agreement with the landowner, the exact wetland acreage covered by a waterfowl production area easement; and provide that only those delineated wetland acres shall be covered by the easement. Under present Fish and Wildlife Service policy, not only the actual wetlands but also the surrounding acreage, in some cases as much as a quarter or half section, is covered by the easement agreement.

In addition, the committee believes an easement should be limited as to time, rather than providing for a perpetual easement as under most present conveyances to the Fish and Wildlife Service. It is believed that perpetual easements prevent effective use of potential agricultural land by future generations.

Under present practice, the Governor submits proposed federal wildlife area acquisitions to the Board of County Commissioners of the affected county prior to his approval or disapproval. The Governor is also authorized to request an environmental impact statement prior to approving or disapproving any land acquisition by a federal

agency by transfer of title, lease or easement if he believes the scope of the project warrants an impact analysis.

Bill No. 1 would require the Governor, the Game and Fish Commissioner or their designees, responsible under federal law for final approval of land and water acquisitions by the Department of the Interior for waterfowl production areas, wildlife refuges, or other wildlife or waterfowl purposes, to submit the proposed acquisition to the board of county commissioners of the county or counties in which the land and water areas are located for that board's recommendations. An affirmative recommendation would be required from the board prior to final approval by the Governor or the Game and Fish Commissioner.

The proposed acquisition areas would have to be physically inspected, an opportunity for public comment would have to be given, and notice would have to be published for two successive weeks in a newspaper having general circulation in the county or counties setting forth the substance of the proposed acquisition.

The board of county commissioners would then have to make a recommendation within 60 days. A detailed impact analysis would be required which would be forwarded to the State Planning Agency and made available to all interested state agencies and political subdivisions for their review and comments within 30 days.

Bill No. 2 would amend Section 20.1-02-17 of the North Dakota Century Code by which North Dakota assents to cooperative wildlife and fish restoration projects by the State Game and Fish Commissioner and the Department of the Interior. Assent to the projects would be conditioned upon the State Game and Fish Commissioner submitting proposed wildlife and fish restoration programs involving proposed acquisitions of land or water areas to the board of county commissioners of the county in which the affected areas are located for the board's approval prior to an agreement with and approval by the Secretary of the Interior.

The board of county commissioners or a designee of the board would be required to inspect proposed acquisition areas, give opportunity for public comments on the proposed acquisitions, provide notice for two successive weeks in a newspaper having general circulation in the county of the proposed action, and finally to approve or disapprove the proposal within 60 days. A detailed impact

analysis would also be required and copies would be forwarded to the State Planning Agency so interested state agencies and political subdivisions could comment within 30 days.

A landowner would be allowed to negotiate the time period of a lease, easement, or servitude, but they would terminate upon the death of a landowner or upon a change in ownership of the affected land. The landowner would also be allowed to restrict a lease, easement, or servitude by legal description to the wetlands, water, or land areas sought, and would be allowed to drain any expanded wetland or water area in excess of the legal description. Failure by the United States or the State Game and Fish Department to accept the conditions of assent would nullify North Dakota's consent to the Federal Acts.

Bill No. 3 would create a new section to Chapter 20.1-02 of the North Dakota Century Code allowing a landowner to negotiate the terms of a lease, easement, or servitude for land, wetland, or water areas sought to be acquired by the State Game and Fish Department with state or federal moneys or by the United States Department of the Interior with moneys from the migratory bird conservation fund.

The landowner would be allowed to negotiate the time period, but a lease, easement, or servitude would automatically terminate upon the death of a landowner or a change in ownership. The landowner

would also be allowed to restrict such agreement by legal description to the land, wetland, or water areas being sought. The landowner would also be allowed to drain any after expanded wetland or water area in excess of the legal description.

Failure by the federal government to accept the conditions of the section would nullify North Dakota's consent to the Federal Acts under Sections 20.1-02-17 and 20.1-02.18.

Unaccepted Committee Recommendation

The following report recommendation was made by the Committee on Agriculture, but was deleted from the report by the Legislative Council at its meeting in Bismarck on November 16, 1976:

A companion bill recommended by the committee would authorize the Bank of North Dakota to make grants in conjunction with loans under the Loan Act and federal moneys available under federal law. No grant made under the Act could exceed \$250,000, or 10 percent of the total cost of the community water facility project, whichever is less. A grant could be used to reduce the cost of a proposed community water facility project to a reasonable level in accordance with FmHA requirements. The committee recommends the transfer of \$5 million from the undivided profits of the Bank of North Dakota to a Community Water Facility Grant Fund administered by the Bank.

BUDGET SECTION

Section 54-44.1-07 of the North Dakota Century Code directs the Legislative Council to create a special Budget Section to which the budget director is to present the Governor's budget and revenue proposals. In addition, the Budget Section has been assigned other duties by law which are set forth later in this report.

Budget Section members were Representatives Robert Reimers, Chairman, Richard Backes, Ralph Christensen, Aloha Eagles, Leonard Fagerholt, Charles Fleming, Layton Freborg, LeRoy Hausauer, Neil Hensrud, Howard Johnson, Eugene Laske, Lawrence Marsden, Charles Mertens, Corliss Mushik, Jack Olin, Olaf Opedahl, James A. Peterson, Oscar Solberg, Earl Strinden, Enoch Thorsgard, Malcolm Tweten, Michael Unhjem, and Vernon Wagner; and Senators Walter Erdman, S.F. Hoffner, Lester Larson, Evan Lips, George Longmire, John Maher, Lawrence Naaden, David Nething, Ernest Pyle, Clarence Schultz, Theron Strinden, Russell Thane, Jerome Walsh, and Frank Wenstrom.

The report of the Budget Section was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

At its organizational meeting, Budget Section members were advised of the section's responsibilities directed either by statute or legislative resolution, which are as follows:

1. House Bill No. 1002 (Ch. 2, S.L. 1975), gives the Budget Section authority to act on requests from North Dakota State University officials to spend North Dakota State University Branch Experiment Station local moneys in excess of that specifically appropriated by the legislature.
2. Section 6 of House Bill No. 1012 (Ch. 12, S.L. 1975) appropriates \$7,806,700 in federal funds, \$5,139,301 to be contributed by individuals, organizations, governmental units, or other sources, and \$36,500 from the general fund, for purposes determined to be eligible for funding as provided by state and federal law. Before any of these funds may be expended, the Social Service Board must seek approval from the Budget Section.
3. NDCC Section 54-27-22 provides that the director of the Department of Accounts and Purchases file requests for advances from the Preliminary Planning Revolving Fund with, and present his recommendations on proposed capital improvement projects and necessary planning funds for such projects to, the Budget Section. Budget Section approval is required prior to release of such planning funds.
4. NDCC Section 54-06-04.1 authorizes the Budget Section to receive reports from the State Auditor's office on the cost of services provided by agencies that license, inspect, or regulate private business activities or products.
5. Senate Bill No. 2071 (Ch. 475, S.L. 1975) requires Budget Section approval of transfers from the state contingency fund if such transfers exceed \$500,000 in the aggregate.
6. Senate Concurrent Resolution No. 4020, as passed by the 1973 Legislature, provides that the Executive Budget Office develop a plan, in consultation with the Budget Section, to have all state agency, department, and institution budget request on a program basis before the 1979 Legislature.
7. The 1973 Legislature assigned the duties of the Auditing Board to the Executive Budget Office. NDCC Section 54-14-03.1 provides that if the Executive Budget Office discovers irregularities during the pre-audit of claims that point to the need for improved fiscal practices, it shall make a written report documenting the irregularities to the Budget Section.
8. NDCC Section 15-10-18 provides that institutions of higher education shall charge nonresident students tuition in such amounts as determined by the State Board of Higher Education subject to Budget Section approval.
9. NDCC Section 15-10-12.1 authorizes the Budget Section to review requests by the State Board of Higher Education for

authority to use land under its control to construct buildings and campus improvements thereon which are financed by donations, gifts, grants, and bequests; and to act upon the board's requests for authority to sell any property or buildings an institution of higher learning has received by gift or bequest.

10. The Budget Section is to receive and review, prior to the 1977 Legislature, the executive budget for the 1977-79 biennium prepared by the Executive Budget Office.

SOCIAL SERVICE BOARD

A new federal law, Title XX of the Social Security Act as amended, became effective October 1, 1975, for state social service programs. It grew out of the cooperative effort of the United States Congress, the Department of Health, Education and Welfare, the National Conference of Governors, and key organizations concerned with services for children and families, and for the aged, blind, and disabled.

Under Title XX, state social services programs will be shaped primarily by decisions made in the state rather than by federal requirements. States can make significant changes in their social services programs in regard to what services will be available, which people will be eligible to receive services, and where and how services will be provided.

The Department of Social Services reported to the Budget Section that the Department of Health,

Education and Welfare has conducted a statewide study on the administration and quality of Title XX programs. North Dakota has been rated third (behind Michigan and Utah) as having the best Title XX program.

Under Section 6 of House Bill No. 1012, the 1975 Legislature appropriated \$7,806,700 of Title XX funds to the State Social Service Board for the 1975-77 biennium. In addition, it appropriated \$5,139,301 under Section 6 to be contributed by individuals, organizations, governmental units, or other sources. These amounts are in addition to Title XX moneys appropriated for social service programs included in the appropriation to the board for its other operations.

The Social Service Board presented 58 projects to the Budget Section requesting funding under Section 6. The Budget Section approved 37 of the projects totaling \$4,235,941 of which \$2,992,626 is federal funds. Most Section 6 programs are on a 70-30 matching basis, with 70 percent of the funds available from the federal government and 30 percent from the private agency requesting the project.

The following schedule lists all the Section 6 projects approved by the Budget Section for the biennium ending June 30, 1977, and expenditures for Section 6 projects during the year ended June 30, 1976. This schedule is followed by a brief description of each project.

Project Name	Budget Amt.	Donor's Share	Federal Share	Federal Expenditure	Unexpended Federal Balance
Agassiz Enterprises	\$ 360,600	\$ 108,180	\$ 252,420	\$ 62,566	\$ 189,854
Big Brother-Big Sister	66,000	19,800	46,200	10,564	35,636
Burleigh-Morton Employment Committee	31,827	9,548	22,279	3,900	18,379
Dickinson Hostel	43,114	12,934	30,180	8,823	21,357
Early Periodic Screening— Minot	147,121	44,136	102,985	14,881	88,104
Heart of America Youth Service	160,652	48,196	112,456	34,027	78,429
Heart of America Staff	135,857	40,757	95,100	20,676	74,424
Listen	40,500	12,150	28,350	12,394	15,956
Medical Social Work— Dickinson	35,250	10,575	24,675	3,426	21,249
Medical Social Work— Minot	77,360	23,208	54,152	9,418	44,734
Mental Retardation Service— Devils Lake	115,000	34,500	80,500	-0-	80,500
Minot Halfway House	87,181	26,154	61,027	21,180	39,847
Minot Vocational Adjustment Workshop	285,684	85,705	199,979	57,648	142,341
Nokomis Day Care	129,125	38,738	90,387	21,849	68,538
Oppen Family	270,000	81,000	189,000	53,512	135,488
Rugby Group Home	107,677	32,303	75,374	25,586	49,788
School Social Work					
Bismarck	150,000	45,000	105,000	34,921	70,079
Minot	173,202	51,961	121,241	15,813	105,428
Devils Lake	56,000	16,800	39,200	8,189	31,011
Aging Services	36,580	10,974	25,606	-0-	25,606
Social Group Services— Minot	48,148	14,444	33,704	7,483	26,221
Speech and Hearing— NDSU	187,045	56,113	130,932	35,786	95,146
YMCA Service Support Project	62,000	18,600	43,400	3,678	39,722
NYPUM— Grand Forks	23,304	6,991	16,313	8,381	7,932
Burleigh County Housing	13,410	4,023	9,387	2,424	6,963
VAC— Bismarck	26,640	7,992	18,648	6,507	12,141
VAC— Grand Forks	39,786	11,936	27,850	5,994	21,856
Vocational Training Center— Fargo	71,789	21,537	50,252	3,969	46,283
Fraser Hall— Fargo	94,339	28,302	66,037	8,269	57,768
F-M Activity Center— Fargo	75,540	22,662	52,878	25,316	27,562
Developmental Work Activity Center— Fargo	49,357	14,807	34,550	-0-	34,550
Special Needs Adoption— Fargo	106,308	31,892	74,416	-0-	74,416
Therapeutic Evaluation— Fargo	90,303	27,091	63,212	-0-	63,212
Voluntary Action Center— Fargo	43,963	13,189	30,774	-0-	30,774
West Fargo Nutrition	16,357	4,907	11,450	-0-	11,450
Adult Day Care— Minot	100,500	30,150	70,350	-0-	70,350
WIN Ojt	762	762	-0-	-0-	-0-
Plan 4	36,500	10,950	25,550	15,365	10,185
Vocational Rehabilitation	400,000	100,000	300,000	-0-	300,000
Human Resource Planning	160,000	40,000	120,000	-0-	120,000
Rehabilitation Teacher— Blind	81,160	24,348	56,812	-0-	56,812
TOTAL	\$4,235,941	\$1,243,315	\$2,992,626	\$542,547	\$2,450,079

The Agassiz Enterprises Project, Grand Forks, provides services to the mentally and physically handicapped. Under the Big Brother-Big Sister Project, Minot, volunteer adults work with emotionally needy children. The Burleigh-Morton Employment Committee Project provides for a full-time employment coordinator to assist retarded individuals in obtaining gainful employment. The Dickinson Hostel project provides housing and supervision for 12 mentally retarded adult males with a goal of enabling them to find employment in the community. The Early Periodic Screening Project, Minot, provides an organized screening program to identify illness and health defects before they become serious, irreversible, or costly.

The Heart of America Youth Services and Heart of America Human Service Center projects in Rugby deal with youth who are experiencing problems and provide for maintenance of professional service in the community. "Listen" is a social activity center for mentally retarded adults in Grand Forks.

The Medical Social Work Project in Dickinson provides medical social services to patients at St. Joseph's Hospital. The Medical Social Work Project in the Minot region provides similar services to patients of clinics and hospitals in five communities in the Minot region. The Mental Retardation Services Project, Devils Lake, provides for the operation and staffing of two residential homes for mentally retarded children.

The Minot Halfway House provides housing for 10 mentally retarded adults. The Minot Vocational Adjustment Workshop provides treatment and training for mentally retarded adults with the goal of providing these adults with the necessary skills to enter the work force. The Nokomis Day Care Center, Fargo, provides day care services for 44 children. The Oppen Project, Minot, is a center which provides comprehensive evaluation, counseling, and training for unmarried parents and their families. Under the Rugby Group Home Project, a group residence has been established for the supervision of eight retarded adults.

The Social Service Work Programs in schools in Bismarck, Minot, and Devils Lake provide on-site social services to students experiencing problems and to their families. The Aging Services Project, Burleigh County Housing Authority, will, as of January 1, 1977, provide nursing and outreach services for the elderly in need of welfare and health type services in Burleigh County. The Social Group

Services Project, Minot, provides a social and recreational center in Minot for retarded adults. The Speech and Hearing Project, NDSU, provides for comprehensive social and remedial services to children and adults with handicapping speech, hearing, and language disabilities.

The YMCA Service Support Project provides for four social type programs for the Bismarck-Mandan area. Fraser Hall is a residence hall for mentally retarded female adults in Fargo. The F-M Activity Center, Fargo, is a Lutheran Social Services activity serving approximately 130 developmentally disabled adults. The Vocational Training Center, Fargo, provides vocational education, vocational training, and sheltered employment and work activity for developmentally disabled persons. The NYPUM Project, Grand Forks, works with hard-to-reach youths through, for example, the use of minibikes to reach the 11 to 15-year-old child.

The Burleigh County Housing Authority is an extensive program for elderly and low income families. The Volunteer Action Centers in Bismarck and Grand Forks help the elderly, handicapped, retarded, and low income people in the two communities. The Developmental Work Activity Center, Fargo, helps the developmentally disabled to gain a concept of self-worth, the worth of others, and provides them with the skills necessary for independent functioning at whatever level they are capable.

The Special Needs Adoption Project, Fargo, reimburses the Children's Village Adoption Agency for staffing and operating a program emphasizing the placement of children with special needs in adoptive homes. The Therapeutic Evaluation and Treatment Center provides specific assessment, evaluation, and treatment services to preschool handicapped children and their families in the Fargo area. Through the Voluntary Action Center in Fargo, services are provided by volunteers, such as transportation, emergency food procurement, provision of used clothing, and provision of furniture (for low income persons) to individuals and families who need assistance on a temporary basis until a crisis is resolved. The West Fargo Nutrition Project provides low cost meals to primarily senior citizens. The Adult Day Care Services Project, Minot, provides a "work place" for mentally retarded adults who otherwise would require institutionalization.

The funds spent under Plan 4 are spent in monitoring all Section 6 projects. The Vocational Rehabilitation funds are used by the Division of

Vocational Rehabilitation for sheltered workshops. The Human Resource Planning Project will provide for the assessment of human needs in North Dakota. The Rehabilitation Teacher Program for the Blind provides rehabilitation teachers who provide home teaching services to the blind throughout the state in the skilled areas of personal management, home management, communication, and leisure time activities.

In October 1976 the Budget Section authorized the Social Service Board to transfer funds between line items for Section 6 projects to the extent it determined necessary until the Budget Section meets for its first meeting of the 1977-79 biennium.

The Budget Section also reviewed information on total Title XX funds received by the Social Service Board. Expenditures of Title XX funds for social services during fiscal year 1976 by the Social Service Board are as follows:

Section 6 Projects	\$ 565,840
Counties	2,933,705
Area Social Service Centers	1,230,282
Human Service Centers	820,384
Training — Title XX	126,401
Total Title XX Expenditures	\$5,676,612

Total federal funds, exclusive of vocational rehabilitation, spent by the Social Service Board during fiscal 1976 were \$51,685,511.

At the June 1975 meeting, Mr. Thor Tangedahl, Executive Director of the State Social Service Board, reported to the Budget Section that the Department of Health, Education and Welfare (HEW) had declared his department out of compliance with provisions of the Social Security Act relating to the state providing early and periodic screening, diagnosis, and treatment of children under the North Dakota AFDC program. He said his department appealed this decision. The Budget Section, by motion, supported the board in its petition for reconsideration and reversal of the HEW determination. In October 1976 the board's Early and Periodic Screening Program was reevaluated by HEW and declared to be in compliance.

The Social Service Board employed Touche Ross & Co. to review the board's progress in integrating the Division of Vocational Rehabilitation's services with

other social services under the board's supervision and to assist it in determining how it might further integrate social services, including those on the regional and local levels. The final Touche Ross Report on the coordination of the vocational rehabilitation services with other board programs was presented to the Budget Section for informational purposes. It is filed with the Legislative Council.

EXPERIMENT STATION

At the Budget Section's June 1976 meeting, Mr. Arlon G. Hazen, Director of the NDSU Agricultural Experiment Station, requested authorization to spend an additional \$16,098 during the 1975-77 biennium at the Main Experiment Station, the Hettinger Branch Station, and the Dickinson Branch Station. The authorization was sought under the previously cited provisions of Chapter 2 of the 1975 Session Laws.

Mr. Hazen said the request was to recognize expenditures necessitated by hail and wind loss during 1975 not contemplated or provided for in the 1975-77 budget. Since payments from the State Fire and Tornado Fund are made directly to NDSU and not to vendors, the funds represent sales income in the budgeting process and therefore authorization was needed to spend them. The necessary expenditures were covered only in part by payments from the State Fire and Tornado Fund.

The Budget Section approved NDSU's request to spend an additional \$16,098 in sales income during the 1975-77 biennium.

REQUEST FOR FUNDS FROM PRELIMINARY PLANNING REVOLVING FUND

At its February 1976 meeting, in accordance with Section 54-27-22, Mr. Lloyd Omdahl, then Director of the Department of Accounts and Purchases, filed requests with the Budget Section received by his office from the Supreme Court (\$48,300) and from the Director of Institutions (\$24,000) for funds from the preliminary planning revolving fund. Section 54-27-22 requires the director to file planning fund requests and his recommendations on these requests with the Budget Section. Funds can be advanced only with Budget Section authorization. Mr. Omdahl recommended the requests be approved.

The Supreme Court's request was for the development of plans for a Supreme Court building to alleviate its space problems. The Director of Institutions' request was for planning for major improvement and construction projects at the institutions under his control. The Director of Institutions' office presented a priority project listing for the planning funds. These projects included pollution control equipment at San Haven State Hospital, repair of the Capitol plaza steps, a media-library and classroom building at the School for the Deaf, a vocational-maintenance shop complex at the State Industrial School, and swimming facilities at the School for the Blind and at the School for the Deaf.

The Budget Section approved both requests. It authorized the director of the Department of Accounts and Purchases to make \$48,300 available to the Supreme Court from the preliminary planning revolving fund to develop plans for a Supreme Court building and for the use of present space for legislative purposes, and to make \$24,000 from the fund available to the Director of Institutions.

At its June 1976 meeting, Mr. Omdahl filed with the Budget Section requests received by his office from the Board of Higher Education and the North Dakota Soldiers' Home for funds for consulting and planning fees for capital improvement. The North Dakota Soldiers' Home requested \$9,700 and the Board of Higher Education requested \$22,000. Mr. Omdahl recommended approval of the board's request, and recommended \$7,800 for the Soldiers' Home.

The board's planning fund request was for hiring an engineering consultant to plan for power plant modifications for its institutions to comply with the Federal Clean Air Act. The request by the Soldiers' Home was to obtain schematic designs and cost estimates for major improvements to and expansion of its facilities.

The Budget Section authorized the director of the Department of Accounts and Purchases to make \$22,000 available to the Board of Higher Education from the preliminary planning revolving fund as requested. The section tabled the Soldiers' Home request until a later meeting, and pending additional information and testimony on the Home's status.

At the October 1976 meeting, Soldiers' Home representatives reported that it had the necessary funds available and had applied for and received

Emergency Commission approval to use them for planning fees to obtain estimates for an addition to the Home. The preliminary cost for the addition is estimated at \$800,000 to \$900,000.

COMPREHENSIVE EMPLOYMENT TRAINING ACT

The 1975 Legislature, in Section 5 of Senate Bill No. 2007 (Ch. 31, S.L. 1975), appropriated \$1,234,289 to the Grafton State School for the 1975-77 biennium. This was to be made available only in the event of a reduction, and only to the extent of such reduction, in the school's receipt of estimated federal funds of \$1,234,289 anticipated under the Comprehensive Employment and Training Act (CETA).

Pursuant to this bill, Director of Institutions Edward Klecker said he would ask the Emergency Commission to transfer \$592,459 from the contingency fund created by Senate Bill No. 2007 to the salaries and wages line item of the Grafton State School appropriation for the employment of additional personnel. He said they anticipated CETA funds are not available.

Mr. Dean Conrad, CETA Director, said moneys are not available to the Grafton State School under CETA since they are otherwise available under Senate Bill No. 2007.

The Budget Section asked the Legislative Council's legal staff to determine the legislative intent of Section 5 of Senate Bill No. 2007 which provides that in the event CETA funds are not available, the Emergency Commission has authority to approve the transfer of the general fund moneys to the Grafton State School for new positions. The legal staff, by corresponding with the Regional CETA Administrator, was told CETA moneys can be spent at the Grafton State School pursuant to Senate Bill No. 2007 without prior expenditure of the contingency appropriation.

The committee also heard extensive reports on CETA and its history. For fiscal year 1976 (as of May 31, 1976), use of CETA funds by the state involved the employment of 463 persons in 50 state institutions and agencies. The allocation of CETA funds for statewide programs and state agencies for the period July 1, 1975, through January 31, 1977, is \$3,237,891.

CETA was enacted by Congress in 1973 to provide job training and employment opportunities for people who need employment. Special consideration is given to aid the disadvantaged, minorities, veterans, women, handicapped, youth, and the older worker. Services provided by CETA included counseling, job development, job training, basic education, and medical and dental services. CETA will expire in 1977 and no new appropriation bill had yet been introduced into Congress to continue CETA after 1977.

The Employment Security Bureau administers CETA in North Dakota. As a result of its study of CETA, the section, to inform the legislature of total funds spent by the Employment Security Bureau, directed that the bureau be asked to come under the same appropriation process as other state agencies. The Employment Security Bureau was notified and has prepared a budget request for the 1977 Legislature. Unemployment benefits will be excluded from the appropriation process; however, administrative costs and programs, such as CETA, will be included.

STATUS OF STATE GENERAL FUND

At each of the Budget Section meetings, a representative of the Department of Accounts and Purchases reviewed the status of the state's general fund and presented information comparing revenue collections to date with collections for the same periods of time during the previous biennium. This information is on file in the Legislative Council office.

At the October 1976 meeting, Mr. Dale Moug, now Acting Director of the department, presented the department's estimate of a general fund balance on June 30, 1977, of \$186,818,604. Mr. Moug termed this a very conservative estimate, and said it could be as high as \$205 million. The \$186.8 million estimate is based on the assumptions that each state agency would spend its entire appropriation for the 1975-77 biennium and upon the estimates of each source of revenue. The 1975 Legislature had estimated a \$70.4 million general fund balance by June 30, 1977.

PROGRAM BUDGETING

Senate Concurrent Resolution No. 4020 (1973 Legislature) directs the Executive Budget Office to develop a plan to have all state agency, department, and institution budget requests on a program basis

before the 1977 Legislature. Mr. Moug, who is also the Executive Budget Analyst, presented a status report to the Budget Section on his office's implementation of the new accounting system. He reported that the accounting system would go into effect on July 1, 1975. However, he said, not all agencies would be able to present program information beginning on that date. He said few other states have systems as refined as the one being implemented in North Dakota.

VOUCHER IRREGULARITIES

Pursuant to Section 54-14-03.1, Mr. Ralph Dewing, then Director of the Department of Accounts and Purchases, filed a letter with the section at its June 1975 meeting that read in part as follows: "Section 54-14-03.1 . . . requires me to submit to your committee any voucher presented to my office for payment that I consider may be contrary to the intent to the legislative appropriation. I am enclosing a copy of the voucher presented to my office for payment by the Department of Vocational Rehabilitation."

The Department of Accounts and Purchases determined the following facts related to this expenditure. The client had a physical handicap which qualified her for assistance by the Department of Vocational Rehabilitation. She purchased an automobile for an agreed price of \$6,829, but paid only \$5,799. The balance was to be paid by the Department of Vocational Rehabilitation. The department said the handicapped individual needed the accessories on the automobile to drive to a restoration center for treatment so she could continue her duties as a housewife.

The section directed that the director of the Department of Accounts and Purchases and State Social Service Board be immediately informed of the Budget Section's disapproval of the expenditure of funds in the manner indicated by the letter and the voucher filed with the committee.

CONTINGENCY FUND

Senate Bill No. 2071 (Ch. 475, S.L. 1975) requires Budget Section approval of transfers from the state contingency fund if such transfers exceed \$500,000 in the aggregate. Since the 1975-77 appropriation to the state contingency fund was limited to \$500,000, no action on the part of the Budget Section was possible during this interim.

STATE AUDITOR'S OFFICE

Pursuant to Section 54-06-04.1, the State Auditor's office submitted reports to the Budget Section on the cost of services provided by 16 agencies, institutions, and departments which license, inspect, or regulate private business activity or products. The reports indicate the collection for each type of service provided and the estimated cost of providing the service for fiscal years 1975 and 1976. The reports are on file in the Legislative Council office.

NONRESIDENT TUITION

Section 15-10-18 provides that institutions of higher education shall charge nonresident students tuition in such amounts as determined by the State Board of Higher Education subject to Budget Section approval.

At the section's June 1975 meeting, Mr. Kenneth Raschke, Commissioner of Higher Education, reported that the Board of Higher Education, as directed by the 1975 Legislature, has entered into a reciprocal agreement with Minnesota, and that applications from students are being processed by the board's office. He reported exploring the possibility of reciprocity with South Dakota in the area of physical therapy. He said that the board plans to exchange student space in this field at the University of North Dakota for a clinical position for North Dakota students in South Dakota. At the section's October 1975 meeting, Commissioner Raschke reviewed the status of the reciprocity program between North Dakota and Minnesota. He reported that 1,988 Minnesota students (compared to 1,606 one year ago) were enrolled in North Dakota colleges and universities, and that 913 North Dakota students (compared with 635 one year ago) were enrolled in Minnesota schools.

LEGISLATIVE INTENT

At the February 1976 meeting of the Budget Section, Mr. Gary Leppart, Director of the North Dakota Park Service, presented a report regarding

the dormitory construction project at Lake Metigoshe State Park. The 1975 Legislature appropriated \$100,000 to renovate the dormitory's foundation. Mr. Leppart said costs estimates indicated total renovation of the dormitory would cost \$111,798, while a new dormitory facility was estimated to cost \$101,315. Since the cost to construct a new dorm was less than remodeling the old facility, Mr. Leppart said the decision was made to apply for a Bureau of Outdoor Recreation (BOR) grant to aid in the construction of a new dormitory. He said the new dormitory will be a much safer one that can be used the year round. The old dorm was razed and work on the new facility was begun during fall 1976. Mr. Leppart said Park Service officials intend to submit an application to BOR requesting approximately 50 per cent of the \$115,000 to \$120,000 necessary for the construction.

The Budget Section expressed disapproval and concern about the way the Park Service handled this project since legislative intent was that the dormitory be renovated rather than be replaced.

Since all state agencies and institutions must receive Emergency Commission approval to accept additional federal funds during the interim, the Budget Section moved that the Emergency Commission be encouraged to approve the State Park Service request for additional federal funds for the Lake Metigoshe project.

TOUR GROUPS

During late September and early October 1976, Budget Section members visited major state institutions and agencies to determine and evaluate fund requests for major improvements and structures, and to hear any problems the institutions might be encountering during the interim. An indexed copy of the tour group's minutes, with their comments, observations, and recommendations, will be submitted to the Appropriation Committees during the 1977 Legislature. The members of each tour group, and the institutions they were to visit, were as follows:

TOUR GROUP No. 1 — Representative Robert Reimers, Chairman

Membership

Representative Robert Reimers
Representative Olaf Opedahl
Representative Howard Johnson
Representative Jack Olin
Representative James Peterson
Representative Earl Strinden
Representative Michael Unhjem
Representative Daniel Rylance
Senator Frank Wenstrom
Senator S.F. Hoffner
Senator George Longmire

Institutions Assigned

North Dakota State University
Cooperative Extension Service
and Experiment Station
Mayville State College
Grand Forks Area Social Service Center
Northeast Mental Health Center, Grand Forks
University of North Dakota,
Medical Center, Rehabilitation
Hospital, UND Medical School
School for the Blind
Grafton State School

TOUR GROUP No. 2 — Representative Oscar Solberg, Chairman

Membership

Representative Oscar Solberg
Representative Lawrence Marsden
Representative LeRoy Hausauer
Representative Vernon Wagner
Representative Aloha Eagles
Senator Lester Larson
Senator Ernest Pyle
Senator John Maher
Senator David Nething
Senator Harry Iszler

Institutions Assigned

Fargo Area Social Service Center
NDSU Speech and Hearing Clinic
Nokomis Day Care Center, Fargo
Vocational Training Center, Fargo
Southeast Mental Health Center, Fargo
Division of Independent Study, NDSU
School of Science, Wahpeton
Soldiers' Home
Jamestown State Hospital
South Central Mental Health Center, Jamestown
Valley City State College

TOUR GROUP No. 3 — Senator Russell Thane, Chairman

Membership

Senator Russell Thane
Senator Walter Erdman
Senator Lawrence Naaden
Senator Theron Strinden
Representative Charles Fleming
Representative Layton Freborg
Representative Enoch Thorsgard
Representative Leonard Fagerholt
Representative Eugene Laske
Representative Richard Backes

Institutions Assigned

Lake Region Junior College, Devils Lake
School for the Deaf
Lake Region Human Resource Center, Fort Totten
Heart of America Human Services Center, Rugby
San Haven State Hospital
Peace Gardens
Lake Metigoshe State Park
NDSU-Bottineau Branch and State Forest Service
State Park Service
Industrial School
State Penitentiary and State Farm

TOUR GROUP No. 4 — Senator Evan Lips, Chairman

Membership

Senator Evan Lips
Senator Jerome Walsh
Senator Clarence Schultz
Representative Charles Mertens
Representative Malcolm Tweten
Representative Corliss Mushik
Representative Ralph Christensen
Representative Neil Hensrud

Institutions Assigned

Dickinson State College
Badlands Human Service Center, Dickinson
Experiment Station, Dickinson Branch
Northwest Human Resources Center, Williston
Williston Branch—UND
Experiment Station—Williston Branch
Minot Area Social Service Center
Oppen Family Guidance Institute, Minot
Minot Halfway House
Minot Vocational Adjustment Workshop
North Central Mental Health and
Retardation Center, Minot
Minot State College
State Fair Association

MISCELLANEOUS BUDGET SECTION ACTION

At the June 1975 meeting of the Budget Section, Mr. Floyd Case, Director of Fiscal Affairs for the Board of Higher Education, reviewed the 1975 Legislature's action regarding pollution control devices at the state's colleges and universities. He said House Bill No. 1535 would have appropriated \$1,694,000 above the Governor's budget for pollution control equipment at the institutions. This bill failed, leaving the \$640,000 appropriation in Section 8 of House Bill No. 1001 as the amount available for the installation of equipment at some of the institutions. Mr. Case said that since the 1975 Legislature adjourned, the board has determined that \$20,000 per year in additional cost would result from converting the present coal-fired boilers at NDSU-Bottineau Branch to oil. Since the Health Department now indicates that the NDSU-Bottineau Branch can be in compliance with law by spending \$20,000 for the improvement of their coal-fired boiler, the board wishes to proceed in this manner even though the legislative intent was for conversion to an oil gas-fired boiler. Mr. Case said that, without objection from the Budget Section, the board would authorize continued use of coal at the NDSU-Bottineau Branch. He said the board will ask the 1977 Legislature for additional funds to improve

the coal operation at UND and NDSU. The section supported the board's decision to continue operation of the coal-fired boiler at NDSU-Bottineau Branch.

At its June 1976 meeting, the Budget Section by motion encouraged the Tax Commissioner to deposit tax collections in the state treasury on a more frequent basis.

At its final meeting in October 1976, the Budget Section met jointly with the Council's Education Committee. The Education Committee discussed with the Budget Section the five bills it is recommending to the Legislative Council. The bills relate to the foundation program, textbook fees, educational accountability, an Indian education curriculum, and the State School Construction Fund (see the Education Committee's report for a detailed analysis of these five bills).

This report presents the activities of the Budget Section during the interim period. Since one of the major responsibilities of the Budget Section is to review the executive budget, which by law is not presented to the committee until after December 1, a supplement to this report on the final phases of its activities will be submitted for distribution at a later date.

BUDGET "A"

[LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE]

The Legislative Council by law appoints a Legislative Audit and Fiscal Review Committee as a division of its Budget Section. The Council designated its Budget "A" Committee to serve in this capacity during the 1975-77 interim.

The committee was created: "For the purposes of studying and reviewing the financial transactions of this state; to assure the collection and expenditure of its revenues and moneys in compliance with law and legislative intent and sound financial practices; and to provide the Legislative Assembly with formal, objective information on revenue collections and expenditures for a basis of legislative action to improve the fiscal structure and transactions of the state." (NDCC§54-35-02.1)

In setting forth the committee's specific duties and functions, the legislature said: "It shall be the duty of the legislative audit and fiscal review committee to study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditor in regard to such reports, and when necessary, to confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state." (NDCC§54-35-02.2)

In addition to carrying out its statutory responsibilities, the committee was assigned the portion of Senate Concurrent Resolution No. 4069 (1975) relating to a study of state employee fringe benefits.

The Lieutenant Governor by law serves as chairman of Budget "A" Committee (Legislative Audit and Fiscal Review Committee). Other members were Representatives Stephen Farrington, Howard Johnson, Lawrence Marsden, Charles Mertens, Jack Olin, Olaf Opedahl, and Jens Tennesfos; and Senators Lester Larson, Russell Thane, Frank Wenstrom.

During the interim, the State Auditor presented 69 audit reports to the committee. A list of these audits is on file in the Legislative Council office. An additional 46 audit reports were filed with the

committee, but were not formally presented. The committee only heard audits of major agencies and audit reports containing major exceptions.

The report of the Committee on Budget "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

State Employee Fringe Benefits

State employee fringe benefits include: sick leave, annual leave, time off with pay for legal holidays, military leave, group health insurance coverage, life insurance coverage, retirement programs, social security, coverage under the state workmen's compensation laws, unemployment compensation benefits for employees of the State Hospital and state institutions of higher education, funeral leave, and maternity leave. The state also pays one-tenth of one percent of payroll to fund the Employment Security Bureau's administration of the Social Security Contribution Fund, and contributes one percent of the first \$4,800 of an employee's annual salary to the Old Age and Survivors Insurance Fund.

The Legislative Council staff presented various memorandums on fringe benefits, including:

1. A memorandum on fringe benefits available to employees in the private sector. Information on some of these fringe benefits was included in a report entitled, "Proposed Classification and Pay Plans for the Classified Service," completed by the Public Administration Service for the Central Personnel Division during the 1973-75 interim. A section of that report on fringe benefits was included in this memorandum for committee review. Data was received from 243 private employers with a total of 22,503 employees in the state. The report indicated the state offers more liberal fringe benefits than offered by most of the state's private employers.
2. A memorandum comparing the retirement benefits of federal and North Dakota employees. This memo indicated that state retirement benefits are lower than federal

retirement benefits since neither the state nor its employees contributed to the plan prior to July 1, 1966, when the Public Employees Retirement System was established.

3. A memorandum comparing North Dakota fringe benefits with those of Iowa, Kansas, Michigan, Minnesota, Montana, South Dakota, Wisconsin, and Wyoming. This analysis presented comparative information on annual leave, legal holidays, sick leave, group health insurance, group life insurance, and group disability income insurance.
4. A memorandum on federal government employee benefits. This memorandum presented information on annual leave, sick leave, holidays, leave for jury service, military leave, group health insurance, group life insurance, retirement benefits, injury compensation, unemployment compensation, and severance pay.
5. A memorandum on group life insurance plans and group disability income protection plans for state employees of Michigan, Minnesota, and South Dakota. This memorandum presented information on the various types of protection offered, options available, and the employee's share of the premium cost.

In addition, the staff presented a memorandum on state employee terminations from all state agencies and institutions except the colleges and universities, the National Guard, the Bank of North Dakota, and the Employment Security Bureau, during the six months ended June 30, 1975. The agencies, departments, and institutions included in this survey had a total 4,983 full-time employees as of June 30, 1975. The memorandum indicated that from January 1, 1975, to June 30, 1975, 405 full-time employees terminated employment with the state. Of that number, 29 transferred to some other state job.

The staff presented another memo on state college and university full-time classified and other personnel who left employment during the six months ending June 30, 1975, and faculty members who did not receive or accept a contract for the 1975-76 academic year. The survey indicated that 197 nonfaculty employees quit, and 116 faculty members did not receive or accept a contract. As of June 30, 1975, the colleges and universities had 2,193 full-time classified and unclassified employees, excluding

faculty. The full-time faculty at the end of the 1974-75 academic year numbered 1,372.

The committee also heard from interested employee groups and representatives of various supervisory and other departments on the adequacy of state employee fringe benefits. In response to the committee's invitation, the State Central Personnel Division said state agencies it had contacted expressed concern about consistency and uniformity in the administrative handling and application of fringe benefits. According to the Central Personnel Division, agencies expressed the following concerns:

1. The full premium for health insurance programs should be paid by the state.
2. The retirement benefits need to be increased and the \$600 limitation on the state contribution should be removed.
3. There should be payment for unused sick leave at retirement.
4. Dental coverage should be provided.
5. All employees should be covered by unemployment insurance coverage.
6. Disability insurance coverage should be provided for state employees.

The Director of Institutions recommended the following:

1. Early retirement benefits for employees with hazardous duties at the State Penitentiary.
2. A five percent contribution to the retirement program by state employees, with employees being given the option to contribute an unlimited amount above five percent, and a state contribution not to exceed five percent.
3. Disability insurance protection for employees, with various options.
4. The state paying a larger share of the family medical insurance premiums.

The Board of Higher Education suggested that:

1. The state pay a larger share of the health insurance premium.
2. Inconsistency and inequities between the state retirement programs be eliminated.

3. A statewide group disability plan be investigated.

The North Dakota State Employees Association would like to see the following additional fringe benefits provided without cost to state employees:

1. Fully paid family major medical insurance premiums.
2. At least a three percent increase in the state's contribution to the employees' retirement program.
3. Long-term disability or income protection plan.
4. Dental insurance.
5. An errors and omissions or professional liability insurance program.
6. Increases in the group life insurance plan equivalent to an employee's annual salary.

The association also voiced its concern over the great disparity in the way fringe benefits are administered by various state agencies. It said one state agency pays for accumulated sick leave upon termination of employment, and another pays the full medical insurance premium, including the premium for family medical coverage.

The committee asked those agencies reported as providing fringe benefits not provided other state employees to explain the nature and basis for providing such benefits. Representatives of the State Mill and Elevator said the Mill provides additional benefits pursuant to its agreement with the American Federation of Grain Millers, AFL-CIO. Such additional benefits include: life insurance, health and accident insurance, fully paid medical insurance coverage, and paid sick leave.

The Employment Security Bureau said it operates under a benefit formula retirement program pursuant to Chapter 52-11, NDCC. This program costs the department approximately 7.43 percent of payroll and has an unfunded liability of \$1,600,979 underwritten by the federal government.

The Board of Higher Education said the colleges and universities provide unemployment compensation coverage pursuant to state law. In addition, the UND Alumni Association sponsors a disability income protection plan for the University,

Medical School, and Rehabilitation Hospital employees. Part of the premium cost is paid by the employee with the remaining portion being paid by the Alumni Association. The board's office said there is no obligation on the part of the state to assume the cost of this program.

During its study of employee fringe benefits, the committee obtained information on the cost of increased state participation in health insurance premiums for state employees. Based on the rates and enrollment as of March 31, 1976, the state and its employees make the following contributions toward medical and hospital benefit coverage:

Description	Premium Cost	
	One Year	Two Years
State contribution for single rate premium, \$19.50/month/employee . . .	\$2,233,531	\$4,467,062
Employee contributions for optional family coverage, \$40.45/month/employee . . .	\$2,401,964	\$4,803,928
Estimated total cost of medical and hospital benefit coverage	\$4,635,495	\$9,270,990

If the state had paid during the current biennium the total cost of family medical and hospital benefit coverage for eligible employees, approximately \$4.8 million in additional state funding would have been required.

The committee also asked about the availability and cost of mandatory disability income protection for state employees. At its October 1976 meeting, Mr. Bruce Halverson, an insurance consultant, said insurance companies are reluctant to provide this type of protection because long-term disability coverage for large groups is unprofitable. He suggested that any state disability income protection plan provide for coordination of disability income benefits with the state's sick leave and retirement system benefits.

The committee took no action regarding retirement and disability income protection since the Council's State and Federal Government Committee is recommending a benefit formula retirement plan for state employees, which includes provisions for benefits in the event of disability. The committee recommends that the information compiled re-

garding state employees' fringe benefits be made available to the 1977 Legislature to assist it.

STATE AUDITOR'S OFFICE

NDCC Section 54-10-04 requires the legislature to provide for an audit of the State Auditor's office. The Legislative Council contracted with Eide, Helmeke, Boelz, and Pasch, Certified Public Accountants, for such an audit for the period beginning January 1, 1973, and ending June 30, 1976. This audit included a financial examination and a determination of compliance with the 1973 State Auditor performance review recommendations. The firm presented its audit report at the committee's October 1976 meeting. A copy is available in the Legislative Council office.

The report contained the following recommendations:

1. There should be documentation in the work papers of the internal control review for small political subdivisions.
2. A schedule should be included in the financial reports of counties showing the changes in each city, township, and school district agency fund.
3. The auditor's budget should provide additional appropriations to expand the continuing education of staff auditors.
4. Salary levels for staff auditors be maintained at a level commensurate with those in the public accounting profession and elsewhere in government.
5. The State Auditor's office should expand the scope of its audits to include performance auditing on a regular basis.
6. The preparation of time budgets, with explanations of significant variance between actual and budget, should be implemented for all audits.
7. The narrative accompanying the budget request for the Auditor's office should include, in support of the request for salaries and wages, the anticipated number of audits to be performed.
8. The statutes should be changed to eliminate the required membership of the State Auditor on any executive branch board.

The firm said that, in addition to running his own office, the State Auditor serves on the Public Employees Retirement Board, the Board of University and School Lands, and the State Board of Equalization.

The firm reported that all counties are being audited at least once every two years. However, only 53 percent of the other political subdivisions are being audited within a two-year period of time. If the State Auditor's office is to be in compliance with the law regarding the audit of political subdivisions, said the report, additional staff will be needed, requiring an increase in appropriations. As an alternative, the firm suggested the statutes could be amended to require that audits of political subdivisions be performed by independent certified or licensed public accountants with the State Auditor's office acting strictly as a monitoring agency.

In response to the report, the State Auditor said his office would like to conduct additional performance audits, and that his staff presently includes several individuals who are experienced in this type of audit. The committee reaffirmed its support for the State Auditor's office to proceed with performance audits of state agencies, departments, and institutions.

The State Auditor said more time must be spent on audits because of the larger dollar volume subject to audit, and that his office is more concerned about quality than quantity. He said such things as employee turnover within the department and special audits affect the total number of audits which can be completed.

In regard to the audits of state agencies and political subdivisions, the State Auditor suggested the following alternatives as a means of performing the necessary audits:

1. Provide an additional \$1.4 million to make it possible for his office to perform required audits. The \$1.4 million would provide for 33 additional staff personnel and other associated costs. The budget for the current biennium is \$970,932. The department requested \$1.2 million in its 1977-79 budget request to fund the department at its present staffing level.
2. Allow private certified public accountants and licensed public accountants to conduct all audits of political subdivisions.

3. Establish a revolving fund whereby moneys collected for the audits would be set aside in a special account to fund other audits.
4. Extend the time limit for performance of required audits to four or five years.
5. Allow certain political subdivisions to submit financial reports annually in lieu of an audit.

To assist the State Auditor's office, the committee recommends a bill providing that political subdivisions other than school districts, with less than \$75,000 of annual receipts and school districts with less than 100 pupils be audited at the auditor's discretion. In lieu of an audit, the political subdivisions shall submit a report to the State Auditor. A political subdivision may submit a petition for an audit by the State Auditor if it contains the signatures of not less than 10 percent of the number of persons within that political subdivision who voted for Governor at the last election. In addition, the committee recommends that the 1977 Appropriations Committees be informed of the State Auditor's need for additional funds to perform audits in accordance with law.

During the interim, the State Auditor also presented a proposed schedule of state agency, department, and institution audits which his office planned to conduct during the 1975-77 biennium. He indicated that the total time required to complete those audits is 26,161 hours. The Auditor's office planned to concentrate its audits in areas of state government with the greatest dollar expenditures. The committee accepted the auditor's proposed audit schedule and suggests that it be made available to the 1977 Appropriations Committees.

Amortization of Investment Premiums and Discounts

During the interim, the State Auditor's office said Fire and Tornado Fund and Bonding Fund investments were reported at par value without consideration of premiums paid or discounts taken at the time of purchase. The auditor recommended that investments be recorded and valued in accordance with generally accepted accounting principles. It was also recommended that an amortized cost accounting basis in accordance with NDCC Section 26-07-04, which requires the amortization of premiums and discounts on bond investments by insurance companies, be established for the reserve balances of the Fire and Tornado Fund and the Bonding Fund.

Based on its desire to have all state agencies properly valued and report bond investments, the committee recommends that state agencies making investments value such investments in accordance with generally accepted accounting principles as recommended by the State Auditor, and review from time to time their market values which should be parenthetically noted or footnoted in the agencies' financial statements. Generally accepted accounting principles require the amortization of premiums and discounts over the life of the bonds.

DEVILS LAKE FLOOD CONTROL PROJECT

The committee was briefed on the Water Commission's \$600,000 appropriation for the Devils Lake Flood Control Project. The law requires the commission to consult with the Devils Lake Basin Advisory Committee before allocating funds to the Devils Lake Flood Control Project.

At the October 1976 meeting, the water commission said the Advisory Committee had recommended that state funds for construction of channel A (Devils Lake Flood Control Project) be released. The Water Commission has recommended the \$600,000 be made available for the Channel A project, contingent upon the state engineer and the local political subdivision arriving at a basis for committing state funds to the project.

STATE HISTORICAL SOCIETY ARTIFACTS, INVENTORY, AND SAFEGUARDING

The State Auditor's report on the State Historical Society for the years ended June 30, 1974, and June 30, 1975, recommended an inventory of artifacts and library collections, an estimate of individual artifact values, and the computerization of fixed asset records. Mr. James Sperry, State Historical Society Superintendent, said periodic inventories, updating and improving of records, proper storage and preservation, and quick retrieval of items are critical needs in the museum and seven branch museums controlled by the Society. The committee recommended the Historical Society request funds from the Emergency Commission to provide adequate security for its artifacts and other historic items, and encouraged the Society to explore bonded storage for artifacts as a means of providing proper temporary security protection.

The committee also recommends that the State Historical Society's funding be increased during the next biennium to permit an adequate artifact in-

ventory, and to provide the necessary security to safeguard the artifacts.

The committee's recommendations concerning an adequate artifact inventory, and the necessary security to safeguard them, were considered by the department when its 1977-79 budget request was prepared. The budget request includes \$397,390 for the department's museum function, compared to \$55,243 included in the current biennium budget for this purpose. This includes \$102,944 to fund the new positions of a security supervisor and three security officers. A total of \$531,451 is being requested for the research and reference division, compared to \$151,782 included in the current biennium's budget for the care of the Historical Society's documentary collections.

QUARTERLY REPORTS ON THE EXPENDITURE OF FUNDS AUTHORIZED BY THE EMERGENCY COMMISSION

NDCC Section 54-16-06 requires agencies receiving Emergency Commission approval to transfer funds or to receive additional funds to submit quarterly an itemized report on the expenditure of such funds to the Emergency Commission's secretary and the chairman of the Legislative Audit and Fiscal Review Committee. Since the State Auditor now includes information on such Emergency Commission transfers and authorizations in his audit report, the committee believes that such reporting is no longer necessary. The committee recommends a bill to repeal Section 54-16-06. The committee included a section directing in the bill the State Auditor's office to review expenditures made pursuant to Emergency Commission action in the course of its audits of state agencies, departments, and institutions, and that it include such information in the audit reports.

PURCHASING FUND

The State Auditor's Department of Accounts and Purchases audit report for the year ended June 30, 1974, raised a question regarding the meaning of the word "surplus" as used in Section 54-44-11. This provides that when the surplus in the State Purchasing Fund exceeds \$150,000 on June 30 of each year, the excess shall be transferred to the state general fund. The committee, based upon a Legislative Council staff memorandum, interprets the reference to the term "surplus" to mean the cash balance remaining in the State Purchasing Fund on June 30 of each year.

NATIONAL GUARD UNIT MAINTENANCE FUNDS

In the audit report on the Adjutant General for the years ended June 30, 1973 and 1974, the auditor questioned whether legal authority existed for the National Guard to maintain checking accounts for Guard units throughout the state.

The Adjutant General's office reported that such unit maintenance funds are to pay routine maintenance, minor repair, and telephone costs for local unit operations, and this procedure is based on Section 37-01-23 which provides that "all matters relating to . . . government of the national guard, not otherwise provided for in this title or in the general regulations, shall be decided by custom and usage of the armed forces of the United States." The Adjutant General's office suggested three alternatives for the committee to consider: continue with the present method, handle such expenditures through the National Guard operating fund, or prepare legislation to specifically authorize such accounts.

The committee recommends a bill specifically permitting each unit of the North Dakota National Guard, with the approval of the Adjutant General, to maintain a nonreverting unit fund for purposes prescribed by federal law and regulations, and to pay petty operating, equipment, and supply costs incurred by the individual units.

TRADES OR BARTERING BY STATE DEPARTMENTS, AGENCIES, AND INSTITUTIONS

The State Auditor's office said some state departments, agencies, and institutions are involved in the trading of, and the assignment of sales proceeds of supplies, materials, and equipment to third parties in exchange for goods and services. The auditor believes that through these methods a department is able to extend its appropriation beyond the amount appropriated. Mr. Mike Schwindt, Chief Auditor, said the Auditor's office had found nothing in state law preventing trading or bartering. In an opinion which had been requested by the State Auditor and the Director of Institutions, the Attorney General said transactions involving trading or bartering do not necessarily violate Section 186 of the State Constitution. The State Auditor's office asked the committee whether trade transactions should be subject to the appropriation process.

The committee believes the trading or bartering of goods by state agencies, institutions, and departments should be discouraged except where authorized by the legislature. The committee recommends that, in keeping with good budgetary procedures and sound accounting practices, and except as otherwise provided by law, all transactions involving sales and purchases be made through the state treasury and be recorded in the state's accounting system. At its June 1975 meeting, the committee asked the Department of Accounts and Purchases to inform all state agencies, departments, and institutions of the committee's disapproval of such trading and bartering practices.

PENITENTIARY TAG AND SIGN INCOME

In the State Penitentiary audit report for the year ended June 30, 1974, the State Auditor recommended that the Penitentiary obtain clarification from either the Attorney General or the legislature of the proper accounting procedures applicable to its tag and sign income. In an opinion requested by the Penitentiary, the Attorney General said Section 54-23-25, which requires that the institutions under the Director of Institutions deposit their income into the respective operating funds, prevails over Section 12-48-13, which requires that tag and sign income be credited to the general fund. The committee recommends a bill repealing Section 12-48-13.

BANK OF NORTH DAKOTA AUDIT

The committee heard a report by Broeker Hendrickson and Co. on its audit of the Bank of North Dakota. The report indicated the Bank's trust department had not been subject to a complete audit. The committee recommended the Bank of North Dakota audit include all its activities, and that the Industrial Commission, in contracting for such audits in the future, provide for an audit of all activities, including the trust department.

Mr. H.L. Thorndal, Bank of North Dakota President, said the Industrial Commission has provided for an audit of the Bank's trust department and trust accounts in its engagement letter with Broeker Hendrickson for the next audit. He believed the auditors did include the trust accounts in past bank audits, but that such information had not been included in audit reports. Broeker Hendrickson representatives agreed to include statements on the Bank's various trust accounts in future audit reports.

NORTHEAST MENTAL HEALTH AND RETARDATION CENTER AUDIT

The committee heard a report by the State Auditor on his review of the Northeast Mental Health and Retardation Center, Grand Forks, covering the period July 1, 1974, through July 31, 1975. This audit was directed primarily at reviewing management controls and procedures as well as determining the basis for charges of mismanagement against individuals at the center. The review indicated a need for increased management attention in the areas of patient data, outreach, personnel management, and administrative procedures. The State Department of Health maintains controls over the operation of such centers through its licensing function.

The committee expressed disappointment that centers are not following sound accounting and management practices, and recommended to the Department of Health that it take necessary action to correct the situations noted in the report.

ALL ENCOMPASSING APPROPRIATIONS

During the interim, the State Auditor reported several instances where expenditures of federal funds are not pursuant to legislative appropriations. In his report on the Social Service Board, he recommended that suspense fund expenditures be pursuant to appropriation. The indirect and administrative cost reimbursements received by the state's colleges and universities from the federal government are not included in the appropriations, institutional collections, or otherwise subjected to direct legislative control. The auditor recommended that these be included in their institutional income and that such funds be appropriated by the Legislative Assembly for such purposes as it determines necessary at the institutions.

The committee recommends that all federal funds received by the Social Service Board and the Department of Public Instruction be included in their budgets and be subject to the appropriation process in accordance with Section 186 of the State Constitution. Approximately \$10 million in federal funds received by the Social Service Board for administrative expense reimbursement to counties, and approximately \$13 million in federal funds apportioned by the Department of Public Instruction during the current biennium to various political subdivisions were not appropriated by the legislature.

The committee also supports the State Auditor's recommendation that funds received by the institutions of higher education as indirect and administrative cost reimbursements pursuant to federal grants and contracts be included in the 1977-79 biennium budget requests as estimated income.

INDIRECT AND ADMINISTRATIVE COST REIMBURSEMENT UNDER FEDERAL GRANTS AND CONTRACTS

The State Auditor reported that some state agencies, departments and institutions are charging only part of what they could receive from the federal government as indirect and administrative cost reimbursement. This results in the state agency, department, or institution paying a portion of the administrative cost which could be charged to the federal grants and contracts. The committee asked the Legislative Council staff to contact state agencies to determine the amount of reimbursement now received, and the amount they could be receiving.

These indirect cost reimbursements are permissible under federal management circulars (FMC) 74-4 and 73-8. These define indirect costs as those agency, department, or institution costs that are not readily identifiable with a particular project or activity, but that are necessary to the general operation of the agency, department, or institutions and the conduct of its activities. FMC 74-4 (July 1974) provides the principles for determining the allowable indirect and administrative cost of programs administered by state and local governments under grants from, and contracts with, the federal government. FMC 73-8 (December 1973) contains the principles for determining indirect costs applicable to research and development under federal grants and contracts with state educational institutions.

An analysis of the replies received to the indirect cost reimbursement questionnaire sent by the Legislative Council staff indicates \$2,347,575 in reimbursement was received during the year ended June 30, 1976, out of a total \$2,937,874 of possible reimbursement. Agencies were also asked to explain the reasons for not seeking indirect cost reimbursement. Several said the federal funds were utilized to cover the program costs instead of indirect and administrative costs.

The committee recommends that all state agencies, departments, and institutions receiving

federal grant and contract funds investigate the possibility of receiving indirect and administrative cost reimbursements pursuant to FMC 74-4 and 73-8. It also recommends that any reimbursement received be subject to the state's appropriation process.

UNIVERSITY OF NORTH DAKOTA AUDIT

At the October 1976 meeting, the State Auditor presented his report on the University of North Dakota audit for the year ended June 30, 1975. The audit report contained recommendations regarding indirect administrative costs, cancelled appropriation payments, land leases, payroll, internal auditing, accounts receivable, investments, duplicate payments, equipment inventory, contingent funds, discretionary and office accounts, special assessments, additional employment of public employees, and equipment financing and purchasing. Mr. Schwindt, the Chief Auditor, said questions of legality raised by the report could not be answered by his office, but must be reviewed by the Attorney General's office or this committee. He reported that a copy of the audit report had been filed with the Attorney General.

The committee expressed its concern over the improper fiscal practices reported by the State Auditor in his UND audit report for the year ended June 30, 1975, and urged the university to take the necessary corrective action to bring its operations into compliance with the State Auditor's recommendations.

WRITEOFF OF ACCOUNTS RECEIVABLE

During the interim, the committee heard reports pursuant to Section 25-09-02.1 relating to the writeoff of accounts receivable. The report by the State Hospital for the year ended June 30, 1975, indicated that \$1,195,791 of accounts receivable had been written off. The report for the year ended June 30, 1976, indicated that \$15,273,586 of patient accounts receivable were written off during that year.

The committee also received reports from the Grafton State School and San Haven State Hospital. They had not written off any accounts, but filed reports on the aging of accounts receivable for the years ended June 30, 1975, and June 30, 1976.

OTHER ACTION

The State Auditor has included in the audit reports findings concerning conflicts between statutory provisions and areas where agencies have failed to comply with state law. The committee recommends that the State Auditor's office continue to report situations relating to noncompliance with state law observed while conducting audits.

The State Auditor recommended that Dickinson State College charge to its old appropriation only those expenditures for goods and services received and accepted prior to the end of the biennium. The

committee considers the practice of spending appropriated funds for commitments made prior to July 1 of the beginning of a new biennium, for goods and services received after July 30 following the close of the biennium, as contrary to acceptable state fiscal and budgetary practices.

FUTURE STUDIES

At the last meeting, committee members suggested that the Committee on Budget "A" (Legislative Audit and Fiscal Review Committee) conduct a study during the next interim on special assessments at the state institutions.

BUDGET "B"

House Concurrent Resolution No. 3032 directed the Legislative Council to determine the feasibility and desirability of tying the level of state expenditures to the level of personal income in North Dakota.

House Concurrent Resolution No. 3091 directed the Legislative Council to conduct a thorough study and review of the type, size, and character of all governmental programs and services provided by the state, or supported in whole or in part by state revenues or funds, and fully evaluate the budgetary requirements for the support of those programs and services. The purpose of the study was to be able to recommend to the 1977 Legislature ways it could eliminate or reduce programs, if necessary, for economic or other reasons.

Committee members were Representatives Vernon Wagner, Chairman, Myron Atkinson, Richard Backes, Aloha Eagles, Charles Fleming, Layton Freborg, LeRoy Hausauer, Corliss Mushik, James Peterson, Robert Reimers, Oscar Solberg, Earl Strinden, and Malcolm Tweten; and Senators Chuck Goodman, S. F. Hoffner, Evan Lips, Lawrence Naaden, David Nething, Ernest Pyle, Theron Strinden, and Jerome Walsh.

The report of the Committee on Budget "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

STUDY OF TYING THE LEVEL OF STATE EXPENDITURES TO THE LEVEL OF PERSONAL INCOME

The committee's study of personal income and state spending levels included review of the growth of general fund expenditures and personal income during the past two decades. The committee reviewed similar income-expenditure proposals considered in other states, North Dakota's revenues and expenditures compared to other states, state expenditures during the past 20 years, and the relationship of personal income to state expenditures. In addition, the committee reviewed forecasts of future levels of personal income prepared by the North Dakota State University Agricultural Economics Department.

Personal income is total income received by households. It is income after deducting personal taxes. Individuals may use personal income for personal consumption expenditures for goods and services, interest paid by consumers, or personal saving.

California and Arizona Proposals

The committee extensively reviewed recently proposed constitutional amendments in Arizona and California limiting state expenditures to a percentage of personal income. Voters defeated both measures.

The 1973 California proposal would have limited state expenditures to seven percent of personal income. Generally, it applied the percentage formula to all expenditures made from the general fund, and from gasoline tax and motor vehicle license revenues. It did not cover expenditures made from revenues in the form of federal funds, fees paid for services or products, contributions to unemployment and retirement funds, higher education tuition payments, game and fish fees, park and recreation fees, and other miscellaneous special fund revenues.

The 1974 Arizona proposal was much shorter and less complex than California's. It would have limited state expenditures from state revenues to 8.4 percent of total Arizona personal income. The limitation applied only to general fund expenditures, and did not apply to expenditures of federal funds, fees for services, motor vehicle fuel taxes, game and fish fees, motor vehicle registration fees, and higher education tuition payments.

Both proposals provided adjustments to the spending limitation percentage in the event of a transfer of the cost of any governmental function or program between the federal government and the state, or between the state and political subdivisions. Both proposals required a two-thirds vote of the legislature to increase the level of spending above the percentage limitation.

The committee reviewed several memorandums about general fund appropriations as a percentage of personal income, general fund transfer payments to local governments, and comparative costs of state government in North Dakota, Montana, and South Dakota.

Appropriations — Personal Income

The schedule below presents total general fund appropriations from sources now reported as general fund revenues for the 1955-57 through 1975-77

bienniums. It also shows the relationship of the general fund appropriations as a percentage of personal income:

Biennium	General Fund Appropriation	Two Years' Personal Income ^{1/}	General Fund Appropriation as Percentage of Two Years' Personal Income
1955-57	\$ 61,221,906	\$1,753,000,000	3.49
1957-59	\$ 69,584,389	\$1,962,000,000	3.55
1959-61	\$ 88,713,576	\$2,092,900,000	4.24
1961-63	\$ 99,946,121	\$2,386,900,000	4.19
1963-65	\$101,161,948	\$2,627,000,000	3.85
1965-67	\$120,954,227	\$3,134,400,000	3.86
1967-69	\$147,685,121	\$3,326,700,000	4.44
1969-71	\$185,743,929	\$3,869,200,000	4.80
1971-73	\$229,379,908	\$4,847,200,000	4.73
1973-75	\$299,423,691	\$7,175,500,000	4.17
1975-77	\$442,253,253	\$7,289,000,000 ^{2/}	6.07 ^{2/}

^{1/} The personal income amounts are the totals for the calendar years ending in each of the bienniums.

^{2/} Estimate.

Transfer Payments

The committee also reviewed the amount of transfer payments made from the state general fund to political subdivisions during the past two decades. Transfer payments increased from \$17.2 million during the biennium ending June 30, 1957, to \$190.1 million during the biennium ending June 30, 1977. These transfer payments amounted to 28 percent of general fund appropriations for the 1955-57 biennium, compared to 43 percent for the 1975-77 biennium. The major reason for the transfer payment increase is the additional support for elementary and secondary education from the state general fund, and the general fund appropriation for personal property tax replacement. The 1955-57 general fund appropriation for aid to elementary and secondary education was \$16.1 million, or 26.3 percent of the total general fund appropriations. The 1975-77 foundation program appropriation to elementary and secondary schools from the general

fund was \$141.4 million, or 32 percent of total general fund appropriations.

In addition to general fund appropriations to political subdivisions, it was reported that state government collects taxes and fees which are transferred to local governments. During the 1973-75 biennium, \$52.7 million of cigarette, gas, oil and gas production, and other special taxes were transferred to local governments.

After reviewing comparative data of state and local expenditures in Montana, South Dakota, and North Dakota, committee members observed that North Dakota, when compared to Montana and South Dakota, has made a significant switch from its dependency on property taxes to state revenues. Recent United States Census Bureau reports indicate that 31.3 percent of total state and local taxes collected for the fiscal year 1974-75 in North Dakota

were property tax collections, compared to 49.6 percent in Montana and 49.1 percent in South Dakota. The reports also indicate that total state and local expenditures are higher in South Dakota and Montana than in North Dakota.

In North Dakota and South Dakota sales tax revenues represent the largest source of state income. Sales tax collections represent approximately 52 percent in North Dakota and 60 percent in South Dakota of total estimated general fund receipts. Montana does not have a sales tax. Its largest source of revenue is the personal income tax which represents 39 percent of the total estimated state revenue. Montana has significantly larger general fund revenues than North Dakota derived from coal taxes, a corporation license tax, and the inheritance tax. Although Montana does not have a sales tax and South Dakota does not have a state income tax, both states levy personal property taxes. The total 1974 personal property tax collections in Montana were \$77,300,000 and in South Dakota were \$38,083,009. North Dakota no longer has a personal property tax. However, the North Dakota Legislature appropriates funds from the general fund for personal property tax replacement. In North Dakota the 1974 personal property tax replacement funds paid to local governments totaled \$8,735,299.

Study of Personal Income and Estimates of Personal Income and State Sales and Income Taxes for the 1977-1979 Biennium

The committee at its organizational meeting expressed interest in hearing reports about economic reasons for the growth of public sector expenditures and the possibility of forecasting future levels of North Dakota personal income. A report prepared by the NDSU Agricultural Economics Department about the reasons for the growth of public sector expenditures divided state spending into two categories: expenditures necessary for the maintenance of law and order, and expenditures for doing the things people want to do collectively.

The report states that expenditures of state and

local governments in the United States have shown steady increases, and that these increases, even at an accelerated rate, seem almost certain to continue. Educational and health services, recreational facilities, and other services begin to increase in the want patterns of individuals as incomes increase. At certain levels of real income, the demand for public services are quite high. The single most important explanation for the increasing relative size of government in the economy, says the report, may lie in population growth or the thinning out of the rural population. Expenditures for education are the most important single category for states and localities, followed by spending for highways, public hospitals, public assistance, and community facilities.

Because, according to the report, a high percentage of personal income in North Dakota is linked directly or indirectly to farm output prices, there is more year-to-year variation in personal income in the state than in the nation. For example, farmers income rose from about 21 percent of total personal income in 1972 to more than 38 percent in 1973.

The committee asked NDSU's Agricultural Economics Department to prepare forecasts of future personal income levels in North Dakota. Since state general fund sales and income tax collections for the 1977-1979 biennium could be estimated based upon personal income projections, the committee also contracted for this information to assist the Budget Section, the Executive Budget Office, and the legislature in developing income estimates for the next biennium. The Department of Accounts and Purchases is a party to the contract calling for the income and sales tax estimates.

The forecasting of personal income involved projections of receipts from sales of livestock, crops, mining output, and manufactured products, as well as federal government outlays and tourism revenue in the state for 1976, 1977 and 1978. Dr. Thor Hertsgaard, the director of the project, reported that total personal income in North Dakota has risen from \$872,000,000 in 1955 to \$3,652,000,000 in 1975. The high, medium, and low projections of personal income for 1976, 1977, and 1978 are as follows:

Total Forecasts of Total Personal Income in North Dakota for 1976, 1977, and 1978

	Low Forecast	Medium Forecast	High Forecast
1976.....	\$3,425,000,000	\$3,637,000,000	\$3,849,000,000
1977.....	\$3,182,990,000	\$3,954,830,000	\$4,983,230,000
1978.....	\$3,261,350,000	\$4,033,190,000	\$5,103,420,000

**Projected Tax Revenues From Personal Income Tax, Sales and Use Tax,
and Corporate Income Tax, Fiscal Years 1976-77, 1977-78, and 1978-79**

Fiscal Year		Projected Tax Revenues		
		Personal Income Tax	Sales and Use Tax ^{a/}	Corporate Income Tax
		(million dollars)		
1976-77	(High)	49.34	97.59	8.84
	(Medium)	45.85	90.69	8.26
	(Low)	42.37	83.80	7.68
1977-78	(High)	67.95	100.06	11.85
	(Medium)	51.09	74.69	9.09
	(Low)	38.43	55.50	7.04
1978-79	(High)	69.93	102.39	12.17
	(Medium)	52.37	76.17	9.30
	(Low)	39.72	56.99	7.24

^{a/} The approval of the initiated measure in the election on November 2 reduced sales and use and motor vehicle excise tax to three percent; sales and use tax on farm machinery and irrigation equipment to two percent; and eliminated sales and use tax on electricity; all effective January 1, 1977. The effect of this change in the tax structure is expected to reduce sales and use tax collections by about 32 percent in fiscal years 1977-78, 1978-79 and in the fourth quarter of fiscal year 1976-77. The projections in this column have been adjusted for that fact.

Livestock and crops sector (the source of most of the personal income in the state) estimates are high, medium, and low projections. The remaining sector projections are trend projections from the period 1958-75. High projections of crop sales are based on 20 percent above 1971-75 average yield and prices of \$5 for wheat and \$3 for barley. Medium projections are based on 1971-75 average yields and prices of \$4 for wheat and \$2.50 for barley. Low projections are based on 20 percent below 1971-75 yields and prices of \$3 for wheat and \$2 for barley. Livestock sales estimates were based on NDSU Agricultural Experiment Station and the Cooperative Extension Service estimates. A copy of Dr. Hertsgaard's report is available at the Legislative Council office.

Citizen and State Officials Comments

The committee invited interested citizens, state officials, and representatives of local organizations to comment on the advisability of tying state spending to the level of personal income. Two persons appeared before the committee supporting the concept. Former State Senator Dave Robinson encouraged the committee to recommend a constitutional amendment to limit increases in state government expenditures to the same percent that personal income increases, as did the president of the North Dakota Townships Association.

State officials testified that such a constitutional amendment would be a substitute for the legislature's judgment and would create enough uncertainty to make it difficult to plan more than one year ahead.

The North Dakota League of Cities opposed the concept as too restrictive of the legislature. The North Dakota Association of Counties opposed the proposal, saying it would restrict government services in times of need or disaster. The Grafton Mayor said the proposal lacks the flexibility necessary for a viable government and society. He said state government has assumed greater responsibilities because cities and school districts have demanded state support for local services since they can only rely on property taxes as a basic source of income.

Other reasons expressed in opposition to the proposal included: the legislature through its budget process already limits state spending; such a limit could be the creation of a ceiling which might become the floor; and the proposal severely limits the legislature's responsiveness to economic and social demands in times of emergency.

Committee Action

The committee tabled the study regarding limiting state expenditures to a percentage of the state's personal income. Committee members said it is important to continue reviewing the relationship between state spending and personal income, but state expenditures should be based on necessary services and not on what the level of personal income may be. It was also pointed out that a limitation on state expenditures could increase property taxes.

The committee recommends that the estimates of personal income and the income and sales taxes for the next biennium be made available for review by the Budget Section and the appropriate committees of the 1977 Legislature. Some committee members believe the estimates might be too high if the state incurs a drought during the next biennium.

REVIEW OF GOVERNMENTAL PROGRAMS AND SERVICES

In its study of all governmental programs and services, the committee reviewed the program priorities of 22 major state agencies and institutions; monitored on a quarterly basis the status of appropriations made by the 1975 Legislature for the charitable and penal institutions, the institutions of higher education, the Department of Public Instruction, the Highway Department, the Division of Vocational Education, and the State Social Service Board; and, in cooperation with the Executive Budget Office, investigated the possibility of having state agencies and institutions complete zero growth budget forms for legislative consideration.

Priority of Programs

The Council staff surveyed program priorities for the following 22 state agencies and institutions:

- Accounts and Purchases
- Attorney General's Office
- Central Data Processing
- Central Personnel Division
- Director of Institutions
- Game and Fish Department
- Grafton State School
- Health Department
- Highway Department
- Industrial School
- Library Commission
- Penitentiary
- Public Instruction
- Radio Communications Department

San Haven State Hospital
School for the Blind
School for the Deaf
Social Service Board
South Central Mental Health
and Retardation Center
State Historical Board
State Hospital
Tax Department

Since the classification of expenditures into programs is a complex and time-consuming process, the committee asked state agencies and institutions to identify programs and their priorities as they were being converted to the new accounting system established by the Department of Accounts and Purchases. This new system makes such reporting possible. Eventually, most state agencies will be under the new accounting system; however, during the committee's study only the agencies reviewed by the committee had installed the new system. The 22 agencies and institutions reviewed by the committee received during the current biennium \$281 million in special fund appropriations and \$252 million in general fund appropriations totaling \$533 million or 60.5 percent of the state's total \$878.7 million of authorized general and special fund spending.

A detailed report indicating the program priorities of each of the agencies is available at the Legislative Council office. The committee recommends this information be made available to assist members of the 1977 House and Senate Appropriations Committees in the event major budget reductions are required.

In addition to surveying the program priorities of agencies and institutions, the committee polled its own members, asking two questions regarding alternative state finance policies that could be followed in the event major budget reductions become necessary in the next or future bienniums.

The first question asked committee members how they ranked courses of action that could be taken to achieve a balanced budget in the event of substantial reductions in general fund revenues. Based upon the survey of committee members, the committee would consider courses of action in the following order:

1. Evaluate the need and value of each major state program and reduce it if necessary based upon the findings of such evaluation.

2. Disapprove all major capital construction projects except emergency situations.
3. Reduce the number of employees, on an equal percentage basis in each state agency and institution.
4. Increase fees charged by state agencies and institutions including tuition charged at the colleges and universities.
5. Authorize no new programs.
6. Reduce the levels of state employee compensation.
7. To the extent possible transfer funding responsibilities to local political subdivisions.
8. Increase the state income tax rate.
9. Increase the state sales tax.

The second question asked the order of importance of governmental agencies and institutions. This information would be of assistance to the legislature in the event major budget reductions are necessary. The results of this question indicated the following in order of importance:

1. Health and welfare (Health Department, Social Service Board, Vocational Rehabilitation, and others)
2. Judicial and legislative branches of government and the offices of elected state officials (Legislative Assembly, Supreme Court, Governor, and others)
3. General government (other than the judicial and legislative branches and the offices of elected state officials; Accounts and Purchases, Director of Institutions' Office, and others)
4. Education (Foundation Program, Higher Education, State Library, and others)
5. Public safety and security (Highway Patrol, State Penitentiary, Adjutant General and National Guard, and others)
6. Regulatory agencies (Workmen's Compensation Bureau, Securities Commissioner, State Laboratories Department, Department of Banking and Financial Institutions, and others)

7. Agriculture, industrial development, and promotion (Wheat Commission, Experiment Stations, BIDD, and others)
8. Highways (Highway Department)
9. Recreation and natural resources (State Historical Society, Park Service, Water Conservation Commission, Outdoor Recreation, and others)

Monitored Status of Appropriations

The Legislative Council staff prepared quarterly reports on the status of the 1975 appropriations to the charitable and penal institutions, the colleges and universities, the Department of Public Instruction, the Division of Vocational Education, the Highway Department, and the State Social Service Board. Each agency forecasted its expenditures on a quarterly basis for the biennium. After the end of each quarter, the Council staff prepared a report for committee review comparing actual expenditures to estimates. Special reports were made after each quarter in key budget areas such as energy and food costs.

The reports provided information on budget problems needing immediate attention and could be a basis for the introduction of any budget-related legislation. Budget problems were reported relating to unemployment compensation benefits paid by the Board of Higher Education to former employees of the state's colleges and universities, the State Penitentiary, and the State Weather Modification Board.

Generally, however, the reports indicate the budgets are in much better condition than two years ago, and it appears that expenditures will be within estimates and the limits of legislative appropriations.

Although it is not a problem during the current biennium, the committee was informed by the Social Service that the federal matching percentage for Medical Assistance, AFDC, and Foster Care will be reduced from 57.59 percent to 50.7 percent during the next biennium. This will require an increase of over \$5 million from the state general fund to maintain Social Service Board programs at their present levels. The reduction will take place because the federal formula is based on the state's per capita income. Of the \$116,182,569 appropriation of all funds to the Social Service Board during the current biennium, \$39,554,088 is from the general fund.

Unemployment Compensation

The 1975 Legislature appropriated \$75,106 to the Board of Higher Education to reimburse the Employment Security Bureau for benefit claims resulting from persons leaving state college and university employment. The law requires employees at the state's colleges and universities to receive unemployment insurance coverage. The board chose to reimburse the Employment Security Bureau for all claims paid rather than pay an unemployment tax.

At the October 1976 committee meeting, the Employment Security Bureau said the board will be billed an estimated \$267,340 for claims paid on behalf of college and university employees during the current biennium. The board's 1975-77 appropriation will cover \$75,000 of this amount. The benefits paid were greater than anticipated because more employees than expected terminated employment voluntarily, because mandatorily retired employees were also eligible for coverage, and because a number of working wives were eligible for benefits after they terminated work because their spouse graduated and obtained work elsewhere.

The committee asked the Legislative Council staff to determine whether it would be possible to amend state law to limit the number of persons in these categories. A memorandum prepared by the Council staff indicates it would be possible. The law could be amended to exclude a student's spouse from unemployment coverage and yet be consistent with federal law if the spouse is advised by the college or university at the time of employment that the job is provided under a financial assistance program and that it will not be covered by unemployment insurance. The committee recommends a bill requiring such notification.

The staff memorandum also points out that it is possible to require an employee who voluntarily terminates employment or is terminated because of misconduct to go back to work and earn 10 times his weekly benefits rather than waiting 10 weeks without working to overcome his disqualification to receive unemployment benefits. Unemployment benefits could be reduced by retirement benefits received under a state retirement program. The committee, however, does not make any recommendations for change in these areas. It does recommend that the Board of Higher Education be encouraged to introduce, during the 1977 Legislature, a bill seeking a deficiency appropriation for amounts due the Employment Security Bureau

on this matter because provision of these benefits is mandated by federal law. This total, it is estimated, could approach \$200,000.

At the committee's last meeting, Employment Security Bureau officials reported that legislation recently passed by Congress, and effective January 1, 1978, requires that all North Dakota county, municipal, and state employees be covered by employment compensation insurance. This will provide coverage to an additional 45,000 employees in North Dakota, 10,000 of whom are state employees. It was also reported that the tax base will increase from the present \$4,200 to \$6,000. At a 2.7 percent tax rate, this amounts to approximately \$162 per employee. The committee asked its staff to prepare a report on the cost of providing state employees unemployment insurance coverage for the next biennium and present it to the Budget Section at its December 1976 meeting.

State Penitentiary

At its June 1976 meeting, the committee asked its staff to determine the adequacy of the State Penitentiary budget for the biennium ending June 30, 1977. The analysis was requested because the warden said his present budget was inadequate, primarily because of unexpected increases in Penitentiary population. Penitentiary officials indicated an additional \$79,000 might be necessary for the Penitentiary to pay its expenses for the remainder of the biennium. The Legislative Council staff study indicated that an additional \$10,357 may be needed in fees and services and \$16,734 in supplies and materials. However, transfers from other areas of its budget may be adequate to meet the needs in these two categories and consequently a deficiency appropriation may not be necessary.

The prison population at the time of the 1975 Legislative Session was 150, and it was estimated then it would be an average of 180 during the current biennium. On October 1, 1976, that average was exceeded by 23 as the population reached 203. Penitentiary officials agreed that a deficiency may not occur. However, they indicated that if certain CETA positions do not continue, and if medical costs are greater than estimated by Legislative Council staff, the budget will be inadequate. The Council staff agreed that a further review of the Penitentiary's needs should be made during the 1977 Legislative Session.

North Dakota Weather Modification Board

At the committee's October 1976 meeting, the North Dakota Weather Modification Board reported that its \$654,760 general fund appropriation will be inadequate to complete the biennium. It plans to ask for a \$265,000 deficiency appropriation from the 1977 Legislative Assembly to begin its program for the 1977 crop season. The 1975-77 appropriation did not include funds to begin the 1977 crop season. The board also reported that for its office to remain within its budget until the 1977 Legislature meets, it will have to cut back staff personnel.

The Weather Modification Board spent more money on cloud seeding than estimated because of unanticipated weather activity in August. Committee consensus is that poor budget practices are being used by the North Dakota Weather Modification Board. The committee recommends that future board appropriations be on a two-year line item basis, and that a report on its budget status be included in the 1975-77 Legislative Council report and be filed with the Appropriations Committees of the 1977 Legislature.

The committee also asked its staff to contact the State of South Dakota for information regarding its Weather Modification operations and present such information to the Budget Section at its December 1976 meeting.

Zero Growth Budgets

The committee considered asking state agencies and institutions to complete zero growth budget forms along with the budget request forms they normally present to the Executive Budget Office and the legislature. The zero growth forms require agencies and institutions to indicate how they would operate during the 1977-79 biennium if their spending levels each year were based upon the expenditure level during the fiscal year ending June 30, 1977.

A number of agencies and institutions opposed the zero growth budget concept, saying it would create problems for agencies with limited budgets. It was also reported that even though it may be possible to reduce state spending in certain areas, it would not be possible to reduce it in other areas without additional expenses being incurred by political subdivisions. In addition, the committee was advised that since zero growth budget forms would require a lot of additional state agency and institution personnel work, and since the need for developing

budgets with reduced spending levels did not appear necessary in light of the state's present economic conditions, the committee should discontinue consideration of the zero growth budget concept.

The committee decided not to give further consideration to the zero growth budget concept.

OTHER COMMITTEE ACTIVITIES

Food Cost Survey

The Legislative Council staff surveyed food costs at the various state charitable and penal institutions, the price employees are charged for meals, and other policies relating to food handling. The per-meal charge to institutional employees, while varying from institution to institution, is approximately 50 cents for breakfast, 60 cents for lunch, and 55 cents for dinner. Comparing the actual cost of food for each meal with the price charged the employee, only the School for the Deaf, Grafton State School, and Soldiers' Home charged employees enough to cover costs. All other institutions charged employees less than cost to eat and considered meals at institutions a fringe benefit to employees. Regarding food service policies at the institutions, only the Grafton State School and the State Hospital serve meals to a number of employees and others without charge.

The committee recommended that the Director of Institutions and the State Health Department

establish uniform policies regarding the availability of meals to employees at the institutions under their control. Pursuant to this recommendation, the Director of Institutions reported that his office has established a policy and directed that charges to employees for meals at the charitable and penal institutions under his control be at least the cost of the raw food plus 10 percent, and that prices be reviewed once a year. He indicated that administrators have the flexibility to determine which employees will receive food without cost because of the nature of their employment and duties. He reported that all institutions under his control presently comply with this directive.

Chase Econometrics — Economic Forecasts

At the June 1976 meeting, the committee and the Department Accounts and Purchases jointly contracted with Chase Econometrics for an economic forecasting service relating to the United States economy and the economy of North Dakota and surrounding states. These forecasts contain numerous items, including agricultural prices, consumer price index projections, and future expected costs of energy products. The service's information and forecasts are on file with the Legislative Council. It will be of use to the legislature and the Executive Budget Office in revenue estimating for the next biennium. It will also aid Appropriations Committees in determining the impact of inflation on the budgets of the various state agencies and institutions for the next biennium.

BUDGET "C"

The Committee on Budget "C" was assigned five study resolutions, and performance reviews of selected state agencies.

House Concurrent Resolution No. 3058 directed a study of the space needs of state agencies located in the Bismarck area. Senate Concurrent Resolution No. 4051 called for a study of Supreme Court space needs. Senate Concurrent Resolution No. 4045 directed a study to determine the needs and financing for additional college buildings and capital improvements. House Concurrent Resolution No. 3070 directed the Legislative Council to study and monitor the State Central Personnel Classification System. The committee was also assigned the portion of Senate Concurrent Resolution No. 4069 directing a study of state employee compensation levels.

The committee selected the State Historical Board, State Library Commission, and State Fair Association for performance reviews.

Committee members were Senators Evan Lips, Chairman, Walter Erdman, Harry Iszler, George Longmire, John Maher, and Clarence Schultz; and Representatives Ralph Christensen, Neil Hensrud, Eugene Laske, Daniel Rylance, Enoch Thorsgard, and Michael Unhjem.

The report of the Committee on Budget "C" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

STATE AGENCY SPACE NEEDS

Background

House Concurrent Resolution No. 3058 stated that the study of state agency space needs in the Bismarck area should include consideration of construction of new buildings, leasing, renovation or destruction of existing buildings, or the transfer of agencies to other quarters. Alternatives considered by the committee to provide adequate space for state agencies included continuation of present leasing policies, use of office space at major state institutions to house departments presently located in Bismarck, use of the Liberty Memorial Building (State Museum), and construction of a state office building.

The committee's study began with a review of the Director of Institutions' October 1974 Space Utilization Study. This study, directed by the 1973 Legislature, said there is a need for more state office space and recommended construction of a new state office building.

The Director of Institutions reported that state agencies in Bismarck would pay \$386,483 for leased space during the 1975-76 fiscal year. Generally, office space is presently rented for between \$5 and \$6 per square foot annually.

The committee also conducted a survey to determine how much office space at major state institutions would be available for use by state agencies in the Bismarck area. The survey results indicated a very limited amount of office space or space that was suitable for renovation of office space is available at other state institutions.

State Office Building

The State Land Commissioner described to the committee his proposal to construct an office building financed by moneys belonging to the permanent common school trust funds. The proposed building would encompass 118,000 gross square feet and 94,400 usable square feet. The estimated construction cost is \$6.25 million or \$53 per square foot.

To recover construction and maintenance costs, and provide a return on investment to the permanent common school trust funds, it was proposed that state agencies would rent space in the building. The estimated annual rental charge at the time of occupancy in 1979 would be \$6.53 per square foot which would generate total rentals of \$616,432 per year. The plans call for amortization of the cost of the building over 50 years. Over this period of time, \$15,625,000 of interest and \$6,250,000 of principal will have been paid to the common school trust fund. Over 50 years, the permanent common school trust fund would receive an average 10 percent annual interest return. At the end of 50 years, the Land Department would transfer title to the building from the permanent common school trust fund to the state.

The committee requested information on comparative costs of present rental charges paid by state agencies to rental charges proposed for the state office building. It was reported that if rentals for recently constructed office space presently rented by state agencies were increased 10 percent per biennium, agencies would pay \$6.60 to \$6.71 per square foot during the 1977-79 biennium and \$7.26 to \$7.38 per square foot during the 1979-81 biennium.

As the committee's review of the Land Commissioner's proposal progressed, it invited state agency officials to comment on the advisability of constructing a state office building to accommodate agencies with related functional responsibilities, primarily natural resource agencies and human service agencies. The Director of Institutions said he supports the Land Commissioner's proposal. He said natural resource agencies and human service agencies could occupy approximately 90,000 square feet in the proposed building. These agencies are the Social Service Board, Vocational Rehabilitation Division, Health Department (but not health laboratories), REAP, Reclamation Siting Division of the Public Service Commission, Water Commission, Bismarck office of Geological Survey, Land Department, Attorney General natural resource counsels, and the State Planning Division. The Land Commissioner said human service agencies and natural resource agencies would pay rent primarily from federal funds and other revenue sources.

The state engineer said the Water Commission would not object to being in an office building where agencies with related natural resource functions are located. It was reported that a recent review by Touche Ross and Co. of the coordination of Social Service Board responsibilities pointed out a need for centrally located office space. The Social Service Board supported a proposal to house agencies with related human service functions in one building. The Health Department's executive officer said several Health Department offices had recently moved to new rented quarters. However, the Health Department is still located in three facilities. Director of Accounts and Purchases Lloyd Omdahl supported a proposal to bring agencies with related functions into one location.

Before taking final action on the proposal, the committee asked the Director of Institutions to take necessary action, including contacting the Capitol Grounds Planning Commission, to select a site for construction of a proposed state office building and report his findings to the committee. At the October

1976 committee meeting, he reported that the Capitol Grounds Planning Commission had considered various sites on the Capitol grounds for a proposed state office building. The commission indicated that should the legislature authorize construction of a state office building, it should be built on the Capitol grounds on a north-south axis directly to the east of the Capitol tower connecting both the Capitol tower and the Highway Building. The Director of Institutions said parking space on the Capitol grounds would need to be expanded to accommodate parking for the building. He also pointed out that a building in this location could have a cafeteria that could accommodate employees of both the Capitol and the Highway Building. This cafeteria could be of sufficient size to accommodate the large number of persons visiting the Capitol during the legislative session as well as having sufficient space for better service to legislators.

The committee recommends a bill authorizing the Board of University and School Lands to invest \$6,250,000 from the permanent common school trust fund for construction of a state office building. Space in the building will be rented to state agencies with the rental proceeds going to pay for construction costs, maintenance costs, and a return on investment to the common school trust fund. The bill provides for amortization of the construction cost over 50 years at which time title will be transferred from the permanent common school trust fund to the state.

Use of Liberty Memorial Building

The committee also considered what use will be made of the Liberty Memorial Building once the Historical Board occupies the Heritage Center. The Director of Institutions recommended that the State Library Commission be moved to the Liberty Memorial Building.

The State Librarian said the Liberty Memorial Building would provide sufficient space for present and future library operations. The Library Commission presently rents 10,820 square feet at a cost of \$92,402 for the 1975-77 biennium. He said a total of 23,021 square feet, or an additional 12,201 square feet of space is necessary to meet the Library Commission's space needs to 1988. He said the Liberty Memorial Building would require some remodeling for library operations. It was noted that the Library Commission was located in the Liberty Memorial Building until 1970.

The president of the North Dakota Library Association presented a resolution passed by the

association supporting the relocation of the State Library Commission on the Capitol grounds. The program review of the State Library Commission conducted by the committee recommended that plans to renovate the Liberty Memorial Building for occupancy of the State Library Commission should begin immediately.

The Director of Institutions stated that the Liberty Memorial Building could also provide additional space for the state's records management program. The Secretary of State said increased storage space for the records management program is necessary.

The committee recommends a resolution urging the Director of Institutions to move the State Library Commission to the Liberty Memorial Building once that building is vacant. The resolution also encourages the Director of Institutions to apply for preplanning funds to adequately plan any remodeling necessary to the Liberty Memorial Building for use by the State Library Commission.

SUPREME COURT SPACE STUDY

Overview

During the interim, the committee toured the present Supreme Court facilities, discussed the Supreme Court space needs with the Supreme Court justices and employees, and received reports from court facility planners and architects.

The Supreme Court said its present space is inadequate to meet the needs of the judicial branch of government. They said it operates in the same amount of space it occupied when the Capitol was constructed. The justices said offices are overcrowded, there is insufficient recordkeeping space, and library facilities are inadequate to store the publications received by the court. The Chief Justice said the Supreme Court recommends construction of a new building to provide adequate space for present and future Supreme Court operations.

Alternatives Considered

The committee requested the Supreme Court to present alternative plans to obtain sufficient space. At the October 1975 committee meeting, the court presented a Supreme Court Facility Study Report prepared by the National Clearinghouse for Criminal Justice Planning and Architecture. It stated that the overall environment for the court and its administrative offices is overcrowded, cramped, and

inundated by a variety of physical planning and design problems. The report indicates a need for a considerable amount of additional space. The report contained the following alternatives reviewed by the committee to meet the additional Supreme Court space needs:

1. **Construction of a new Supreme Court building.**
2. **Remodeling present facilities and expanding the Supreme Court within the Capitol.**
3. **Adding and utilizing space for the Supreme Court within the proposed new Heritage Center.**
4. **Remodeling the existing Liberty Memorial Building for the Supreme Court.**

The report states that a new facility would best meet the Supreme Court's needs since it would eliminate all existing planning and functional problems and also provide flexibility for future expansion. The preliminary estimated cost of a new building was \$2.41 million to \$2.87 million. The estimated cost of expanding present facilities in the Capitol would range from \$445,000 to \$826,000. However, the expansion of the present Supreme Court facilities within the Capitol will only occur at the expense of other state agencies housed in the building, the report states. The report indicates that enlarging the proposed Heritage Center for Supreme Court operations would cost approximately the same as a new building. The cost of remodeling the Liberty Memorial Building to suit Supreme Court needs would range from \$839,000 to \$1,557,000. The report concludes that no interim solution will begin to solve the Supreme Court's space problems since there is no additional space likely to become available in the Capitol. The report recommended that professional architectural and planning expertise be engaged to plan a new court building.

Chief Justice Ralph Erickstad reviewed a letter received from the late Superintendent of Construction, Mr. Corliss Nelson, which stated that present Supreme Court space is inadequate. This letter also states that remodeling the Liberty Memorial Building for Supreme Court space should not be considered, since renovation of the building to meet the Supreme Court's needs would destroy the interior architectural design of that building.

Chief Justice Erickstad said the Supreme Court would prefer to stay in the Capitol rather than be

located in an office building where additional state agencies are located. He said the court does not want to be located in a building that does not include space for its law library. He also said the Supreme Court does not collect revenue so it could not pay rent from its own revenue for space in the state office building proposed by the Land Commissioner.

Supreme Court Building

The committee encouraged the Supreme Court to request planning funds from the state planning revolving fund for preliminary designs, limited schematic drawings, and cost estimates for a Supreme Court building, and plans to convert present court space to legislative use. The committee also asked the court to present these plans to the Capitol Grounds Planning Commission and to report the commission's comments and recommendations back to the committee.

The Supreme Court received \$48,300 in planning funds. It selected Space Management Consultants, Inc., to prepare a program plan for the proposed facility and Ritterbush Associates, Inc., to prepare architectural designs.

The program report and architectural designs were presented to the committee in October 1976. The report states that the space needs of the Supreme Court in the next 25 years are expected to triple. The report estimates Supreme Court space needs of 66,743 gross square feet or 52,720 usable square feet (including a 20,000 square foot unfinished basement). The court heard 58 cases in 1961 compared to 146 cases in 1975, and projections estimate it will hear 197 cases in 1990 and 239 cases in the year 2000. The report also states that court personnel may increase from the present 35 to 63 by the year 2000. The present Supreme Court justices will be able to handle increased caseloads until 1985, according to the report, at which time a decision should be made regarding whether to increase the court to seven justices or to create a three-judge or five-judge intermediate court of appeals. Justice Paul Sands doubted the future need for an intermediate appellate court, but said it is possible the court will need seven judges.

The Ritterbush Report says a two story building with an unfinished basement and room for an additional two justices is planned. There would be 71,140 gross square feet in the building, including 20,000 square feet in the unfinished basement. The estimated cost, based on 1978 construction costs, is \$3,920,000.

The report also indicated that the court's present space in the Capitol could be easily adapted for Legislative Council use.

Committee Action

Some committee members said the building's estimated cost is high for the proposed amount of space. They said alternative cost estimates should be made available to the 1977 Legislature. The Supreme Court should also consider reducing the amount of square feet proposed for the building, they said.

The committee recognizes the need for additional Supreme Court space and recommends that the 1977 Legislature consider alternatives to provide for the Supreme Court's space needs. The committee also asked the Supreme Court to prepare alternative cost estimates on construction of a Supreme Court building and cost estimates for remodeling and expansion of Supreme Court space in the Capitol. The committee suggests that the Supreme Court have available appropriate legislation to implement each of the alternatives for additional Supreme Court space for introduction during the 1977 Session.

HIGHER EDUCATION CAPITAL CONSTRUCTION STUDY

Background

Senate Concurrent Resolution No. 4045 directed a Legislative Council study of what additional buildings and improvements may be needed at the state's colleges and universities, their priority, and how to finance them.

During the interim, the committee reviewed criteria used by the Board of Higher Education to evaluate higher education building and plant improvement requests. The board's criteria are enrollment projections, facility usage, cost of remodeling versus new construction, program demands, technological changes, and federal requirements. In addition, the board also reviews information on utility, maintenance, equipment, and site requirements.

The Commissioner of Higher Education advised the committee that enrollments at the institutions of higher education will decline in approximately six years because of declining enrollments in elementary and secondary schools.

The North Dakota Higher Education Facilities Commission was created in 1965 to prepare a state

plan for higher education facilities. The 1974 commission report stated that over 50 percent of college space, including junior colleges and private colleges, had been constructed between 1960 and 1974, and that over 96 percent of the college space was considered permanent space. This report also

stated that: approximately 82 percent of the existing college buildings, including junior colleges and private colleges, were in satisfactory condition and 18 percent of the buildings required varying degrees of remodeling.

Recent General Fund Appropriations for Higher Education Buildings

Both the 1973 and 1975 Legislatures considered requests for additional college buildings to be constructed with general fund moneys. The 1973 Legislative Assembly approved the following general fund appropriations for college buildings:

Name of Institution	Type of Facility	State Funds
State School of Science	Diesel building and completion of maintenance laboratory building	\$1,000,000
North Dakota State University	Home economics building addition	1,500,000
Minot State College	Science facility	450,000
University of North Dakota	Nursing building	800,000
State School of Science	Auto-mechanics addition	850,000
State School of Science	Addition to trade-technical auto body building	101,000
TOTAL		\$4,701,000

In addition, the 1973 Legislature appropriated \$1,778,000 from the general fund for construction of a veterinary science building at North Dakota State University.

The higher education buildings approved by the 1975 Legislature to be constructed from transfers from the general fund to the capital construction fund during the 1975-77 and 1977-79 bienniums are:

Name of Institution	Type of Facility	State Funds	Biennium to be Constructed
Minot State College	Completion of allied health and science building	\$ 200,000	75-77
State School of Science	Physical education activities center	3,000,000	75-77
North Dakota State University	Library addition	2,000,000	77-79
University of North Dakota	Office facilities and class lab	3,000,000	77-79
Minot State College	Physical education activities center	3,000,000	77-79
Dickinson State College	Multipurpose arena	250,000	77-79
TOTAL		\$11,450,000	

In addition, the 1975 Legislature appropriated \$3,777,000 for construction projects during the 1975-77 biennium at the Main Experiment Station.

1977-79 Plant Improvement Requests

The committee reviewed the 1977-79 plant improvement requests of the institutions of higher education. The Board of Higher Education approved \$9,540,695 of a requested \$16,923,692 for plant improvements at the institutions for the 1977-79 biennium. These funds would be used to complete or start approximately 180 different plant improvement projects during that biennium.

The Commissioner of Higher Education said after the lump sum plant improvement appropriations are made by the legislature, the board approves specific projects at each of the institutions. The Commissioner said first priority for use of capitol improvement dollars is to pay \$712,045 of special assessments at the institutions.

Committee members observed that the amounts for major remodeling and renovation projects requested by the institutions, after the total plant improvements requests were reduced by the Board of Higher Education were insufficient to complete

projects during the next biennium. For example, North Dakota State University originally requested \$1,340,000 for renovation of Morrill Hall. However, after the board had reduced NDSU's total plant improvements requests from \$5.4 million to \$3 million, the amount allocated by NDSU for remodeling Morrill Hall had been reduced to \$579,912. Instances of the same type of phased construction planning for capital improvements were also found at the other institutions.

Some committee members said the institutions should use plant improvement appropriations to complete projects rather than to start several projects that will not be completed during the next biennium. It was noted that it will probably cost more to phase major plant improvement construction over several bienniums compared to completing the projects during the next biennium.

The committee recommends that the Board of Higher Education set priorities on plant improvements at its institutions. The committee also encourages the 1977 Legislature to analyze the total cost of completing plant improvements at one time compared to the cost of completing them over several bienniums.

Building Requests

The committee also reviewed the 1977-79 building requests approved by the Board of Higher Education for its institutions. The requests are as follows:

Description	Amount in House Bill No. 1468	Recommended Plus 25% Inflation Increase
Library Addition— North Dakota State University	\$ 2,000,000	\$2,500,000
Office Facilities & Class Lab. — University of North Dakota	\$ 3,000,000	\$3,750,000
Physical Education Activities Center— Minot State College	\$ 3,000,000	\$3,750,000
Multipurpose Building— Dickinson State College	\$ 250,000	\$ 312,500

Institution	New Building Requests	Amount Requested
North Dakota State University	Music Building	\$1,500,000
Experiment Station	Dairy Expansion Greenhouses	\$ 380,000 \$2,478,000
University of North Dakota	Physical Education Addition	\$2,800,000
State School of Science	Swimming Pool Physical Plant— Central Storage	\$ 350,000 \$ 740,000

The board will submit a priority list on construction of these buildings for review by the Executive Budget Office and the 1977 Legislature.

The Board of Higher Education recommended that the amounts for all buildings, authorized in House Bill No. 1468 (1975) to be constructed during the 1977-79 biennium be approved with a 25 percent increase in the original amounts to offset inflation. The committee joins in this recommendation.

Committee members noted that the Governor vetoed Section 3 of House Bill No. 1468 (1975) which provided for a Legislative Council interim committee to study the priority for construction, remodeling, or equipping of buildings at state institutions. Committee members also observed that the 1977 Legislature would have information on building requests at other state institutions and the

Executive Budget recommendations. Because of these two factors, the committee decided to make no recommendation on the priority of higher education's new building requests.

Capital Construction Budget

The committee expressed an interest in developing suggested guidelines and procedures for a statewide capital construction budget for major capital construction at all state agencies and institutions. The committee's study in this area included a review of capital budgeting procedures in surrounding states. Legislative Council staff and the Executive Budget Analyst also reviewed criteria for development of a capital construction budget. The committee considered and approved the following suggested guidelines and procedures for a state capital construction budget:

1. Beginning with the 1977-79 biennium, the executive budget will include a section on major capital construction.
2. The capital construction recommendations submitted in the executive budget will be for a two-year period.
3. The capital construction budget will include recommended general fund appropriations as well as any special fund appropriations that are used in conjunction with general fund appropriations for all major capital construction or land purchases for all state agencies and institutions, including the institutions of higher education. Those capital construction projects or land purchases financed solely with special funds will not be a part of the capital construction budget.
4. The Executive Budget Office's recommended appropriations for major capital construction and land purchases will be submitted separately from the agencies' regular operating budgets. The recommended appropriations will be presented in one bill.
5. The Executive Budget Office will advise the legislature of those requests from agencies and institutions for major capital construction or land purchase which were not included in the executive recommendation.
6. General fund moneys authorized for construction or land purchases will be paid from the general fund in accordance with law and in such manner as is deemed appropriate by the director of the Department of Accounts and Purchases.
7. In addition to those major capital construction projects and land purchases requested by state agencies and institutions for the biennium, the agencies and institutions will advise the Executive Budget Office and the legislature of long-range capital construction plans beyond the two-year biennial period.
8. The recommended capital construction budget will include any additional general fund moneys recommended to complete previously authorized major capital construction projects or land purchases.

9. Beginning with the budget requests for the 1979-81 biennium, agencies and institutions will submit separate budget requests for major capital construction or land purchases. The Executive Budget Office will develop the instructions and forms for these requests and will use its discretion in defining major capital construction projects for inclusion in the requests. In addition, the budget request will include the justification for the capital construction projects or purchases as well as the long-range capital construction plans of the agencies and institutions.

The Executive Budget Analyst said the Executive Budget Office would follow the guidelines and procedures in preparing the 1977-79 executive budget. The buildings already authorized for construction during the 1977-79 biennium will be reviewed by the Executive Budget Office to determine if it will recommend their construction during the 1977-79 biennium.

REVIEW OF CENTRAL PERSONNEL CLASSIFICATION SYSTEM AND STATE EMPLOYEE SALARY LEVELS

Central Personnel Classification System

House Bill No. 1120 (1975) created the Central Personnel Division and State Personnel Board to administer a classification pay system for state employees. House Concurrent Resolution No. 3070 (1975) directed the committee to monitor the operations of the Central Personnel Classification System. Throughout the interim, the committee received several reports on the progress and status of Central Personnel operations.

The Central Personnel Division has classified approximately 8,000 state employees and 1,000 local employees in approximately 600 job classifications. The pay grades for these classifications were generally increased from five to six percent on July 1, 1975, and five percent on July 1, 1976.

During the interim, the Merit System Council merged its operations with the Central Personnel Division. Since this merger, a significant increase in requests for job referral information has been reported.

The division has conducted training programs for classification procedures, office management, and salary administration. The division is presently conducting salary surveys for the classification pay

index effective July 1, 1977. The division is involving personnel from state agencies to complete the survey, and salary data is being collected from private industry, the federal government, and other states.

The division plans to review state personnel policies during the 1977-79 biennium and to present the 1979 Legislature a comprehensive review of legislation affecting state employee salaries and fringe benefits.

The committee's study included a review of the Central Personnel Division's enabling legislation. The Central Personnel Division Director did not recommend any changes to the enabling legislation. He said more experience is needed to evaluate the adequacy of the present statutes.

The committee members noted the present legislation does not indicate how the constitutionally elected official on the State Personnel Board is to be selected. The committee recommends a bill that provides that the state's constitutionally elected officials meet to select the elected official to serve on the board.

The committee invited state officials and other interested organizations to comment on Central Personnel Division operations. The executive director of the North Dakota State Employees Association said it is satisfied with the Central Personnel Classification System; however, the employee appeals process is undefined, he said. The Central Personnel Division Director said the Personnel Board has voted to allow state employees to appeal directly to the board on classification or salary disputes. A representative of the Board of Higher Education Office said the classified em-

ployees at the institutions of higher education are generally satisfied with the Central Personnel Classification System.

State Employee Salary Levels

The committee, in accordance with Senate Concurrent Resolution No. 4069 (1975), studied the adequacy of state employee salary levels. It heard from state officials on the adequacy of current salary levels and also reviewed salary proposals for the 1977-79 biennium. The director of the Department of Accounts and Purchases said it is important to pay state employee salaries competitive with private industry. He suggested consideration of automatic cost of living increases. The Board of Higher Education said it encourages salary increases sufficient to reflect changes in the purchasing power of the dollar.

The committee reviewed Executive Budget Office salary guidelines and higher education salary proposals for the 1977-79 biennium. The salary increase guidelines for preparation of the 1977-79 agency and institution budget requests were set by the Executive Budget Office at seven percent per year. The Executive Budget Analyst said that if increased fringe benefits are recommended, his office will adjust its percentage salary increase guidelines.

The proposed college and university faculty salaries are based on a differential in average faculty salaries between the universities, four-year colleges, and two-year colleges. The present authorized average faculty salaries and proposed average faculty salaries, as approved by the Board of Higher Education for the 1977-79 biennium, are as follows:

Faculty Salaries

	Authorized		Proposed	
	1976-76	1976-77	1977-78	1978-79
Universities	\$ 16,938	\$ 17,784	\$ 19,790	\$ 21,175
% Increase from Previous Year		5.0%	11.3%	7.0%
4-Year Colleges	14,876	15,722	18,290	19,675
% Increase from Previous Year		5.7%	16.3%	7.6%
2-Year Colleges	14,188	15,034	17,040	18,425
% Increase from Previous Year		6.0%	13.3%	8.1%

There are approximately 1,216 authorized faculty positions at the institutions of higher education. The 1977-79 proposed salary budget for the present faculty totals \$47,957,940. The two universities' 1977-79 salary requests include an 11 percent increase the first year of the next biennium and a seven percent increase the second year. After the average salary for each year of the biennium was computed at the universities, the faculty salaries at the four-year colleges and two-year colleges were projected based on the average faculty salary at the four-year colleges being \$1,500 less than at the universities and the average faculty salaries at the two-year colleges being \$1,250 less than at the four-year colleges. The 1977-79 higher education budget requests include funds for seven percent per year classified employee salary increases.

The committee consensus was that Senate Concurrent Resolution No. 4069 did not require the committee to recommend state employee salary levels for the 1977-79 biennium. The committee reviewed the most current state employee salary information available and, based on that information, the committee finds no major inequities in current state employee salary levels. However, the committee recognizes that all salary levels will be considered for increases by the 1977 Legislature which at that time will have additional information, not available to the committee during the interim, with which to evaluate those proposals. This information will include the executive budget recommendation, Central Personnel Division salary surveys, and agency and institution budget requests.

Representatives of the North Dakota Food Retailers Association and North Dakota Retailers Association said they were concerned about the effect of Central Personnel classification pay grades on minimum wage guidelines in the private sector. They also said differing salary levels are paid for similar jobs in the private sector based on the size of a business or population of a community.

Committee members noted that Central Personnel's classification pay ranges are developed from data which includes a survey of salaries paid in private enterprise in North Dakota.

It was the consensus of the committee that the minimum wage for private sector employees should not be based on the salary levels of the Central Personnel Classification System, and that the Central Personnel Classification System is not able

to resolve the problems of differing salary levels in the private sector.

PERFORMANCE REVIEWS

The committee was assigned responsibility for conducting performance reviews of state agencies or institutions. The committee decided to conduct reviews of smaller state agencies and selected the State Historical Board, the State Library Commission, and the State Fair Association. Senators Lips and Erdman and Representatives Laske and Rylance were appointed as a subcommittee to review proposals for conducting the reviews. (The Legislative Council fiscal staff performed that portion of the Historical Board and Library Commission reviews relating to management controls, finance, accounting and budgeting systems, and compliance with legislative intent.) The committee selected Mr. Russell Fridley, Director of the Minnesota State Historical Society, to evaluate the programs of the State Historical Board and Library Commission. The certified public accounting firm of Eide, Helmeke, Boelz, and Pasch was selected for the performance review of the State Fair Association. The reviews began in January 1976, and reports to the committee were made periodically on their progress. The major findings and recommendations of the reviews are presented in the following summaries of the study reports (as accepted by the committee) which are on file in the Legislative Council office.

Historical Board

The report prepared by the Legislative Council staff recommends improved organizational policies and procedures in the Historical Board's written rules and procedures, organization chart, job descriptions, and work schedules. Improved budgeting procedures for historic site development projects and program estimates are also recommended. Recommended improvements for administrative operations include development of office and historic site operational procedures, expansion of the administrative officer's duties, and consolidation of clerical services. The report recommends planning to adequately record and inventory all Historical Board collections as they are moved to a new location (the Heritage Center). Other recommendations are made for improved accounting controls and annual leave and sick leave records.

The Historical Board program review report prepared by Mr. Fridley recommends legislation

designating the State Historical Board as the State Archives and defining its relationship to the state's records management program. The report also recommends legislation to define the legal relationship of the Historical Board to the Heritage Center. Legislation was also considered to authorize the establishment of local historic preservation districts.

The report recommends the State Historical Board define its responsibilities and meet more frequently. The report states that the Historical Board urgently needs to plan its future development. A position of deputy superintendent is recommended for the planning function. Duplication of effort was reported between the State Historical Society and the State Library Commission because both are building genealogical collections. It is recommended that this function be centralized in the Historical Board. The museum, publications, historic sites, and library programs were all reviewed and the report includes recommendations for improvements in each area.

As was mentioned above, the committee recommends two bills. The first bill designates the Historical Board as the official State Archives. This bill would require the state archivist to operate a program of selection and preservation of state records that have permanent value for research and reference. The bill allows the state archivist to enter into agreements with other state or private agencies and institutions to serve as depositories of regional archival resources. Also, the bill clarifies the relationship of the state archivist to the state's record management program.

The second bill gives the State Historical Board administrative and operational jurisdiction over the North Dakota Heritage Center Building. The bill makes the Director of Institutions responsible for the maintenance of the Heritage Center building; however, the Historical Board is to be responsible for the maintenance and security of its collections.

The committee also reviewed a bill draft authorizing the establishment of local historic districts for local government preservation activities. The bill draft provided for the establishment of historic preservation commissions to oversee the preservation activities. Committee members were of the consensus that this legislation should be given further study to allow review with local officials. The committee decided to take no action on this bill draft. However, it suggests that the State Historical

Board, if it desires, introduce legislation in 1977 for local historic preservation activities.

In response to the committee's request, the Superintendent of the State Historical Board presented the committee with a report which presents an analysis of funds necessary to carry out the program review recommendations as well as meet the needs of the Historical Board when it moves to the Heritage Center. It was reported that the 1977-79 Historical Board budget request totals \$4,465,023. The 1975-77 Historical Board appropriation is \$1,244,626. The superintendent said the first priority is to adequately inventory, catalogue, preserve, store, and display museum collections in the Heritage Center. The committee suggests that the Historical Board's response to the committee's program review be a basis for the 1977 Legislature's consideration of Historical Board needs.

State Library Commission

The Library Commission performance review report prepared by the Legislative Council staff states there is a need for better planning in the development of the Library Commission budget request. The report indicates that expenditures for the 1971-1973 and 1973-1975 bienniums were, in some instances, substantially different from budget estimates. It is recommended that the commission's financial planning procedures be improved to adequately reflect short-term and long-term expenditures in its budget request.

The report also indicates that the Library Commission was making full payment on contracts prior to full delivery of materials and services. It is recommended that the commission take the managerial and procedural steps necessary to ensure that specific provisions of its contracts are followed. The report includes other recommendations for improved use of filing space, accounting controls, annual leave and sick leave records, and inventory controls.

The program review of the State Library, (prepared by Mr. Fridley) includes a review of the place of the State Library in the structure of state government. This report recommends that the State Library can best deliver services to a wide constituency in its present structure. If there is future reorganization of state government, the report states, the Library Commission should be a division of a department of cultural affairs or similar department. As noted in an earlier section of this

report, the program review report recommends that the State Library be moved to the Liberty Memorial Building when it is no longer occupied by the Historical Board. The program review report states that public libraries in North Dakota will increasingly depend upon regional libraries and recommends that the state librarian present a proposal for the expansion and development of a regional library system for consideration by the Governor and 45th Legislative Assembly.

The report states that there is little duplication between state library programs and those of other state agencies; however, the State Library could perform the purchasing, acquisitions, and cataloguing functions for the State Historical Board library. Other recommendations include elimination of the traveling library program, expansion of minitex teletype services, and development of a plan to coordinate statewide library planning and development. The committee, as a result of the review, recommends a resolution directing the Library Commission to provide technical services to the State Historical Board library.

The committee also requested the state librarian to present a report responding to the program review findings. He presented plans in the form of two bill drafts to establish a division of library planning, development, and coordination and to develop a regional library system. He did not recommend a regional library system because, he said, there is not sufficient interest among local libraries for regional library services. He did recommend the establishment of a division of library, planning, development, and coordination within the State Library Commission to adequately coordinate statewide library services. It was reported that the 1977-79 Library Commission budget request includes funds to staff the proposed division of library planning, development, and coordination. The committee decided to take no action on the bill drafts since they believe the State Library Commission presently has sufficient statutory authority to coordinate library services in the state.

State Fair Association

The performance review report on the State Fair Association (prepared by Eide, Helmeke, Boelz, and Pasch) says the association is generally effective, but certain changes need to be made to improve its operational efficiency. Recommendations include development of formalized State Fair Board policies, creation of personnel files, better accounting for

vacation and sick leave, and development of a long-range plan for fairground facilities.

Recommendations for improved accounting and budgeting includes: conversion to the accrual basis of accounting, prohibiting the signing of blank checks, depositing all cash receipts, no payment of expenses directly with cash, establishing a petty cash fund, changing the financial year of the association to coincide with the state's fiscal year, and including gross amounts for both revenues and expenditures in the budget.

The report recommends that future appropriation bills contain a specific declaration of legislative intent as to whether the premium appropriation limits the total amount that can be paid for premiums or whether the premium appropriation is intended to be a supplemental appropriation. It also recommends that all capital expenditures be accounted for as such, and that approval for all capital expenditures be requested and obtained from the legislature or the Emergency Commission. The report also recommends that the premium list be edited to remove all ambiguities and inconsistencies, and that a formal agreement be executed with the Ward County Historical Society for its occupancy of Fair property.

A followup review of the State Fair Association was conducted during fair week to determine and comment on the extent of compliance with recommendations made in the initial performance review report, and to make any additional recommendations. The followup review report states that there is weak control over carnival receipts and recommends that the Association print prenumbered carnival tickets, hire ticket sellers, or have the State Tax Department audit carnival receipts during fair week. The report also states that the livestock exhibition barns and women's exhibition building were extremely crowded and did not have enough display room for all animals and exhibits entered at the fair.

The followup review report also contains the results of a survey of fair exhibitors which was made after completion of the 1976 fair. Of the 131 livestock exhibitors that responded to the survey, 42 percent indicated that exhibition facilities were "poor," and 50 percent of the 54 women exhibitors responding to the survey indicated that fair exhibition facilities were either "very good" or "good." Sixty-nine percent of the livestock exhibitors responding and 78 percent of the women

exhibitors responding stated that their exhibit was handled either "very good" or "good." The most mentioned criticism received from responding livestock exhibitors was the inadequate exhibit space and that several of the livestock exhibition buildings were in poor condition.

The manager of the State Fair Association said the State Fair Board generally agrees with the review findings and recommendations. He said the association does not have sufficient funds in their

operating account prior to the opening of the state fair to deposit all receipts intact during fair week. He said the association has paid expenses directly from its income and a ledger showing those transactions has been maintained and submitted to the Department of Accounts and Purchases sixty days after the close of the fair to properly adjust the association's appropriation line items. He said the association considers the premium appropriation as supplemental to the total premium expenditures of the fair.

CONSTITUTIONAL REVISION

The 1975 Legislature directed the Legislative Council (House Concurrent Resolution No. 3059) to "... conduct a study for the purpose of proposing revision of all or appropriate parts of the Constitution of the State of North Dakota." The legislature also directed the Council to "... call upon citizens of the State who have distinguished themselves by service in, and knowledge of, fields of endeavor especially qualifying them to assist in the study."

The Legislative Council established the Constitutional Revision Committee and named Senator Frank Wenstrom chairman. Other committee members were Senators Harold Christensen, Pam Holand, Donald Homuth, Esky Solberg, and Robert Stroup; and Representatives Lynn Clancy, William Kretschmar, and Fern Lee.

Citizen committee members were Mrs. Agnes Geelan and the Messrs. Joe Byrne, Dick Dobson, Gail Hernett, and John D. Paulson.

Senator Wenstrom was president of the 1972 Constitutional Convention (ConCon) and served as a citizen member of the Council's (then Legislative Research Committee) 1965-67 interim constitutional revision study. Senator Solberg and Representative Kretschmar were also ConCon delegates, as were all the citizen members. Mrs. Geelan, Mr. Byrne, and Mr. Hernett are former legislators.

The report of the Committee on Constitutional Revision was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

Background

There have been 188 proposed amendments to the state's Constitution put before the people since the basic document was adopted in 1889. Ninety-nine of these proposals, or about 53 percent, have passed. These changes, however, have been on a piecemeal basis and followed no pattern or plan.

There have been two major efforts at planned constitutional revision in North Dakota in the last 13 years. The most recent was the 1972 Constitutional Convention, or ConCon.

The 98 ConCon delegates were elected in November 1970, organized in April 1971, held committee hearings through the summer and fall of 1971, and met in plenary session from January 3-February 17, 1972. ConCon produced an entirely new Constitution that was rejected by North Dakota voters on April 28, 1972.

The other major constitutional revision effort was conducted by Legislative Council (then Legislative Research Committee) committees over a four-year period, 1963-67. Those interim committees, like the 1975-77 version, also contained both legislators and citizen members. The 1963-65 study proposed changes in roughly half the Constitution, while the 1965-67 committee completed the second half of the revision work. However, voters in 1966 and 1968 defeated the proposed changes.

It was against this background that the 1975-77 Constitutional Revision Committee began its work.

PROCEDURE

The committee, believing the extensive research completed by ConCon and prior interim constitutional revision committees provided sufficient background for its work, focused its attention instead on areas and types of revision needed.

For its study purposes, the committee considered the Constitution as composed of three basic types of provisions:

1. **Obsolete**—provisions which can be repealed without replacement because they are clearly out-of-date, unnecessary, or have been declared unconstitutional by various courts.
2. **Archaic**—provisions which need change and updating, but which cannot be eliminated without replacement.
3. **Unworkable or unrealistic**—provisions which, because of the language used, or the changing times, need to be updated, streamlined, placed in more logical order, and generally reworked to fit today's needs.

Committee discussion delineated to some extent what might be a fourth category: subjects not included in the Constitution but which should be.

However, this never emerged as a clearly distinct grouping.

The committee decided to use as a guide in considering revision proposals the goal of making the Constitution mean what it says; i.e., eliminate wherever possible instances where the Constitution seems to say one thing but court interpretation or actual practice is to the contrary.

After reviewing past revision efforts, the committee decided to present its revision recommendations basically on a section-by-section basis. The committee believes North Dakotans have shown, by their rejection of wholesale revision efforts and their acceptance of individually presented amendments, that they want constitutional revision, but that they want it in small packages.

During its study the committee used various working papers on constitutional revision prepared for its deliberations, the documented research of prior interim committees and ConCon and an especially prepared version of the state's Constitution. The latter listed all the current provisions in their exact order and, in parallel columns, the corresponding provisions suggested by the 1963-67 committees and ConCon.

Obsolete Provisions

The committee, after considerable discussion, made its prime objective the elimination of all obsolete provisions of the North Dakota Constitution. It felt that once this "deadwood" is cleaned out, more substantive revision efforts could be considered.

The committee began its work with a section-by-section review of the entire Constitution: 216 sections, 25 transition schedule sections, and 94 articles of amendment.

Before beginning its review, the committee decided not to consider any changes in the judicial article (Article IV) and the education article (Article VIII) because of the proposed amendments on the September 1976 primary ballot to create a new judicial article based primarily on a unified court system and to change administration or education in the state. Likewise, the committee considered only a few items in the legislative article (Article II) because of the proposed amendment, also to be voted upon in September 1976, to increase the length of the legislative session. The committee believed that if

these measures were approved, subsequent interim committees could consider changes based upon the new provisions. The judicial and legislative measures were approved; the educational proposal was defeated.

RECOMMENDATIONS FOR REPEAL

Appropriations Bills

Section 60 of the Constitution provides that no appropriation bill, except for the expenses of government, may be introduced after the 40th day of a legislative session except by unanimous consent. Section 62 requires that the general appropriation bill embrace nothing but appropriations for the expenses of the executive, legislative, and judicial branches of government. The committee considers both these measures too restrictive on legislative powers, and that the matters covered should be handled by legislative rules and procedures.

Section 62 was also thought to be an example of the Constitution saying one thing and actual practice being another matter. Appropriations for government are handled in several bills, and not one general appropriation bill.

The committee recommends repeal of both sections.

Grain Elevators In Minnesota, Wisconsin

Article 14 of the amendments, approved by the voters in 1912, authorizes the legislature to provide by law for the erection, purchasing, leasing, and operation of one or more terminal grain elevators in Minnesota or Wisconsin.

The committee believes this article is obsolete and is no longer necessary, and recommends its repeal.

State Mill

Article 19 of the amendments, approved by the voters in 1914, authorizes the state to operate terminal grain elevators in North Dakota. This authorized the operation of the State Mill and Elevator in Grand Forks from 1914 through 1919. However, court cases which interpret Section 185 (allowing political subdivisions to engage in business), as amended in 1919, clearly show the State Mill is authorized by that section.

The committee believes Article 19, in light of the reliance on Section 185 to authorize the State Mill, is obsolete and recommends its repeal.

Hail Insurance Mill Levy

Article 24 of the amendments, approved in 1918, allows the legislature to provide a statewide mill levy to create a Hail Insurance Fund. The committee, noting that the 1967 Legislature repealed all hail insurance laws, believes this article is obsolete. If the legislature should decide in the future there is a need for a state hail insurance program, the committee believes it should either fund it through the general fund or seek voter approval for a new tax through a constitutional amendment.

The committee recommends repeal of this article.

World War II, Korean, and Vietnam Bonuses

Articles 59, 65, and 87 provide authority to issue bonds to pay bonuses to veterans of World War II and the Korean and Vietnam conflicts. All the bonds have been paid off. Any future bonus bonds would need separate constitutional authority as was done with the previous bonds.

The committee recommends repeal of those obsolete articles.

Governmental Continuity

Article 75, approved in 1962, provides for the continuity of state and local government in periods of emergency resulting from disasters caused by enemy attacks. The committee believes this provision is unworkable, unnecessary and, in any event, does not belong in a constitution since it is essentially legislative in nature.

The committee recommends repeal of this article.

Power Plants

Article 76, approved in 1962, authorizes the state to issue bonds to help finance privately or cooperatively owned power and energy conversion facilities.

There was considerable discussion concerning this article. Some members believe this authority is still necessary, especially in light of the possible energy crisis which seems to be constantly facing the country. Other members thought the measure grants the legislature far too much power and authority in this regard, and that the provision is obsolete and will never be used.

The committee recommends repeal of this article.

Constitutional Convention

Article 88, approved in 1970, authorized the calling of the 1971-72 ConCon. The committee believes that was the general intention of this provision, and while the article does not specifically restrict its language to that convention, it was thought any future conventions should be called by seeking a mandate from the people via another constitutional amendment.

The committee recommends repeal of this article, albeit with some reluctance born of nostalgia on the part of the former ConCon delegates.

Corporation Charters

Sections 132 and 133 deal with corporate charters in existence when the Constitution took effect in 1889. The sections were obsolete immediately thereafter.

The committee recommends repeal of those sections.

Corporate Elections

Section 135 deals with corporate shareholders' voting powers in certain corporate elections. The committee believes this matter is adequately handled by statute or corporate bylaws, and that such provisions are the antithesis of the type needed in a constitution.

The committee recommends repeal of this section.

Foreign Corporations

Section 136 provides that foreign corporations may not do business in the state without having one or more places of business and an authorized agent in the state. Such jurisdictional requirements for doing business in a state have been prescribed by several United States Supreme Court decisions and are adequately covered by North Dakota law.

The committee recommends repeal of this section.

Authorized Corporate Business

Section 137 says a corporation may only engage in the business authorized by its charter. Corporations are created by law and only have the powers granted them by law. This provision is unnecessary.

The committee recommends repeal of this section.

Corporate Stocks, Bonds

Section 138 prohibits corporations from issuing stocks or bonds except for money, labor done, or money or property actually received. The committee believes this type of provision is legislative and thus is incongruous with good constitutional language. In any event, the subject is adequately covered by state law.

The committee recommends repeal of this section.

Railroad Corporations

Sections 140, 141, and 143 deal with the organization, operation, and trackage of railroad corporations within the state. The committee believes these provisions are adequately covered by federal and state law. Also, there isn't any need, in light of the state's general corporation statutes, to treat railroad corporations differently.

The committee recommends the sections be repealed.

Definition of a Corporation

Section 144 defines the term "corporation." This is superfluous and, the committee believes, adequately covered by state law and innumerable court decisions.

The committee recommends repeal of this section.

Issuance of Tender

Section 145 deals with the issuance of legal tender by banks in the state. The committee believes this section is obsolete because the United States Treasury and federal reserve banks are the only agencies now authorized by federal law to issue legal tender.

The committee does not believe there will ever be a need for "Dakota dollars" and recommends this section be repealed.

Poll Tax

Section 180 allows the legislature to levy, collect, and dispose of an annual poll tax of not more than \$1.50 on every resident male in the state between ages 21 and 50. A poll tax is a capitation tax, i.e., a tax of a specific sum levied upon all persons of a certain class within a jurisdiction regardless of income, property, etc.

North Dakota has not collected capitation taxes of any sort in the last decade, and state laws on poll taxes, such as the per capita school tax levy, were repealed with the repeal of the personal property tax in 1969. The committee believes this section is obsolete and recommends its repeal.

Legislative Authority

Section 181 says the legislature has the power to pass laws to carry out revenue and taxation provisions. The committee believes this is pure surplusage since the legislature is granted full legislative power under Section 25.

The committee recommends this section be repealed.

Original Apportionment

Section 214 is the original apportionment of North Dakota in 1889 for United States Senate, United States House of Representatives, and state legislative districts. This apportionment has long since gone by the boards and is obsolete.

The committee recommends this section be repealed.

Transition Schedule

There are 26 sections in the Constitution grouped under the title "Transition Schedule" that deal with the details involved in splitting the Dakota Territory into North and South Dakota. They provided for the orderly transition from territorial government to state government, but are now obsolete. The committee believes the only portion of this schedule that should be retained is Section 26. This gives the legislature authority to publish the State Constitution and contains the signatures of the president and chief clerk of the state's first Constitutional Convention.

The committee recommends Sections 1 through 25 of the Transition Schedule be repealed.

RECOMMENDATIONS FROM OTHER COMMITTEES

The Constitutional Revision Committee recognized that some of the Council's other interim committees would also, in the course of their studies, be considering constitutional amendments. While not wanting to interfere with the work of another

committee, the Constitutional Revision Committee believed it was incumbent upon it to ensure there would be no duplication or conflict between committees regarding constitutional amendments.

At the same time, the Constitutional Revision Committee also realized it lacked the expertise or specific directive to undertake constitutional revision research in the specific areas assigned other committees.

So, moving cautiously so as to not violate the integrity of other committee studies, the Constitutional Revision Committee asked that other committees considering constitutional amendments forward those amendments to them after approval by the originating committee. The other committees were asked to include their specific recommendations regarding the amendments when they forwarded them. The Constitutional Revision Committee would then review the proposed amendments for possible duplication or conflict with its work. If it found none, it would forward the amendments to the Legislative Council while noting that it was forwarding the proposals on behalf of the other committee, and that the Constitutional Revision Committee itself had not studied the matter and therefore had no specific recommendation on it.

The basic support and documentation for these recommendations from other Council committees is found in those committees' reports.

Three other Council committees — Finance and Taxation, Natural Resources, and Political Subdivisions — took advantage of the Constitutional Revision Committee's generous offer and forwarded proposed amendments. They are presented here after being reviewed by the Constitutional Revision Committee as indicated above.

Section 161 — Leasing Restrictions

The Natural Resources Committee recommends amending Section 161 of the North Dakota Constitution to generally remove the restrictions on the leasing of state school lands only for pasturage and meadow, to allow the legislature to set the lease terms, and to increase the allowed length of a school land lease for grazing and agricultural purposes from five to 10 years to match the Enabling Act.

Section 174 — Ad Valorem Tax

The Finance and Taxation Committee recommends amending Section 174 to clarify the language

regarding the use of an ad valorem tax and to remove the word "assessed." Section 174 now limits what the state can raise in property tax revenues on a statewide basis to the total amount of what a four-mill levy (based on assessed valuation) on all the taxable property in the state would raise. This limitation hampers state efforts to properly tax the large industrial plants and facilities likely to result from burgeoning coal and energy development in the state.

By removing the word "assessed," the state property tax revenue limit would be based on what a four-mill levy on all taxable property would raise using true market value for evaluation purposes.

Section 183 — Bonding Limitations

The Political Subdivisions Committee recommends amending Section 183 to increase the bonding limitations of political subdivisions from five to eight percent of the assessed valuation of their taxable property. The Political Subdivisions Committee said it proposed the amendment to assist political subdivisions in meeting increasing financial burdens while faced with shrinking bond bases.

ELECTIVE FRANCHISE

In its review of the entire Constitution, the committee decided that Article V — the elective franchise, while it could not be completely eliminated, needed a major overhaul. The article contains Sections 121 through 129. Articles 36 and 40 of the amendments, dealing with voter residency, also pertain to the elective franchise.

The committee believes provisions of this article dealing with women voting only in school elections (Section 128), the first election under the Constitution (Section 124), and setting the voting age at 21 (Section 121) are obsolete, outmoded, unnecessary, violative of federal law and, in some instances, unconstitutional.

There are also several sections dealing with military persons voting in the state, the official residence of military personnel, and residency requirements for voting in North Dakota. These provisions are duplicative and are covered adequately either by state law or by recent federal court rulings regarding voting residency requirements.

Recent United States Supreme Court rulings on voting residency requirements would seem to make nearly all residency requirements of more than 30 days or so unconstitutional. Yet, Section 121 and Articles 36 and 40 of the North Dakota Constitution all contain provisions regarding required voting residencies in North Dakota of one year in the state, 90 days in the county, and 30 days in the precinct. State law (Section 16-01-03) reflects the latest court rulings, but the aforementioned constitutional provisions appear to be unconstitutional.

The committee also noted that Article 40, when first proposed in 1921, purported to amend Section 121. Yet, when it passed in 1922, Section 121 was not amended, but Article 40 was added to the Constitution as a separate provision.

Another constitutional amendment approved in 1958 amended Section 121 and repealed Article 40, yet Article 40 continues to be published as part of the Constitution with no notation of repeal.

The committee proposes repealing the present Article V and Articles 36 and 40, and creating in their place a new Article V based roughly on Con-Con's elective franchise provisions.

The committee's recommendation provides basically that the state shall hold its general elections biennially; that all United States citizens who are 18 years old and older and are North Dakota residents are qualified electors in North Dakota; and that the legislature shall provide by law for the determination of voting residence, for secret balloting, for absentee voting, for nominations, and for election administration.

No person under a current court or other authority's declaration of incompetency would be allowed to vote. Convicted felons could not vote until their civil rights were restored.

SALARY CHANGES FOR ELECTED OFFICIALS

The committee spent considerable time reviewing Section 84 of the Constitution which prohibits increasing or decreasing the salaries of the state's elected public officials during their terms. This review was prompted by the North Dakota Supreme Court's May 1976 decision involving unvouchered expense accounts for public officials.

The court took a dim view of using unvouchered expense accounts to circumvent the prohibition

against increasing officials' salaries during their terms. The court, in its decision, suggested that "possible constitutional amendment in light of changed conditions and times should not be overlooked."

The committee noted that this is yet another instance where the Constitution appears to say one thing, yet actual practice is something quite different.

The committee believes the legislature can be trusted to decide the proper salaries for the state's elected officials. The prohibitions against increasing or decreasing those salaries is outmoded, and prevents the legislature from paying a direct salary to those officials and from biennially keeping that salary up-to-date.

The committee recommends amending Section 84 to read basically that the salaries of public officers shall be prescribed by law. The language prohibiting salary increases or decreases during the officers' terms is eliminated.

LIEUTENANT GOVERNOR

The committee considered two proposals concerning the Lieutenant Governor. The first is Section 77 which allows the Lieutenant Governor to vote in the Senate on tie votes. This has been interpreted to allow the Lieutenant Governor to vote on tie votes on both substantive and procedural matters.

There was divided opinion on the committee on the proper voting role of the Lieutenant Governor in the Senate. The majority of the committee believes Section 77, as it now reads, conflicts with Section 65 which provides that no measure shall become law except by a vote of the majority of the members elect. They also objected to the Lieutenant Governor voting in the legislative branch of government when he is the "number two" elected official in the executive branch.

A minority of the committee believes there is ample tradition in American government, both on the state and federal level, including the Vice President's role in the United States Senate, supporting the present interpretation of the Lieutenant Governor's voting powers in the Senate. The minority also cited the increased possibility of tie votes in the Senate now that there are an even 50 senators as a need to have a "tie breaker" vote.

The committee recommends amending Section 77 to allow the Lieutenant Governor to vote only on tie votes involving procedural matters.

The committee also considered amending Section 73 to provide that the Lieutenant Governor could hold no other elective office during his term. This section now prohibits him from holding any other office during his term. Some committee members believe this conflicts with the recent change in Section 77 allowing the Governor to give the Lieutenant Governor additional duties. However, the committee decided against any recommendations on this matter at this time.

OTHER REVISION SUBJECTS CONSIDERED

Executive Reorganization

The committee discussed the pros and cons of executive reorganization at three of its meetings. It reviewed South Dakota's new constitutional provisions on executive reorganization, and looked at similar provisions in other states.

The committee considered a tentative draft of a constitutional amendment for North Dakota combining the executive reorganization provisions from South Dakota's and ConCon's Constitutions, but decided not to make any recommendations on this subject.

Mr. Lloyd Omdahl, then Director of the Accounts and Purchases Department, testified before the committee at its invitation about his study of government organization and effectiveness. Mr. Omdahl said his study, undertaken under the authority of Section 54-44.1-03 (6), was not so much concerned with reorganization and constitutional change as it was with governmental effectiveness and efficiency. Mr. Omdahl had 12 separate committees studying personnel policies, local government, general administration, state and federal relations, criminal justice and safety, fiscal affairs, higher education, general education, economic affairs, natural resources and energy management, human resources, and regulatory activities.

He said his study would result in recommendations to the Governor, but that his groups were trying to avoid constitutional changes because of the obstacles those present in the way of timing and implementation.

The committee contacted the Governor's office and asked to be kept informed of any reorganization studies undertaken by the executive branch. The 1975 Legislature, through Senate Concurrent Resolution No. 4078, asked the 14 elected executive branch officials to form a commission to study executive reorganization. This commission, if formed, was to report its findings to the 1977 Legislature. This group did hold one meeting, but the committee is not aware of any further meetings.

Section 25 — Initiative and Referendum

The committee reviewed the North Dakota Supreme Court opinion on the referral of the University of North Dakota's 1975-77 appropriation. The court ruled in essence that, while Section 25 of the Constitution appears to be a blanket grant of initiative and referendum powers to the people, it is overridden by the more specific and more recent constitutional mandates of Article 54 of the amendments that direct the legislature to provide "adequate" funds for the institutions of higher education.

While believing this is yet another instance where the Constitution apparently does not mean what it appears to say, the committee also believes a study of this section demands a more extensive and thorough review than it could effect at this time. Thus it makes no recommendations on this subject.

Employment of Legislators

The confusion about what sorts of state-related jobs legislators can or cannot hold, and similarly what types of positions prohibit persons from becoming legislators, was a matter of committee concern. The constitutional provisions involved are Sections 37 and 39, and Article 51. The committee believes this is yet another area where constitutional language and actual practice appear at variance. However, as with the problems concerning initiative and referendum, the committee believes this subject needs a more thorough and comprehensive study than it could render during its interim study.

Legislative Compensation

Mr. Gorman King, Chairman of the Legislative Compensation Commission, appeared before the committee to ask if any constitutional changes concerning the commission should be recommended regarding legislative pay in light of the proposed amendment on the September 1976 primary ballot to repeal the Constitution's present \$5 per day legislative salary (the measure was defeated).

The committee decided no constitutional nor statutory changes would be needed. The Legislative Compensation Commission is now organized under law (Sections 54-03-20.2 and 54-03-20.3) to determine proper levels of legislative compensation and to make recommendations accordingly to the legislature. This function would remain regardless of the outcome of the proposed repeal, the committee noted, although the commission would probably be looking at a restructured form of legislative compensation should the repeal be approved.

Revenue, Taxation, Debt

In its review of the entire Constitution, and throughout the committee's interim study, several suggestions were made by committee members and committee witnesses concerning possible revisions in Article XI — revenue and taxation, and Article XII — public debt and public works. There were specific suggestions for revision of at least five of the 14 sections (Sections 174-187) of the two articles.

The committee believes the two articles are veritable quagmires of outmoded, archaic, and obsolete provisions which are seriously hindering efficient governmental operations on both state and local levels. While the committee is recommending two repeals in Article XI (Sections 180 and 181—see repeal recommendations covered earlier in this report), and is forwarding a proposed amendment of Section 183 from the Political Subdivisions Committee, it believes the two articles should receive a thorough study as a whole by a future interim Constitutional Revision Committee.

No Party Offices

In line with its goal of making the Constitution mean what it apparently says, the committee considered a proposal to remove the no-party designations from the offices of Tax Commissioner and Superintendent of Public Instruction. The committee noted that candidates for these positions seek and receive party endorsement.

Superintendent of Public Instruction M.F. Peterson was not able to appear before the committee, but he did send word that he had no strong feelings one way or the other about the proposed change, but did not see any particular need for it. Tax Commissioner Byron Dorgan said much the same thing as Mr. Peterson, and added that removing the no-party designation might in some way indicate a lessening of what he believes is a directive to keep the office free of political influence.

Both officials stressed that they have kept partisan politics out of the administration of their offices. Mr. Dorgan said the proposed change would be cosmetic rather than substantive. Viewed in this light, he said, it looks better to have offices such as Tax Commissioner and Superintendent of Public Instruction kept out of politics.

The committee decided not to make any recommendations on this subject.

MISCELLANEOUS MATTERS

Master Plan, Public Information, Editing

The committee considered several miscellaneous matters which did not pertain to actual constitutional revision. One was a suggestion that some system be devised to provide voters with information concerning the constitutional revision proposals put before them. Some committee members said that often, after the legislature votes to put a constitutional amendment before the voters, absolutely no information is given to the voters about the proposal until just before the election when the news media perhaps provides some information. It was noted this is more often true in instances where the proposed amendments are seemingly minor or noncontroversial. The committee took no action on this matter.

Another suggestion was that the committee prepare some type of a master plan for constitutional revision for the next several years that could serve as a guide for future interim constitutional revision studies and future legislative sessions. While the committee saw some merit in advance planning of this sort, it believed changing times and conditions militate against effective long-range planning on this subject. It took no action on this suggestion.

The committee briefly considered the efficacy of some proposal to allow periodic editing of the Constitution to keep the provisions and amendments in their logical order, to keep the numbering understandable, to assure that repealed provisions are taken out, and to generally make the document more readable and understandable. The committee took no action on this matter.

Constitution Handbook

The committee believes copies of the Constitution should be easily available to the public, particularly to school children. This is not the case now. The Constitution is printed in Volume 13 of the North

Dakota Century Code, but that version contains all the past provisions and historical references as well as the current provisions, annotations, and cross references. It is difficult for a nonlawyer to read it. And, it is not generally available in any event unless a person has access to a 15-volume set of the Century Code.

Secretary of State Ben Meier testified that his office gets few requests for copies of the Constitution. The Department of Public Instruction, he said, used to send out copies. He said he sends out an 8 ½ x 11" booklet containing the current Constitution which he had reproduced on a copying machine. The copy is prepared from pages of the Century Code and was prepared originally for ConCon. The committee believes there would be more requests if it were known a usable version of the Constitution was easily available.

The committee is recommending a bill directing the Secretary of State to publish a so-called "short-form" version of the Constitution and appropriating \$10,000 for this purpose. The publication will contain the exact and current constitutional provisions in their correct order, and will omit unnecessary and confusing historical references and annotations. It would be small enough to be easily mailed or carried, and it should be printed in an inexpensive manner so it can be distributed free or at a nominal cost.

Interim, Standing Constitutional Revision Committees

Constitutional revision in North Dakota is apparently going to be accomplished in small doses. In the past 13 years voters have three times rejected wholesale constitutional amendment. During the same period, voters approved 18 of the 30 (or 66 percent) individual constitutional amendment proposals put before them.

Such ongoing revision needs careful thought to avoid conflicting amendments, to avoid piecemeal amendment of a particular section when perhaps a thorough review of the entire article is needed, and to be able to draw upon the wealth of constitutional revision research already completed.

The committee recommends two steps to achieve orderly and logical constitutional revision. First, it recommends a Legislative Council study resolution creating what in effect would be a permanent interim Constitutional Revision Committee composed of legislators and citizen members.

Secondly, the committee requested the Council's Legislative Procedure and Arrangements Committee, and it agreed, to recommend to the 1977 Legislature a proposed joint legislative rule creating a Joint Constitutional Revision Committee as a regular standing committee operating somewhat similar to the Joint Legislative Council Resolutions Committee.

All the proposed constitutional amendments, additions, or repeals introduced in the legislature would be referred to this eight-member committee. The committee would report the resolutions to the houses of origin in the same manner as other standing committees.

The Constitutional Revision Committee believes such a joint standing committee will be able to sort through all the proposed constitutional changes, avoid conflicts and duplications, schedule them on the ballot in some orderly and logical fashion (so, for example, there are not eight on the primary ballot and none on the general election ballot, or Sections 180 and 181 in September and Section 182 in November) and generally bring some planning to the constitutional revision process.

SUMMARY OF RECOMMENDATIONS

The Constitutional Revision Committee, in summary, recommends the following 29 items:

1. 20 concurrent resolutions repealing 50 sections and articles of the North Dakota Constitution (Sections 60, 62, 132, 133, 135-138, 140, 141, 143-145, 180, 181, 214, and Sections 1-25 of the Transition Schedule; and Articles 14, 19, 24, 59, 65, 75, 76, 87, and 88);
2. 3 concurrent resolutions forwarded on behalf of other Council committees amending three constitutional sections (Sections 161, 174, and 183);
3. 3 concurrent resolutions from its own study amending two constitutional sections and creating a new article (Section 77—Lieutenant Governor voting in the Senate, Section 84—salaries of elected public officials, and Article V—elective franchise);
4. 1 concurrent resolution calling for a permanent interim Legislative Council Constitutional Revision Committee;
5. 1 bill directing the Secretary of State to publish a "short-form" or handbook version of the state's Constitution; and
6. 1 proposed joint legislative rule creating a standing Joint Constitutional Revision Committee.

EDUCATION

House Concurrent Resolution No. 3057 directed a study of the financing of elementary and secondary public education in North Dakota. The study was to include:

1. A review of the statutes and practices relating to charging student fees and charging for textbooks by North Dakota public schools.
2. An investigation of the effectiveness of the foundation aid program in achieving the goal of top quality education for North Dakota's students, including a grade-by-grade measure of the academic ability of students in the public school system.
3. A complete review of current salary and negotiation practices for teachers.
4. Consideration of limiting state funding to a basic curriculum.

House Concurrent Resolution No. 3081 directed a study of the transportation aid formula, and House Concurrent Resolution No. 3038 directed a study of the feasibility of establishing a statewide computer system for public schools.

Committee members were Senators Robert Nasset, Chairman, Phillip Berube, Jay Schultz, and Kenneth Tweten; and Representatives Herbert Anderson, Arthur Ekbal, Bernhard Gustafson, Dean Hildebrand, Irvan Jacobson, Kenneth Knudson, Gordon Larson, Joe Leibhan, John McGauvran, Walter Meyer, Art Raymond, Larry Tinjum, and Cheryl Watkins.

The report of the Committee on Education was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

TRANSPORTATION AID FORMULA

The state foundation program reimburses school districts for the cost of school bus transportation. The present transportation aid formula envisions circuitous travel by school buses for pupil collection. Under this method of pupil collection, buses leave from a given area close to a school, travel in a cir-

cuitous route, and eventually arrive back at the school to deliver pupils. However, there was indication that in some school districts a circuitous travel route is not feasible, and an uneconomical and energy-wasteful situation results in which school districts are encouraged to run their buses empty half the time in order to maximize state aid payments.

The committee examined the problem of "deadheading" school buses, and it appeared that only one school district was adversely affected by this problem. Because the committee could find no acceptable solution, either legislatively or administratively, to this highly localized problem, the committee decided not to tamper with the transportation aid formula because amendments to remedy this problem may cause other inadvertent problems with the formula.

The committee did make recommendations regarding the level of transportation aid support, which are described in more detail in the recommendations regarding the level of financing during the 1977-79 biennium.

STATEWIDE COMPUTER SYSTEM

The study of the feasibility, financing, cost, and problems of establishing a statewide educational computer system for use by all North Dakota public high schools was to be comprehensive in scope, including a study of alternative options. The committee examined the probable cost of establishing and maintaining a statewide data communication system for education. However, further study would have required additional staffing and expertise. The committee explored alternative financing methods, including federal grants, to supplement the limited funds of the Legislative Council. However, because of staffing and expertise limitations in this area, the committee decided to terminate this study without recommendation. Testimony indicated that the area of computer technology is changing so rapidly that establishment of a statewide computer system at this time may mean that such a system would become obsolete before it had been installed. Recent developments in computer technology have driven the cost of these items down and have made many computer systems obsolete.

SCHOOL FINANCING Foundation Program

Most states have traditionally relied upon local property taxes to finance school systems. However, in 1971 two court cases—*Serrano v. Priest* and *Rodriguez v. San Antonio Independent School District*—held that the educational financing systems of California and Texas, which were both based upon property taxes, were unconstitutional because they violated the Equal Protection Clause of the Federal Constitution. Differences in the property tax base between school districts caused tax rate differentials and differences in per-pupil expenditures. However, in 1973 the United States Supreme Court reversed *Rodriguez* because no disadvantaged class could be identified which had suffered an absolute deprivation of a right guaranteed by the Constitution. It concluded that utilizing property tax revenues to finance education, though imperfect, bore a rational relationship to legitimate state purposes.

However, by the time *Rodriguez* was decided, most states, including North Dakota, had undertaken to reform the method by which education was financed. Moreover, the North Dakota Supreme Court held that “all children in North Dakota have the right, under the State Constitution, to a public school education.” *In Interest of G.H.*, 218 N.W. 2d, 441, 446 (N.D. 1974).

In North Dakota, the state foundation aid program was first enacted in 1959 and remained basically unchanged until 1971. As a result of the Legislative Council study during the 1971-73 biennium, major changes in the entire program of financing elementary and secondary education in North Dakota were made by the 1973 Legislature. At that time, the legislature committed itself to funding approximately 70 percent of the cost of education, with the remainder to be funded through local property taxes.

The 1975 Legislature made permanent the basic concepts for state financial aid to elementary and secondary education which had been temporarily enacted in 1973. The base payment was increased from \$540 to \$640 per pupil for the first year of the biennium and to \$690 per pupil for the second year. There were changes in weighting factors for elementary pupils, including a new classification for seventh and eighth grade pupils. Transportation payments were increased from 23 cents per mile to a new formula for buses with a capacity of 17 or more which would provide 26 cents per mile plus 15 cents

per day for each pupil transported, except the 15 cents per day payment would not be made for transporting pupils to schools located in cities where such pupils lived. Payments for smaller buses were also increased from 10 cents to 12 cents per mile.

The committee received testimony from school board representatives, school administrators, teachers, and taxpayers. The committee also received testimony from Mr. Howard Snortland, Assistant Superintendent of Finance for the Department of Public Instruction. The committee examined: financing problems regarding special education for preschool children, financing alternatives, use of federal revenue sharing moneys in the foundation aid program, and costs of education.

Presently, schools serving special education pupils who are over three years of age and less than six receive both special education reimbursement and state foundation payments. Attorney General's Opinion (3-20-76). Federal regulations require that states provide such pupils with educational opportunities, and the case *In Interest of G. H.*, supra, also held “that failure to provide educational opportunity for handicapped children . . . is an unconstitutional violation of the (State Constitution).” Recognizing that preschool special education pupils do not usually spend an entire day in school, that school districts also receive special education funds for these pupils, and that a weighting factor of one-half the full foundation program payment approximates the actual cost to schools, the committee recommends that schools educating special education pupils between three and six years old receive foundation payments with a weighting factor of .49.

When the foundation program was revamped in 1973, the legislature also committed the state's share of federal revenue sharing moneys to education. In 1973 the state's share of federal revenue sharing moneys amounted to \$25 million, but by 1975 the state's share had declined to \$6 million, largely due to the state's rapidly rising personal income.

During the interim a problem which had not been anticipated by the legislature arose concerning the state's use of its share of federal revenue sharing moneys to fund education. Federal regulations require strict accounting procedures to identify federal revenue sharing moneys, and when a governmental entity commingles federal revenue sharing moneys in the manner North Dakota did in its foundation aid program, these strict accounting

procedures also apply to the secondary recipients, school districts. Presently, 325 school districts participate in the foundation program, and the relative amount each school district receives through federal revenue sharing is small and not proportionate to the increased accounting costs necessary to identify such small amounts. Indications suggest the state's share of federal revenue sharing moneys will continue to decline, and it will be easier to identify federal revenue sharing moneys through the state for another purpose rather than dividing it among many school districts, thus causing unnecessary duplication of accounting costs.

Therefore, the committee recommends appropriations for the foundation program not include any federal revenue sharing moneys. Rather, the committee recommends that full appropriation for the foundation program come from the general fund, and all federal revenue sharing moneys be appropriated in a lump sum for another purpose to facilitate accounting procedures and to cut administrative costs.

It is estimated there will be approximately 143,000 weighted units for each school year during the next biennium. Enrollment in elementary schools will continue to decline, but there will be a slight enrollment increase in secondary schools during the biennium. Moreover, school districts affected by coal impact will continue to experience increased enrollments. Together, these increases and decreases balance each other, and the number of weighted units remains the same as it did during the last biennium.

However, the costs of education have continued to rise, and to maintain the goal of funding 70 percent of the cost of education, the committee recommends the level of support be increased to \$765 per pupil during the first year of the biennium and to \$840 per pupil for the second year. The committee also recommends that the level of transportation aid be increased to 15 cents per mile for school buses having a capacity of 16 or fewer pupils and to 31 cents per mile for school buses having a capacity of 17 or more. With these increases, the total cost of the foundation program during the next biennium will amount to \$187 million.

Financing of Adult and Vocational Education

Several problems were brought to the committee's attention during the interim regarding the financing of adult and vocational education programs which

the committee thought were peripherally within the committee's assigned areas of study. However, these problems were extremely complex and involved, and because these problems also touched on areas plainly outside the scope of the committee's studies, the committee recommends a resolution to study these problems during the next biennium.

Section 15-46-03 provides that the state is to pay one-half the salaries of teachers in an established evening school. Evening schools are a part of the public school system which school boards may establish and maintain for all persons over 16 years of age. This law was enacted in 1917, probably as a response to the agrarian populist movement sweeping across North Dakota at that time. The law has overtones of the chautauqua movement because of its emphasis on continuing education for adults. The state funded evening school teachers' salaries from 1917 to 1929. When the Depression paralyzed state government in the 1930's, this was one type of state funding which was eliminated. In 1933 the budget of the Department of Public Instruction was cut by 40 percent, and the level of state funding of education fell from a high of almost \$700,000 in 1923 to not quite \$31,000 in 1933. However, interest in evening schools appeared to be declining even before these extreme spending cuts took place. The state appropriations for evening school teachers, which amounted to one-half of the entire teachers' salaries, had been steadily declining since 1925, and apparently there was little demand for this type of education in the late 1920's.

The committee received testimony to the effect that farm management programs attended by veterans who receive federal veterans' benefits for enrolling in these programs are jeopardized because the benefits are running out. Although the committee believed these programs are worthwhile and help both the individuals enrolled in these programs and communities where these farmers live, the committee could endorse these programs temporarily but it could not commit the state to continued funding of these programs.

The committee also received testimony regarding vocational education programs in North Dakota. Recent agricultural and industrial development in North Dakota has created new and emerging occupations which require vocational skills and abilities. If North Dakotans are to work in these new and emerging occupations, it will be necessary for state citizens to acquire these skills and abilities through full-time or part-time adult and vocational

training, and citizens of the state may have to retrain and upgrade several times during their lives to keep pace with the emerging needs of industry. Studies indicate that the need for vocational training will touch the lives of 88 percent of the population of the United States, and 50 percent of the state's population over age 25 have not completed a high school education or its equivalent.

As a result of this testimony, the committee was concerned about whether adults and minorities have sufficient access to adult and vocational education programs in relation to their needs, and whether this serves to deny such persons the opportunity to choose competitive careers in the open labor market and to make contributions to the state and their communities commensurate with their potential. However, evening schools and adult and vocational education, while it may involve elementary and secondary education, may also involve concerns other than elementary and secondary education. Since the study resolution only assigned the committee with responsibility to examine the financing of elementary and secondary education, the committee limited its study to this area. The committee believed these complex problems should be examined during the next interim, and therefore, the committee recommends a study of the needs and financing of adult and vocational education. This study is to give special emphasis to the effect of agricultural and industrial development in creating new and emerging occupations, to financing adult education including evening schools, and to the vocational education needs of adults and minorities of the state.

Indian Education Curriculum

Under the committee's study of the financing of elementary and secondary schools, the committee examined the financing of an Indian education curriculum. The committee felt such a curriculum is necessary to establish not only cultural pride for Indians, but also to enhance the realization by non-Indians of Indian contributions to society. Although the past cannot be forgotten, the committee hopes to diminish the effects of discrimination through the adoption of such a curriculum within existing curriculum requirements. With this curriculum, North Dakota could take a step in providing leadership in this area and towards breaking down any possible barriers of prejudice toward Indians.

The United Tribes Educational Technical Center has developed an American Indian curriculum which

outlines the social, general, and cultural history of North Dakota Indians. The curriculum centers around the five Indian tribes in North Dakota and may be implemented as a course of study at all levels of elementary and secondary education. The curriculum has been reviewed by the Department of Public Instruction and has been approved nationally and internationally as a well-developed and well-conceived idea. The curriculum has been developed largely through the aid of a \$70,000 federal grant, but the curriculum needs periodic review, evaluation, and updating. The cost of further research and continued evaluation, revision, production, distribution, and teacher in-service training is estimated to be \$500,000 during the next biennium.

The committee recommends a bill to allow the Superintendent of Public Instruction to contract for the services to develop an Indian education curriculum. This curriculum can be implemented within the present minimum curriculum requirement for elementary and secondary schools. However, it would not impose an additional requirement upon schools to provide this curriculum as a prerequisite for certification. Thus, this curriculum could be implemented within existing course requirements for graduation and would require no additional classes to be provided by school districts. Also, because this authority is discretionary in nature, the Superintendent of Public Instruction may contract with entities other than United Tribes for such a curriculum.

State School Construction Fund

The State School Construction Fund provides low interest loans to school districts for construction or improvement projects through a lease agreement with the State Board of Public School Education.

The fund was originally created in 1953 as a result of a Legislative Research Committee study. At that time, the fund was appropriated \$5 million, and the fund has grown since that time to approximately \$9 million, primarily through accrued interest. In 1975 laws relating to the State School Construction Fund were amended, especially Section 57-15-16, and the effect of these amendments was to raise the necessary mill levy to be paid into the fund by a school district from 10 to 20 mills. As a result, school districts must now repay their loans in half the time, and this requirement makes obtaining the necessary board approval more difficult, places a strain upon local resources, and unnecessarily complicates school districts' financial considerations.

The committee reviewed this problem and reexamined other limitations within the statutes in light of recent inflationary trends. Many of these limitations are unrealistically low, unnecessarily restricting the ability of needy school districts to borrow from the fund. Moreover, the amount in the fund is not large enough to extend benefits without additional funding by the state.

The committee recommends a bill to amend the limitations on the State School Construction Fund expenditures to allow a school board borrowing from the fund to allocate any portion of a levy for a school building not otherwise allocated by contract with the fund for purposes determined by the school board within the other limitations for which the mill levy is authorized. The borrowing limitation for school districts is raised from 20 to 30 percent of the school district's taxable evaluation, and the monetary limitations which the loan may not exceed is raised from \$600,000 to \$1 million. The State Board of Public School Education, which administers the fund, is given discretionary authority to determine a sufficient mill levy to provide for repayment of the contracted loan within 20 years. A school district cannot borrow more than 30 percent of its taxable valuation and cannot levy less than 10 mills for the maintenance of a building fund. The fund is appropriated in an additional \$2.5 million to help fund borrowing under these increased limitations.

Excess Cost of Special Education

The place where a child actually resides for general purposes is a residence of the child for school purposes, regardless of legal residence of the parents. *Anderson v. Breithbarth*, 62 N.D. 709, 245 N.W. 483 (1932). In 1961 the legislature enacted an exception to that general rule by providing that the school district in which a child resides just prior to being placed by a court in another school district, which is the receiving district, is the residence district. (Ch. 146, 1961 S.L.)

During the interim a problem arose concerning a handicapped child who had been placed by a court. Because this child requires special education, the cost of educating this child was greater than the average cost of educating other children in the school district. A dispute between the residence district and the district receiving that handicapped child arose over these excess costs of education, and in a letter the Attorney General's office construed Section 15-40.2-03, relating to tuition payments, to compute the amount of tuition costs to be paid by the

residence district in child placement cases. However, Section 15-40.2-03 contains an expression of legislative intent "that school districts educating pupils in other school districts shall pay the full cost of education."

To clarify the legislature's intent regarding payment of special education cost by the residence district in child placement cases, the committee recommends a bill holding the residence district liable for both the cost of tuition and for the excess educational cost related to special education. Holding the receiving district liable for the excess costs of special education discourages communities from providing services to attract the handicapped because of the fear of being held liable for the expensive costs of special education. It also places an unfair burden upon communities which do provide special services for the handicapped because courts tend to place children requiring special education in communities providing services for the handicapped. Holding the residence district liable for the excess cost of special education in these instances spreads the risk and the tax burden more equitably throughout the state.

Student Fees and Textbook Fees

Section 148 of the North Dakota Constitution provides:

"The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education."

Chapter 15-43, which relates to textbooks generally, provides that it is the duty of the parent or guardian of a pupil to provide the pupil with textbooks unless the school district has a free textbook system. The school board may purchase and sell textbooks to pupils at cost, including the cost of transportation and handling. Textbooks may be purchased or loaned to indigent pupils.

A school board may adopt a free textbook system either by its own action or upon petition of two-thirds of the voters of the district. A school board must dispense with a free textbook system if petitioned by two thirds of the voters, but no

petition to dispense with the system may be acted upon within four years after a free textbook system has been adopted. Similarly, after such a system has been dispensed with, it cannot be reinstated for four years.

During the 1975 Legislative Session a bill was introduced to prohibit school districts from charging mandatory activity fees and to require school districts to furnish necessary textbooks to pupils. However, the bill failed because of unanswered questions regarding the financial impacts upon school districts caused by abolishing these fees.

The committee received testimony from school board representatives, administrators, and the public, including Representative Gerald Halmrast, the sponsor of the 1975 bill. Because the full costs of eliminating these fees were not known by the Department of Public Instruction, the committee sent a questionnaire to all school districts within the state regarding the level of each school district's present expenditures for these items, and for projections of additional revenues necessary to assume the full cost of these fees. During the school year 1975-76, North Dakota school districts had an average textbook expenditure of \$10.04 per pupil, but this does not include the portion of textbook fees paid by pupils.

The problem of gathering information from school districts was complicated due to different accounting procedures used by school districts. Some school districts paid the entire cost of providing textbooks; whereas, some school districts, including some rather large school districts, did not pay any textbook or activity fees. The situation varied even more between school districts in regard to activity fees. Indeed, some school districts charge all their pupils a mandatory fee for the sole purpose of raising revenue to subsidize school or extracurricular activities.

Even though exact costs cannot be determined from responses from the questionnaire, the committee found that a great disparity exists between school districts which provide free textbooks and activity fees and those which do not. In some school districts a major cost of education—textbooks and activity fees—is borne by the school district; in others, the entire cost is borne by the student. Extremely large school districts are just as likely to provide free textbooks as extremely small and moderately sized school districts. These fees are a hardship for low income families and discourage

students from taking courses requiring higher priced textbooks. Charges to students often bear no relationship to actual costs, and these charges constitute an arbitrary tax which often falls on those least able to pay. The fact that some school districts charge all students activity fees without regard to whether these students actually attend or participate in these activities only emphasizes that the state is not meeting its constitutional responsibility to provide a free public education and equal educational opportunities.

The committee recommends a bill to prohibit school boards from selling textbooks to pupils or otherwise charging unauthorized fees. The purpose of the bill is to assure that no pupil will be denied an education because of economic inability to furnish textbooks necessary for advancement in or graduation from the public school system. However, school boards are authorized to require certain fees including fees for security deposits, extracurricular and noncurricular activities where attendance is optional, insurance plans, physical education equipment, programs where the resultant product becomes the personal property of the student, and other fees and charges permitted by statute. The Superintendent of Public Instruction has the authority to specify, pursuant to rules and regulations, additional fees which may be authorized by a school board. To provide a penalty, any school district which requires the payment of fees prohibited by this bill forfeits its foundation payments for those students so charged.

One of the questions which the committee sought to answer was the cost of replacing textbook and activity fees. Although information was not available by which such costs could be accurately determined, the committee determined that the cost of eliminating these fees should be borne both by the state and by local school districts. To mitigate the fiscal impacts of eliminating these fees, school boards are required to reduce textbooks and activity fees by not less than 20 percent the first year after the effective date of the bill and not less than an additional 20 percent each year thereafter. These reductions are to be based upon a school district's total fees and may vary as to the actual percentage reductions for individual pupils and for particular fees. The state's share of replacing these fees is to be paid through the foundation program. The level of educational support for the next biennium is to be increased by an additional \$5 per pupil for the first year of the biennium and an additional \$10 per pupil for the second year. These amounts are to be in

addition to the foundation program payments, although the actual payment is to be made in the same manner and at the same time as the foundation program payments. The bill appropriates \$2.1 million to finance this addition to the level of state support.

Effectiveness of Foundation Program [Accountability]

House Concurrent Resolution No. 3057 calls for an investigation of the effectiveness of the foundation program in achieving the goal of top quality education for North Dakota's students, including a grade-by-grade measure of the academic ability of students in the public school system. This type of academic testing is a part of a larger concept in education called "accountability," which is a term used to describe any system which attempts to explain the results achieved by schools. The accountability concept is usually considered a part of a state educational assessment program, and minimally, educational accountability requires at least five components: responsibility, stipulated goals, reporting, achievement of goals, and costs.

Educational accountability is a reaction to recent lower reading scores by pupils nationally and to a general feeling that the quality of education is deteriorating. Although the significance of lower reading scores is debatable and there has been no definite indication that the quality of education is deteriorating, several approaches have been taken in other states to improve the quality of schools and education. These range from simple laws requiring statewide testing of basic subject comprehension to comprehensive laws requiring all the elements of accountability.

Because it is apparent there is no single reason for the progressively declining achievement scores on standardized tests during the past decade, the approaches taken by other states differed drastically, alternately looking at pupil performance, management systems performance—or cost effectiveness—and community involvement. Yet it should be pointed out that comprehensive accountability systems which have been adopted by some states have not been working out, and some states are considering drastically revising their accountability systems. In some states accountability has become such a political issue—often ranking alongside school busing—that it is difficult to obtain accurate reports of the results of the accountability systems. But those states which have a

more limited approach, such as testing of academic ability, have found these to be somewhat successful educational tools, perhaps because less is expected from these approaches and because results are used for specific or limited educational purposes.

Generally, North Dakota students compared favorably in academic achievement to students nationally. The committee reviewed standardized test scores for students which are administered on a national basis to similar test scores for North Dakota students and found these scores to be generally comparable to nationwide averages on these tests. In addition, the committee examined the scores of other tests given to North Dakota students through the Department of Public Instruction and found that students did well on these more specialized tests although these tests indicated the existence of problem areas for some groups of students.

The committee examined alternative accountability approaches and measured the potential use of such alternatives against the projected cost of establishing and maintaining these systems. In the course of this and other studies, the committee noticed a lack of usable information in some of the committee's assigned study areas because the diverse accounting systems by school districts which made statewide cost determinations impossible. Because of the need to have adequate statewide information about educational financing, the committee focused its study of accountability upon the feasibility of establishing a uniform accounting system for school districts.

The committee recommends a bill to establish a uniform accounting system for all school districts which would provide the initial data base from which future decisions regarding the desirability of implementing various types of accountability programs in the state may be determined. Improved educational accounting procedures will answer questions correlating educational funding with educational achievement and should allow the total educational situation to be evaluated whenever an educational expenditure is to be made. The committee determined that a new expenditure coding system should be devised in North Dakota to determine how much money is expended to teach particular items in schools.

However, educational growth also must be determined by measuring devices such as testing, and pilot programs must be established to measure the success of desired goals. Consequently, the bill

draft provides for both testing and establishment of pilot programs through mini-grants to school districts.

Review of Salary and Negotiation Practices

Current teachers' salary and negotiation practices are governed by Chapter 15-38.1, relating to representation in negotiations. However, other general provisions, mainly found in Chapter 15-47, also govern certain practices which relate to various terms of employment which may be subject to negotiations.

Teacher negotiations began in North Dakota in 1960, but only in a limited number of districts. The statutes authorizing teachers to be represented in their negotiations with school boards were enacted in 1969 and have remained essentially unchanged since that time. The law establishes an appointive fact-finding commission, which has the power to adopt its own rules and regulations, appoint factfinders, exercise certain administrative procedures, and help resolve impasses between school boards and teachers. Teachers and administrators are authorized to organize for the purposes of representation before a school board, but are not required to do so. Representative organizations have the right to negotiate with the school board, but any teacher or administrator also has the right to present his views directly to the school board. All matters relating to terms and conditions of employment and employer-employee relations, including salary, hours, and other terms and conditions of employment, may be the subject of negotiations.

Provision is made within the teacher negotiations law for determining appropriate negotiating units of teachers and administrators and for selecting representative organizations. An organization which filed an uncontested selection petition to the school board is recognized as the representative organization of the appropriate negotiating unit unless there is a good faith, reasonable doubt on the part of the school board that such representation exists. In a contested selection, the school board is to call an election to determine the representative organization. A representative organization represents a negotiating unit for a period of at least one year.

The school board and representative organization have the duty to meet and negotiate in good faith with respect to the following:

1. Terms and conditions of employment;
2. Formulation of an agreement, including binding arbitration; or
3. Any question of interpretation of an existing agreement.

If negotiations cannot be resolved, an impasse is declared.

Impasse procedures require the parties to meet with mediators and factfinders, and the parties may resolve the impasse through voluntary arbitration. However, arbitration is not required even though teachers, administrators, and representative organizations may not strike, and any teacher engaging in a strike may be denied the full amount of his wages during the period of the strike.

The committee examined the constitutionality of binding arbitration in North Dakota. Although Section 120 of the North Dakota Constitution, prohibiting all but voluntary arbitration, was repealed by the voters when the new judicial article was approved in September 1976, the committee expressed concern about whether the legislature could consent to binding arbitration on behalf of the school districts. *Hjelle v. Sornsin Const. Co.*, 173 N.W. 2d 431 (N.D. 1969), held that the legislature could consent to compulsory arbitration on behalf of the state and its agents. By implication, the legislature could also consent to compulsory arbitration for political subdivisions, such as school districts.

The committee received testimony and conducted independent surveys of current salary levels for teachers. Although the committee made no specific findings regarding the relative level of teacher salaries in North Dakota compared to teacher salaries nationally, generally teacher salaries in North Dakota are less than national averages and the starting salaries of teachers may be comparable to the starting salaries of persons with less than a four-year degree. In regard to negotiation practices, the committee reviewed teacher negotiation laws and declined to propose amendments regarding collective bargaining because the Committee on Industry, Business & Labor "C" recommended a bill to repeal the provisions relating to teacher negotiations and to replace them with collective bargaining procedures for all public employees, including teachers. However, the committee recommends a resolution to commend school districts for raising teacher salaries

in North Dakota and to urge school districts to continue giving first consideration to raising teacher salaries.

Limiting State Funding to Basic Education

According to the study resolution, the committee was to study the desirability of a "basic curriculum" pursuant to Chapter 15-38 which defines an elementary teachers' duties to teach certain subjects; Section 15-41-24 which defines a minimum high school credit necessary for accreditation by the Department of Public Instruction; the rules and regulations of the department, which are used by the department to evaluate elementary and secondary schools; and the recommendations as developed by this study.

The committee heard considerable testimony regarding limiting state funding of education to a

basic curriculum and encountered various problems regarding what constitutes a basic curriculum and how limiting state funding of education to a basic curriculum could be implemented within the state's obligation to provide equal educational opportunities for all children. Testimony from Representative Robert Reimers, the sponsor of the study resolution, indicated that the basic thrust of this study was to examine the accountability of school districts, teachers, and administrators for the manner in which state funds are spent by school districts to provide equal educational opportunities. The committee terminated its study of limiting state funding of education to a basic curriculum, and instead incorporated this study into a study of accountability by focusing upon a bill to provide for a uniform accounting system for school districts with management information and educational accountability capabilities, which was discussed previously.

FINANCE AND TAXATION

The Committee on Finance and Taxation was assigned two study resolutions. House Concurrent Resolution No. 3078 directed the Legislative Council to study the methods of valuation and the levels of assessment of property in North Dakota. Senate Concurrent Resolution No. 4058 directed the Legislative Council to study the taxation of power transmission lines, including consideration of alternative methods of taxing such structures and the possibility of providing some means of compensation or tax relief for landowners whose property has been affected by transmission lines.

Committee members were Senators Robert Stroup, Chairman, Chuck Goodman, Shirley Lee, Frank Shablow, and Stanley Wright; and Representatives Richard Backes, William Gackle, Alvin Hausauer, Karnes Johnson, Theodore Lang, Bruce Laughlin, Gordon Matheny, Jack Murphy, Arnold Nermyr, Royden Rued, Francis Weber, Gerhart Wilkie, and Ralph Winge.

The report of the Committee on Finance and Taxation was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

METHODS OF VALUATION AND LEVELS OF ASSESSMENT OF PROPERTY

Introduction

There have been a number of studies of property tax assessments in recent years. During the past 20 years, at least one study resolution related to the property tax has been assigned during each biennium to an interim committee. In addition to recommendations of interim committees, a number of individual bills intended to improve property tax assessments and procedures have been introduced over the past two decades. The committee reviewed some 55 pieces of legislation introduced since 1951. Of these, 10 passed and 45 were either killed, indefinitely postponed, vetoed, or withdrawn. Attention has been given in past sessions to assessors and qualifications of assessors, the basis of assessments, the sales ratio study, statements of full consideration, limitations on property tax increases, and special problems related to the assessment of agricultural lands.

The committee sought and obtained the services of Mr. John Hulteen, State Supervisor of Assessments, and other staff members of the property tax division of the State Tax Department. In addition, Dr. William E. Koenker, who has since retired from his position as Vice President for Academic Affairs for the University of North Dakota, presented a paper to the committee on real property taxes in an equitable tax structure.

Background

In North Dakota the state gains less than one percent of its tax revenues from the property tax, but local units of government derive a large percentage of their revenue from the property tax. There has been a trend away from the property tax as a source of state and local general revenue in recent decades. In 1942, 46.9 percent of state and local revenue in North Dakota was derived from the property tax. By 1974 this figure was reduced to 16.2 percent. Several reasons can be given for this decreased reliance upon the property tax, including increased appropriations for the school foundation program and the repeal of personal property taxes.

Although the reliance upon the property tax in the total tax structure has been declining, the amount of real property taxes continues to increase each year. The reasons for this increase can be attributed to inflation and increased demand for local services. The property tax constitutes the primary source of locally collected taxes to meet the demands of local citizens. In addition, the property tax has the advantage over other taxes in that it is a stable source of revenue which has minimum fluctuations in economic cycles.

The committee considered various objections to the property tax. One argument against the property tax is that it is not based upon ability to pay. Another argument is that there seems to be little relationship between the sales price of agricultural land and the productivity of that land. Perhaps the most serious objection to the property tax, which is probably the most difficult to remove, is the difficulty of proper assessment. Because the Legislative Council's interim Committee on Political Subdivisions was assigned the study of alternative revenue sources for local units of government, the Committee on Finance and Taxation concentrated on methods of improving property assessment.

Assessment Problems

There are approximately 1,800 assessors in North Dakota, most of whom are part time. Testimony indicated that many assessors simply copy the books from previous assessments and do not actually appraise or make adequate assessments of property. Because these assessors are part time, most of them cannot afford to attend training sessions or to take other steps to improve their assessments.

North Dakota has elected assessors in 1,368 townships and in 29 other parts of counties that lack township governments. In addition, there are appointed assessors in virtually all of the state's 358 cities. With less than one percent of the nation's population, North Dakota has one-eighth of the nation's assessing districts. A state law passed in 1969 requires each county board to appoint a county director of tax equalization who is supposed to be qualified and experienced in property tax appraisals. However, no assurance of professional competence is in the law. Some counties have never complied with this law, and others have appointed figurehead county directors of tax equalization who have few qualifications for the job.

North Dakota law requires that all property be assessed at its true and full value. As a practical matter, property is assessed at a much lower figure. This disparity between actual value and assessed value is caused by inflation and the absence of genuine property appraisals. As the market continually pushes the actual value of property to increased levels, and as assessed valuations remain relatively constant, the disparity between actual and assessed values increases. Five years ago property was assessed at approximately 25 percent of actual value, while in 1976 the ratio on all property was 12.3 percent. Although state law provides no classification system, a de facto classification system has evolved through the years. In 1976 commercial property was assessed at 16.8 percent of actual value, residential property at 15.5 percent of actual value, and farm property at 10.5 percent of actual value.

In addition to the disparities between classes of property, a more serious problem results because similar property is assessed in widely varying relationships to actual value. Testimony before the committee indicated that the larger cities with full-time assessors are generally doing a better job of assessing than the smaller political subdivisions with part-time assessors. Although the high and low assessments may be just as far off in cities with full-

time assessors as in other political subdivisions, the coefficient of dispersion is smaller in the larger communities. In other words, there are fewer deviations from a uniform level of assessments in those cities with full-time assessors.

In 1963 the legislature attempted to correct the problem of unequal assessments by creating the sales ratio study. The sales ratio study (which was renamed the sales, market, and productivity study in 1973) is only as good as the information available to assessors. The information upon which to base the sales ratio study has been reduced substantially since the elimination of federal revenue stamps, and the Tax Department must use fewer sales in the study each year. Current statutes contain no requirement that information from property sales be made available to assessing officials.

Assessment of Agricultural Lands

Another problem discussed by the committee was the effect of inflated assessments on agricultural lands located near urban areas. While North Dakota has statutes related to agricultural lands located within city limits, there are no provisions relating to assessment of agricultural lands located outside city limits but near urban development. As a result, assessors are required to assess such agricultural lands based upon market value, which may have no relationship to the property's agricultural value. Thus, the tax structure is being used to force land use changes, as farmers cannot afford to continue farming such land.

On August 19, 1976, the State Board of Equalization adopted a resolution urging the Legislative Assembly to enact legislation providing a deferred method of assessment for qualifying farmers together with an adequate rollback formula to protect North Dakota's farmers regardless of where they may live or own farmland. Approximately 33 states have adopted some form of preferential assessments for farmland. Testimony to the committee indicated that laws providing for deferred assessments encourage farmers to stay on their farms, while the absence of this type of legislation encourages them to leave their farms. The rollback of taxes feature provides an incentive to farmers to continue farming their land and if the use of the land is changed, the landowner pays back the incentive which has been granted to him.

Recommendations

The committee recommends two bills intended to improve property tax assessments in North Dakota.

The first bill amends the section of law relating to county directors of tax equalization. This bill requires that by September 1, 1978, each county appoint a county director of tax equalization who holds a current assessor's certificate issued by the State Supervisor of Assessments. The State Supervisor of Assessments would be required to confer with local governing bodies and personnel at North Dakota State University to establish minimum requirements for attaining an assessor's certificate. Any person denied the certificate would have the right to appeal to the Tax Commissioner for a hearing. The bill also provides for four-year probationary certificates. This bill is modeled after bills introduced in the 1973 and 1975 Legislative Sessions. However, the prior bills provided that county directors of tax equalization succeed to the powers and duties of local assessors, except for assessors in cities with populations of over 5,000 persons. In addition, the 1973 and 1975 bills provided an appropriation to reimburse counties for a portion of the salaries of county directors of tax equalization. The committee voted to delete those portions of the bill. Committee members believe the recommended bill is a step in the direction of improving qualifications for county directors without taking away local control of assessments.

The second recommended bill relating to property assessment provides for the preferential assessment of agricultural lands. The bill states that it is in the public interest to encourage the preservation of agricultural lands and to prevent the forced conversion of agricultural land to more intensive uses as a result of economic pressures. The bill applies to farm units of a minimum of 40 acres owned by natural persons and which have been continually and exclusively used as agricultural lands for 10 years preceding the assessment date. The owner must normally derive not less than 51 percent of his net annual income from farming.

The bill provides for two separate assessed valuations on agricultural lands for which the owner files an application. One assessed valuation is based on the agricultural value of the land and would be uniform with the assessed valuation of adjoining agricultural lands. The second valuation is based on the prevailing market value of the land, including nonagricultural factors. The landowner would pay taxes based upon the agricultural valuation of his

land until such time as the land is sold, leased, or its use changed so that it no longer qualifies as agricultural land. At that time, the taxes which would have been due on the land for the five years immediately preceding would be computed and the property owner would pay the taxes for those years in the same manner as he would have if it were not for the existence of this law. The bill contains provisions protecting landowners from additional taxes for preceding years because of the reclassification or rezoning of his property by governmental bodies through no fault of his own. This bill, with a few modifications, is modeled after House Bill No. 1519 from the 1975 Legislative Session.

TAXATION OF TRANSMISSION LINES

Background

Power transmission lines are now taxed under three separate statutes. The taxation of these lines can be separated into three distinct categories:

1. The taxation of transmission lines owned and operated by investor-owned electric utility companies.
2. The taxation of transmission lines having a capacity of 230 kilovolts or larger and owned and operated by a nonprofit cooperative corporation, the gross receipts of which are subject to taxation under the provisions of Chapter 57-33.1.
3. The taxation of transmission lines owned and operated by a nonprofit cooperative corporation and having a capacity of less than 230 kilovolts and which are not owned by cooperatives subject to the provisions of Chapter 57-33.1.

Section 179 of the North Dakota Constitution provides that the property of any firm or corporation used for the purpose of furnishing electric light, heat, or power, or in distributing the same for public use, shall be assessed by the State Board of Equalization. Therefore, the property of investor-owned electrical companies is assessed by the State Board of Equalization and the local taxing districts determine the property taxes to be extended against the property within such districts according to the mills levied against all other property in the districts. The revenue generated is received by the political subdivisions the same as other revenue raised by general property taxes.

During the 1963-65 interim, the Subcommittee on Taxation of the Legislative Research Committee conducted a study of the taxation of power generating and transmission companies. Prior to that time, the property of nonprofit cooperative corporations had all been taxed upon the gross receipts of the cooperatives as provided in Chapter 57-33. As a result of recommendations by the interim committee, generating plants of cooperatives which have a capacity of more than 100,000 kilowatts are now taxed according to the provisions of Chapter 57-33.1, which provides an annual franchise tax of two percent of gross receipts plus \$150 per mile for transmission lines with the capacity of 230 kilovolts or larger. The proceeds from the taxation of those large transmission lines are allocated to each county in which the lines are located in the proportion that the miles of those lines in a county bear to the total miles of the lines in the state. Revenues received by each county are deposited in the county general fund. The 1963-65 interim committee recommended this tax apply to both cooperatives and investor-owned transmission lines, but the portion related to investor-owned lines was amended out of the bill prior to passage by the 1965 Legislature.

The transmission lines of cooperatives having a capacity of less than 230 kilovolts, and which are not owned by cooperatives subject to the provisions of Chapter 57-33.1, are taxed as a part of the property of the cooperatives. Such cooperatives are subject to a gross receipts tax of one percent for the first five years of operation and two percent thereafter. The gross receipts of each cooperative are apportioned in the ratio in which the number of miles of their lines in each county bears to the total number of miles of lines of such cooperative in the state. If the cooperative has a generating plant and less than 200 miles of transmission lines, the Tax Commissioner must apportion the revenues according to the following formula: 85 percent to the county in which the generating plant is located, and 15 percent to the counties in which the transmission lines are located in the ratio in which the number of miles of lines in each county bears to the total number of miles of lines of the cooperative. Under Chapter 57-33, county auditors allocate the taxes due to each taxing district within each county using substantially the same formula as is used between counties. The share for each taxing district is then distributed on the basis upon which the general property tax levy is apportioned and distributed.

Statement of the Problem

The study resolution stated that transmission lines frequently present problems for landowners and

sometimes result in reduced utility of the land because of difficulties in irrigating or operating large machinery on such land. When a public utility has a transmission line across a landowner's property, the utility company pays taxes on that transmission line and the landowner pays taxes on his property. If the value of his land is diminished by the transmission line, the assessment of his property should reflect that diminished value. Testimony before the committee was conflicting as to whether or not assessors take transmission lines into consideration in determining the value of property for taxation purposes. There was testimony to the effect that studies have shown transmission lines do not affect the value of land for resale purposes.

There are 1,973.34 miles of transmission lines (230 kilovolts or larger) in North Dakota. Of these, 801.5 miles of lines are owned by the United States Bureau of Reclamation, and no taxes are paid on that mileage. Investor-owned utilities and the mileage of 230 kilovolt or larger lines in North Dakota are as follows: Northern States Power, 36.7 miles; Ottertail Power Company, 152.35 miles; and Montana-Dakota Utilities Co., 129.3 miles. Cooperatives in North Dakota having transmission lines of 230 kilovolt or larger lines are as follows: United Power Association, 252.5 miles; Basin Power Cooperative, 276.59 miles; and Minnkota Power Cooperative, 324.4 miles. The taxes on the cooperative transmission lines of 230 kilovolts or more are \$150 per mile, while the investor-owned utility company transmission lines are taxed on an ad valorem basis. This tax varies from a low of approximately \$320 per mile on some MDU lines to approximately \$400 per mile of line on NSP lines.

The usual easement contract for electric transmission lines calls for a lump sum easement payment, for which the utility obtains a perpetual easement. One cooperative is now paying approximately \$5,600 per mile, or over \$300 per acre for easement rights for a large transmission line. The cooperative pays the same amount regardless of the usage of the land and the landowners retain control over the use of the land under the transmission lines.

Several landowners testified before the committee and requested that some means be established to provide for annual payments to landowners having large transmission towers on their land. In addition to difficulties in irrigating or operating large machinery on such land, the farmers said the anxiety caused by transmission towers is the greatest burden of having these lines on their land. It is impossible,

they said, to farm land with transmission towers after dark and inexperienced operators cannot run machinery on such land.

Alternatives Considered

Several alternatives were proposed. Some who testified advocated annual easements to provide annual payments to landowners for large transmission lines. The utility industry testified that annual easements would be difficult and expensive to administer. In addition, representatives of the utility industry testified that landowners could invest the amount received and thereby receive an annual return on the lump sum payment.

Another suggestion was that utility transmission lines be required to be placed on quarter section lines. Representatives of the utility industry testified that each turn in a transmission line requires a longer and therefore more expensive line. In addition, it was noted it would be difficult to draft legislation requiring transmission lines be located on quarter section lines because of various exceptions which would have to be provided. For example, some farmsteads are located on quarter section lines, and natural barriers, such as rivers and lakes, would have to be taken into consideration. Although some consideration was given to requiring utilities to pay a portion of taxes on land if the towers were not located on quarter section lines, practical and constitutional questions raised serious doubts as to the appropriateness of such a method. There would be a question of uniformity of taxation if the taxes on identical towers were different because of the location of such towers.

The study resolution called for consideration of the possibility of providing some means of compensation or tax relief for landowners whose property has been affected by transmission lines. One suggested method of providing compensation was a credit against property taxes on land having transmission towers. A credit against the assessed valuation of the land on which each tower is located similar to the homestead credit on residential property of senior citizens and disabled persons would be more compatible with existing laws and procedures than a credit against property taxes due. To reimburse counties and other political subdivisions for the loss in property tax revenue, suggestions were made to appropriate funds from the state's general fund or to increase taxes on transmission lines and change the distribution formula to assure that local governments, especially school districts, would not come out short.

Because the taxes on cooperative-owned transmission lines of 230 kilovolts or more have not changed since 1965, a considerable amount of attention was given to this tax. Some testimony was to the effect the rate should be adjusted because of inflation. Others contended all large transmission lines should be taxed on an ad valorem basis, which method contains a built-in inflation factor. Representatives of the cooperatives generally favor the per-mile method of taxation. One representative of a cooperative with large lines in both North Dakota and Minnesota said the ad valorem tax on his cooperative's large lines in Minnesota averaged \$734 per mile in 1974.

Recommendations

The committee recommends three bills and one resolution related to the taxation of electric transmission lines.

One bill requires utilities, including cooperative corporations, to provide landowners with the option of a lump sum payment or annual payments for easements for electric transmission lines with a design capacity of 69 kilovolts or more. This option applies to easement contracts executed after the Act's effective date. If the landowner chooses to receive annual payments, the term of the annual payment contract is 10 years, after which the amount of the annual payment is renewable. If the utility and the landowner are unable to reach an agreement on the amount of the annual payment for the renewal of an electric transmission line easement, the landowner has the right to submit the matter for arbitration.

The arbitration procedures provided in the bill are similar to those now provided for highway contract disputes. Under the bill, disputes are submitted to an Arbitration Board consisting of one member appointed by each side and the third one selected by the two appointees. Any utility which constructs an electric transmission line after the effective date of the bill is considered to have agreed to arbitration of any disputes arising out of an easement contract necessary for that transmission line. If a landowner does not submit the matter for arbitration, the annual payment for the last year of the last existing contract continues until the dispute is settled. If the title to any property subject to an easement contract for which annual payments are made is transferred to a new landowner, the new landowner has the duty of notifying the utility company of the transfer in writing within 30 days after the transfer so that he

can receive the annual payments. It should be noted that the State Constitution requires that full payment be made in eminent domain cases. Therefore, in those cases in which easements are acquired by eminent domain, the annual payment provisions would not apply.

The second recommended bill relating to transmission towers provides for a property tax credit on electric transmission towers which support electric transmission lines with a design of 230 kilovolts or more. The credit amounts to six percent of the assessed valuation of the quarter section of land on which each tower is located, not including the valuation of any buildings or other structures located on the land. The maximum credit is 25 percent for all towers located on a quarter section. If the parcel of land on which a tower is located consists of less than a quarter section, the credit is applied to the assessment on the smaller parcel. The credit does not apply to special assessments. The credit applies in a manner similar to the homestead credit law for senior citizens and disabled persons. The bill provides for an appropriation of \$200,000 to reimburse political subdivisions for the cost of this credit. Information from the State Tax Department indicates that the average revenue loss for each transmission tower would be \$13.83. Because the property tax year does not coincide with the fiscal year, only one year of lost revenue would be realized by political subdivisions in the 1977-79 biennium.

The third recommended bill relating to transmission lines provides for an increase in the tax on cooperative transmission lines of 230 kilovolts or larger from \$150 to \$225 per mile. This bill contains language to specifically include those transmission lines of cooperatives subject to the taxes on coal conversion facilities which were enacted in 1975. The 1975 legislation did not change the tax on such transmission lines and the \$150-per-mile tax has continued to apply to them. The language relating to the taxes provided in Chapter 57-60 is intended to clarify the law as it applies to those lines.

The committee recommends a concurrent resolution urging Congress to enact legislation providing for the reimbursement of political subdivisions for the loss of property tax revenue resulting from federally owned electrical transmission lines. The bill recommended by the committee providing for a tax credit for large transmission lines applies to the 801 miles of Bureau of Reclamation lines. Local governmental units receive no tax revenue from these federally owned lines,

even though the landowners having such lines on their lands suffer the same inconveniences and loss of use of their land as experienced with cooperative and private utility lines. Therefore, the committee members believe it only equitable that compensation be provided by the federal government.

MISCELLANEOUS

The Finance and Taxation Committee was requested by the Constitutional Revision Committee to review Section 174 of the State Constitution which limits the revenue which can be raised from property taxes to an amount equal to what four mills against the assessed value of all property in the state would raise. The chairman of the committee, who was also a member of the Constitutional Revision Committee, advocated a change in Section 174 for the specific purpose of permitting the taxation of large coal development plants on an ad valorem basis by the state so that the revenue could be distributed equitably in the impact areas. Under existing law, property tax revenues must remain in the political subdivision in which a plant is located, and many times the impact from a plant may fall in another political subdivision.

The committee first considered an amendment to Section 174 to specifically permit taxation by the state of the property of large industrial plants on an ad valorem basis. However, the Constitutional Revision Committee objected to the use of specific "legislative" language in the Constitution. Therefore, the committee recommended to the Constitutional Revision Committee a proposed amendment to Section 174 to delete the word "assessed" so that the restriction would apply to what four mills against the total valuation, not just the assessed valuation, of all property in the state would raise. The proposal also clarifies the wording of Section 174 in line with North Dakota Supreme Court decisions holding that the limitation in that section applies only to property taxes. Although concern was expressed that the amendment to delete the word "assessed" would raise the limitation on state property taxes on all property, the prevailing view was that this amendment would give the Legislative Assembly the flexibility in developing an equitable tax structure for large plants, and especially coal development plants.

The Constitutional Revision Committee is submitting this constitutional amendment as a part of its interim study.

HIGHER EDUCATION

The Committee on Higher Education was assigned one study resolution. House Concurrent Resolution No. 3073 directed a study of: (1) the powers and duties of the Board of Higher Education and the exercise of those powers; (2) the development and improvement of each institution of higher education; (3) the overlap and duplication of courses and programs; (4) the standards for "evaluation of qualification of instructors' teaching loads and hours"; (5) the feasibility and desirability of merging community junior colleges into the state system and consolidating all postsecondary education into the university system; and (6) the need for additional buildings and other capital improvements on the campuses of the state's colleges and universities, the priority of such needs, and the manner in which they should be financed.

The members of the Committee on Higher Education were Senators L.D. (Lee) Christensen, Chairman, Robert Nasset, Claire Sandness, Gilman Strand, and Russell Thane; and Representatives L.E. Berger, Lynn Clancy, Ralph Dotzenrod, LeRoy Erickson, Gerald Halmrast, Gordon Larson, Jack Olin, Daniel Rylance, and Orville Schindler.

The report of the Committee on Higher Education was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

BOARD OF HIGHER EDUCATION STUDY

The committee approached the study of the powers and duties of the Board of Higher Education and the exercise of those powers by reviewing both Article 54 of the North Dakota Constitution establishing the Board of Higher Education, and state laws relating to the board. The committee met with the seven members of the Board of Higher Education, and attended a portion of a board meeting. The committee, in addition, visited with two former board members, reviewed the board's administrative manual, and authorized an attitudinal survey of university and college employees holding faculty rank. The survey was conducted by the University of North Dakota Bureau of Governmental Affairs.

Mr. Vincent J. Buck, Chairman of the Board of Higher Education, told the committee the board's responsibility is to provide the greatest educational opportunity to the largest number of persons in the most efficient manner possible, consistent with quality programs and within the framework of the Constitution.

Mr. Buck said the board sees its responsibility in terms of a board of governance and control, and falling into five broad categories:

1. The selection, retention, or dismissal of the institutions' presidents.
2. Specific overview of the fiscal operation and economic functions of the institutions, including responsibility for physical plants.
3. Broad guidance as to the institutions' educational offerings with continuous review and approval of all new programs and courses.
4. Final responsibility for ensuring that the faculty and staff are qualified and capable of effecting the educational objectives of the institution, including the responsibility for the general welfare and safety of the students.
5. Representing the institutions and their needs before the public and legislative bodies.

Although the board has the authority to control and manage all institutions, he said that as a practical matter considerable authority is delegated to the presidents, the administrators, and the faculty. Mr. Buck said the board's staff is an essential source of information, but that significant input is received from the institutions through the Council of Presidents, the Academic Council, and the Committee of Business Managers, among others. Faculty and student input is provided by recognition of an "official observer" from both the faculty and the North Dakota Students Association.

Mr. Buck said the board operates procedurally by using the following standing committees: Construction and Finance, Indian Affairs, Curriculum, ETV and Vocational Education, Personnel, Medical, Power, and Policy and Legislation. Items of concern

are referred to the appropriate committee for study, a report is made to the full board, and appropriate action is taken. In addition, each board member is responsible for overseeing an individual institution.

Mr. Buck said the board recognizes that planning is essential in fulfilling its responsibilities in the five major areas of concern. He said since publication of the first "master plan" in 1967, the board has continually reviewed earlier recommendations and has revised and added to many of them as events, time, and changes in demand have required. He said the board views the 1967 plan as a guide for higher education and not as a detailed blueprint. The board does not and cannot plan for all postsecondary education in North Dakota, he said, since it has jurisdiction only over those institutions within the state system. This means there are a number of institutions not included in the planning process, and there is a large area of postsecondary vocational education where the financing and, therefore, the planning function, rests with another board.

Mr. Buck said program changes and revisions have been made by the board in the ongoing planning process. He said offering timely programs is critical, and that curriculums must respond quickly to personal, vocational, and social needs. The greatest change in the master plan recommendations has occurred in the mission emphasis of the state colleges.

Mr. Buck said the state has committed itself to making baccalaureate education accessible to a large number of people through its four-year colleges since the adoption of the Constitution. He said while the number and location of some colleges may not be ideal for the 1970's, each college has a long and successful history, a sizable constituency, and the state has a substantial investment in each campus. Mr. Buck said the board is committed to keeping the institutions operating efficiently and effectively. He said this means both the maintenance of quality programs and the recognition of the changing needs of students.

Mr. Buck said state colleges have maintained a major thrust towards teacher education for some time. He said, however, it has never been the sole mission of these institutions. Mr. Buck said the liberal arts offerings have been a part of their mission since the 1940's and occupational and vocational offerings in some of those institutions date back to the 1930's. Because of a diminished

demand for teacher education, he said, state colleges are, with board approval, shifting to some extent their emphasis to the other areas of their overall mission. He said new programs in these areas will be developed if they represent the needs of North Dakota and are appropriate to a residential four-year setting. They will be built for the most part on existing strengths in the present four-year programs. He said the state colleges are charged with producing students who are equipped to live and work in an economic and social environment quite different from the one which existed when the institutions were founded and quite different from what existed 10 years ago.

Mr. Buck stated the mission of the universities and state colleges has not changed appreciably from the original master plan. The board has, however, urged greater emphasis in all institutions in the area of adult education.

Mr. Buck said one of the prime changes in higher education in the last 10 years has been that many North Dakota students are interested in immediate work entry programs. They want a two-year associate degree and then to go directly into the job market.

DEVELOPMENT AND IMPROVEMENT OF HIGHER EDUCATION INSTITUTIONS

As part of its study of the development and improvement of institutions, the committee reviewed profiles prepared by the board's staff on each institution.

The profiles briefly outlined the history, accreditation, student enrollment pattern, teaching staff, mission, and programs at each institution.

The committee also reviewed a publication entitled "Enrollment Projections for North Dakota Postsecondary Education Institutions" prepared in 1974 for the North Dakota Higher Education Facilities Commission by the Department of Agricultural Economics at North Dakota State University.

The report stated that previous estimates of future enrollments in North Dakota institutions anticipated enrollment increases over a period of years from 1970 to 1980. The estimated 1970 to 1980 enrollment increases amounted to 33 percent for all state colleges and universities and the private colleges. However, the report said present data casts doubt on the earlier estimates.

The North Dakota birth rate, following the national trend, began a continuous decline in 1961. The report said this will cause a declining number of 18 year olds in 1978 across the state. Also, the number of high school graduates who entered postsecondary institutions rose rapidly from 1963 to 1970; but from 1970 to 1973, college entrances had declined to the 1968 level. The report said demographic trends indicate a profound impact from the decline in birth rates on college enrollment in the late 1970's and through the 1980's. The distribution of the state's population and the campus locations suggests that the impact will be unevenly distributed over the state.

The report states that any future increase in the percent of high school graduates going to college will be less than what was previously expected, and will not be enough to offset the impact of population decline in the college age group after 1978. The report states the North Dakota Higher Education Facilities Commission may wish to develop long-term policies that reflect enrollment estimates drastically different from those made four to six years earlier. The report said the number of high school graduates in North Dakota is estimated to reach a peak in 1976-77 at about 12,000 and then decline to about 7,600 in 1991.

The report states that enrollment estimates for individual institutions beyond 1978 would be meaningless. However, one can say with certainty that total enrollments will begin a population-induced decline and continue on that course throughout the 1980's. However, a return to the 1971 level of postsecondary enrollments in North Dakota is not anticipated during the 20th century.

The Board of Higher Education staff, in relation to the development and improvement of higher education, recommended that a statutory 1202 Planning Commission be created in the state and that the Higher Education Facilities Commission be eliminated.

The 1202 Commission receives its name from the section of federal law outlining its concept and requirements (since recodified under 20 U.S.C. 1142a). Any state may receive federal assistance for "comprehensive inventories of, and studies with respect to, all public and private postsecondary educational resources in the State, including planning necessary for such resources to be better coordinated, improved, expanded, or altered so that all persons within the State who desire, and who can benefit from, postsecondary education may have an opportunity to do so."

Section 1202 provides that any state desiring federal assistance shall establish a state commission or designate an existing state agency or state commission which is "broadly and equitably representative of the general public and public and private nonprofit and proprietary institutions of postsecondary education in the State including community colleges . . . , junior colleges, postsecondary vocational schools, area vocational schools, technical institutes, four-year institutions of higher education and branches thereof."

A letter from the Department of Health, Education and Welfare was sent to the Governor in March 1974 to the effect that if North Dakota desired to participate in the program, the Governor should identify a 1202 Commission. The Governor's response was to utilize the Higher Education Facilities Commission created in 1965 to administer the Higher Education Facilities Act and other acts specified by the Governor. The Higher Education Facilities Commission is made up of the Board of Higher Education, and representatives of junior colleges, Jamestown College, and Mary College.

The Higher Education Facilities Commission was mandated by federal law when the federal government was putting money into academic facilities, according to the board's staff. Thus, the commission was created in North Dakota to administer the plans and federal money. The board said the federal government has now phased out that program, and a new commission should take over the planning function under the 1202 legislation. It was contended a new commission would broaden the representation, and all federal programs would be conducted by one comprehensive group. It was also recommended that the Board for Vocational Education and the Board of Higher Education be included as one planning commission to involve the boards responsible for policy implementation in the process from the conception of plans to their implementation or rejection. This would help get study results effectively utilized in establishing policy for postsecondary education.

POSTSECONDARY EDUCATION FRAUD PROTECTION

It was also recommended by the Board of Higher Education staff that legislation be prepared to protect the consumer from academic degree fraud. In the past six years groups such as the Education Commission of the States and the American Council on Education have been looking at the needs for

consumer protection in postsecondary education. Even before that, North Dakota had provided for licensing proprietary institutions, but there is no law providing for licensing or recognizing academic institutions in North Dakota.

The board's staff said a number of out-of-state educational institutions, some recognized and listed in directories and some unheard of, have written to the board or to other state offices in the last three or four years asking what they have to do in North Dakota to offer a graduate degree program or to offer courses in the state leading to a degree. The board sends out a form letter to the effect that an institution needs only to incorporate in the state. The board's staff said North Dakota is not having much trouble with academic "diploma mills," but that other states are. It was said many of North Dakota's neighboring states have passed legislation regulating postsecondary educational institutions. In the past, diploma mills have headquartered in Florida, Arizona, and the District of Columbia. However, those states and the District have since tightened up their regulations, forcing the diploma mills to move to other states. The proposed legislation would therefore be aimed at preventing the diploma mills from entering North Dakota.

FACULTY CONCERNS

As part of its study, the committee met with university and college representatives from the North Dakota Higher Education Association, the American Association of University Professors, and with independent faculty members. Their main concerns involved faculty desire to negotiate and the need for higher salaries. Concern was also expressed with the formula upon which the number of teachers at, and dollars allocated to, particular institutions is based. It was stated there is basic support for the formula, but a problem has been found with the student-faculty ratio in some programs which require more individualized attention than other programs. It was said the low credit producing programs, such as physical education, music and drama, should be treated differently to produce sufficient faculty. Concern was also expressed that teachers are evaluated by the administration, by the students, and by their peers, while the administration is evaluated only by the Board of Higher Education.

Some faculty members felt the board must become stronger in its leadership role by instituting policy and then strongly administering that policy. The

board, they said, should seek more input, not only from the administrators but from the faculty as well, in the development of policy. A strong sabbatical leave policy was also recommended.

Better board-faculty communication was also urged by the faculty. A suggestion was made for a board meeting with faculty members on a formal basis every biennium to give the board an opportunity to hear faculty concerns, goals, and problems.

It was also asserted that the board has been spending too much time in recent years on problems and difficulties. It was suggested it should be spending an equal amount of time considering the goals of the institutions, how well the institutions are doing their jobs, and how they can do better.

OVERLAP AND DUPLICATION OF COURSES AND PROGRAMS

The Board of Higher Education believes that because of the dynamics of higher education, the explosion of knowledge, and the increasing demands of society, some new programs are necessary at the institutions each year. However, to prevent unnecessary duplication, and to be assured that the program is needed, the board has instituted the following specific guidelines to be applied to each new program requested:

1. Is the program within the scope and purpose of the institution?
2. Are present programs at other institutions insufficient for the needs of the state?

An institution is to supply the board with the following justification for each new program submitted:

1. The need for the program in North Dakota must be established by competent evidence—surveys, statistics, and the like.
2. A responsible projection of the student enrollment which is reasonably expected during the first five years.
3. A reasonable estimate of original cost and of eventual cost, assuming reasonable growth.
4. The source of funds, availability of space and staff, and a curriculum outline.

5. The strength of the institution in related fields must be demonstrated.
6. The adequacy of libraries in the field and related disciplines.

All institutions wishing to make recommendations for course changes must submit one copy of their recommendations to the other institutions, with three copies to be submitted to the Commissioner of Higher Education not later than the first Monday in May or November. Copies of the recommendations are to be mailed to each institution president at least one week in advance of the board meeting at which the course changes will be considered.

Each institutional president then has an opportunity to study, question, or protest any proposed expansion at any other state institution which appears to be an unnecessary duplication of a course, program, department, or division already in existence.

The board acts on the requests after studying the proposed changes and the institutional comments, questions, and objections.

The board's guidelines for graduate education planning are as follows:

1. Future graduate degree-granting capability should be restricted to the University of North Dakota and North Dakota State University.
2. There will be an outreach program operative under guidelines adopted by the board to fulfill needs throughout the state.
3. No new doctoral programs of a duplicative nature will be considered.
4. The universities should aggressively review and recommend the elimination of unproductive and unjustified duplicative programs.
5. All graduate programs will be reviewed and defended by the individual institutions before the board.

JUNIOR COLLEGE STUDY

The committee reviewed the history of legislation dealing with junior colleges and received and reviewed, with the college presidents, profiles on

each of the colleges, their physical facilities, accreditation, faculty, programs, enrollments, and budgets.

The State Board for Vocational Education also supplied the committee with the 1974-75 sources of income for North Dakota junior colleges as follows:

BISMARCK JUNIOR COLLEGE:

Vocational Education — \$819.23 per pupil was supplied by state sources. \$385.62 was from the State Board for Vocational Education and \$433.61 was in the form of a state aid payment for each full-time student. The average local contribution was \$65.28 per pupil as a result of the local mill levy and other local support for operation through bonding.

Academic — State aid payments based on each full-time student were \$433.61 per pupil with the local contribution amounting to \$225.85 per pupil.

LAKE REGION JUNIOR COLLEGE:

Vocational Education — The total payment from state sources for vocational education was \$906 per pupil and \$415 per pupil was from the State Board for Vocational Education with \$491 per pupil in the form of state aid based on each full-time student. A \$114 per-pupil local contribution resulted from the local mill levy and other local support for operation through bonding.

Academic — Payments amounted to \$491 per pupil through state aid and \$563 per pupil as a result of the local mill levy and other local support for operation through bonding.

UND-WILLISTON CENTER:

Vocational Education — Payments amounted to \$877 per pupil from state sources, and \$388 was from the State Board for Vocational Education with \$489 in the form of state aid based on each full-time student. The average contribution as a result of the local mill levy and other local support for operation through bonding was \$64 per pupil.

Academic — Payments of \$489 per pupil were in the form of state aid. A \$184 per-pupil local contribution resulted from the local mill levy and other local support for operation through bonding.

NEED FOR ADDITIONAL BUILDINGS

A study of the need for additional buildings and other capital improvements on the campuses of the state colleges and universities, the priority of such needs, and the manner in which they should be financed was also assigned to the Committee on Budget "C" by Senate Concurrent Resolution No. 4045. Rather than duplicate the study, the Committee on Higher Education yielded that portion of its study to the Committee on Budget "C", keeping in contact with that committee on the progress being made.

FACULTY SURVEY

The Committee on Higher Education authorized an opinion survey of the faculty of North Dakota institutions under the Board of Higher Education. The survey was conducted by the Bureau of Governmental Affairs at the University of North Dakota.

The committee deemed it important to gather information on employee attitudes about the powers, duties, and role of the Board of Higher Education. The survey was mailed to all persons holding faculty rank. A total of 1,551 questionnaires were mailed, and 757 responses were received for a response rate of 48 percent. Of the 757 responses, 64.6 percent were at the two universities and the remainder were at the state colleges.

The first three survey questions solicited responses concerning Board of Higher Education composition, roles, and methods of keeping faculty members informed of board policies and actions. Strong support was shown for having a faculty member on the board as a voting member. In ranking the board's various functions in priority order, the respondents placed their strongest support for those functions that stress the board representing or serving as an advocate for higher education before the public and the legislature.

Fifty-eight percent of the respondents believed the board does not provide sufficient long-range planning for the state's educational needs. Fifty-seven percent did not believe the board is sufficiently knowledgeable about activities at the individual institutions. The majority of respondents did not believe the administration of their individual institutions keep faculty members adequately informed of board policies and actions. One-half of the respondents indicated that providing more funds for

encouraging faculty renewal would be the most effective or second most effective way to improve the quality of instruction at the institutions. A close second choice was to increase faculty salaries, while a third choice was to provide funds to encourage innovative approaches to instruction.

Respondents indicated a high level of satisfaction with the course offerings of their institutions and the quality of education provided students. A majority indicated sufficient academic freedom at their institutions, but sabbatical leaves, summer session salaries, and travel funds were ranked as unsatisfactory by a majority. Substantial support was shown for increased faculty participation in the selection of campus administrators, presidents, and deans; faculty salary schedules; and leaves of absence. Eighty-three percent supported faculty involvement in the evaluation of the administrators and presidents.

Fifty-six percent of the respondents believed college and university faculty members in North Dakota should be given the legal right to have professional negotiations or collective bargaining with the Board of Higher Education or some other unit such as the public school teachers now have. Seventy-seven percent believed professional negotiation should include salaries, 79 percent said it should include fringe benefits, 68 percent said it should include faculty loads, 53 percent believed it should include teacher evaluation, and 51 percent believed it should include the board's budget formula. Fifty-nine percent were against the adoption of a statewide salary schedule as an alternative to professional negotiations. However, 68 percent of the state college respondents favored a statewide salary schedule, while only 13 percent of the university respondents favored such a schedule.

In response to the question whether faculty members in higher education should ever strike, only five percent of the respondents believed faculty members should strike the same as employees in other occupations. Fifty-eight percent believed they should be able to strike, but only under extreme conditions and after all other means have failed. Twenty-seven percent believed faculty members should never strike, and 10 percent were undecided.

Recommendations

The Committee on Higher Education believes more time should be devoted during the legislative sessions and the interim to the problems of higher

education because of the rapidly changing situation in the state. It therefore recommends that a standing Committee on Higher Education be created during the interim and that a greater amount of time be devoted to higher education during the legislative session.

The committee also recommends a bill draft creating a Postsecondary Education Commission and repealing the Higher Education Facilities Commission authorization. The commission would consist of the State Board of Higher Education, the State Board for Vocational Education, and three additional members appointed by the Governor with the consent of the Senate. The appointed members would represent the governing boards of the junior colleges, the private four-year colleges, and the governing boards of the proprietary institutions.

The commission would have the powers and duties:

1. To coordinate comprehensive planning of postsecondary education as specified in the 1972 amendments to Title XII of the Higher Education Act of 1965, and any other federal program affecting postsecondary education planning as the Governor may designate.
2. To conduct comprehensive inventories of and studies with respect to all public and private postsecondary educational resources in the state.
3. To establish committees or task forces, not necessarily consisting of commission members, to make studies, conduct surveys, and submit recommendations.

Federal moneys received by the commission would be deposited in the state treasury in a special fund from which would be appropriated annually the sum necessary, but within the sum allocated by the Federal Act or Acts, for the payment of expenses and grants authorized under the Federal Act. Any state moneys appropriated to the commission would also be deposited in the fund for use as specified by the Act. State laws relating to the Higher Education Facilities Commission would be repealed.

The committee also recommends a bill draft known as the Postsecondary Educational Authorization Act to prevent academic and vocational diploma mills from operating in the state. Under the bill, Chapter 15-50, which presently

provides for licensing of private trade, industrial, vocational, technical, business, and correspondence schools, would be repealed, and a comprehensive Act modeled after suggested state legislation would regulate academic, vocational, technical, home study, business and professional schools offering educational credentials or instruction or educational services on a postsecondary level for the attainment of educational, professional, or vocational objectives.

The bill excludes institutions offering instruction at any level from preschool through the 12th grade; education sponsored by a bona fide trade, business, professional, or fraternal organization for the organization's membership; education solely avocational or recreational in nature; education offered by charitable institutions provided education is not advertised or promoted as leading toward educational credentials; postsecondary educational institutions established, operated, and governed by the state or its political subdivisions; private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, as long as such institutions retain accreditation by national or regional accrediting agencies; and schools for hairdressers and cosmetologists, schools of nursing, and schools of barbering which are presently regulated by law.

The Board for Vocational Education would have the power to establish and require applicant compliance with minimum standards and criteria relating to quality of education, ethical and business practices, health and safety, and fiscal responsibility. Such criteria would have to be met before authorization or a permit would be issued. Authorization to operate an academic or professional postsecondary educational institution could be issued only upon approval of the Board for Vocational Education and the commissioner of the Board of Higher Education.

A list of postsecondary educational institutions and agents authorized to operate in the state and a permanent file of academic records in the event any institution operating in the state proposes to discontinue operation would be maintained. The Board for Vocational Education would be authorized to investigate on its own initiative or in response to a complaint any person or group subject to the jurisdiction of the Act. The board could also require fees and bonds from institutions and agents.

Accreditation by national or regional accrediting

agencies recognized by the United States Office of Education would be required of all postsecondary educational institutions. Any institution domiciled in the state and seeking a first authorization to operate could be issued a provisional authorization to operate on an annual basis until the institution becomes eligible for accreditation. No person, agent, or organization would be allowed to operate an institution not exempted from the Act unless the institution has a currently valid authorization to operate, nor could it offer instruction or grant educational credentials unless the institution has an agent with a valid agent's permit.

The Act provides for a refund of a percentage of the tuition fees paid by the student until such time as one-half of the prescribed course has been completed. No institution would be allowed to negotiate a promissory instrument received as payment for tuition or other charges prior to completion of one-half of the educational services. The person would have the right to rescind the contract for educational services within seven days after entering into a contract without incurring any tort or contract liabilities. Any person defrauded by misrepresentation could recover from an institution, agent, or person three times the amount paid by such student.

Any person aggrieved by the decision of the board respecting denial or revocation of an authorization to operate, or of an agent's permit, and any person aggrieved by imposition of a penalty by the board would have the right to a hearing and review of the decision by the board and to judicial review in accordance with the Administrative Agencies Practice Act. A civil penalty for violation of the Act is provided as well as a criminal penalty (Class B misdemeanor).

The committee makes no recommendations concerning the study of the overlap and duplication of courses and programs, as the committee believes the Board of Higher Education is aware there should not be any more duplication of courses and programs than is necessary.

The committee likewise makes no recommendations concerning the study of teaching loads and hours. Although there was some faculty criticism in this area, it does not appear to be a serious situation at this time.

The majority of the committee members believe the merger of community junior colleges into the state system is not desirable at this time. However, the amount of state aid to community junior colleges is increasing in comparison with the amount of local contribution and junior colleges do compete with state institutions which provide a similar curriculum. The committee therefore believes the Appropriations Committees of both houses should know more about the fiscal structure of the junior colleges and how state aid money is being spent. Therefore, the committee recommends a bill draft amending Section 15-18-08 to require junior colleges to provide two copies of each proposed biennial institutional budget in the same format as prescribed by the State Budget Office for the colleges and universities. The budgets would be supplied to the Legislative Council staff offices for the information of the Appropriations Committees. In addition, each school district maintaining a junior college or education center would be required to provide the Legislative Audit and Fiscal Review Committee with an official audit of their expenditures and activity on a biennial basis. The bill draft provides budget and audit information only, and does not affect the amount of state aid to the junior colleges under the present formula.

INDUSTRY, BUSINESS & LABOR "A"

The Committee on Industry, Business & Labor "A" was assigned three studies. House Concurrent Resolution No. 3088 directed a study of the ratemaking authority of the Public Service Commission; Senate Concurrent Resolution No. 4011 directed a study of the jurisdiction of the Public Service Commission; and Senate Concurrent Resolution No. 4059 directed a study of the laws and practices relating to trailer homes and trailer parks.

Committee members were Representatives Earl S. Strinden, Chairman, Patricia (Tish) Kelly, Reuben Metz, Edward Metzger, Walter Meyer, Bert Miller, Charles Scofield, and Jens Tennefos; and Senators Donald Homuth, Emil E. Kautzmann, Herschel Lashkowitz, Duane Mutch, and I.E. (Esky) Solberg.

The report of the Committee on Industry, Business & Labor "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

PSC RATEMAKING AUTHORITY STUDY

The Public Service Commission (PSC) supervises public utility rates and has the power to establish, adjust, and enforce rates of public utilities in the state. The PSC must also fix reasonable rates to be followed in lieu of any rates found to be unjust, unreasonable, insufficient, or discriminatory.

In addition to its ratemaking authority, the PSC regulates public utility services and the use by one utility of the facilities of another. The PSC must also be informed as to rates, rules, and practices of common carriers engaged in interstate transportation or transmission of messages to assure that those rates, rules, or practices do not discriminate against the interests of this state.

General Ratemaking Procedure

A public utility requesting a rate change must furnish information as to the date of acquisition and cost of all property, the amount of investment in the property, the amount of outstanding stocks and bonds, the financial condition of the utility, salaries and wage expenses, itemized statements of expenditures, detailed profit and loss accounts, and

other information requested by the PSC. The utility is to provide 30 days' notice to the PSC of the proposed rate change; however, under special circumstances, the PSC may allow rates to be changed without such notice. After receiving notice of the proposed rate change, the PSC may suspend the proposal up to seven or 11 months, depending upon the type of utility involved. The PSC may then order a hearing on the proposal, and at the hearing the utility has the burden to justify the reasonableness of the proposed change. After the hearing, the PSC establishes the rates found to be just and reasonable. Rates not suspended by the PSC pending a hearing go into effect at the end of the 30-day notice period, subject to alteration or suspension by the PSC after a hearing.

Orders issued by the PSC continue in force until their expiration or until their revocation or modification by the PSC. The right of appeal from any decision or final order of the PSC is granted to any party to a proceeding.

Specific Ratemaking Authority

In addition to the general ratemaking authority and procedure applicable to public utilities, the PSC is granted specific rate regulation authority over fuel carriers, railroads, motor carriers, telephone and telegraph companies, and grain transporters.

Ratemaking Considerations

The committee received substantial testimony from public utility representatives and financial advisors on considerations used by telephone, motor carrier, railroad, and electric utilities in developing rate schedules. The prevalent considerations were found to be those which would have rates: recover the cost of service; reflect the value of service provided to customers; take into consideration political (competitive), social, and historical factors; produce an amount of return necessary to attract investment capital; be nondiscriminatory with respect to similar use of the service; and complement existing customer loads.

While some considerations may apply to certain public utilities more than others, the principles involved were found to apply to any public utility whose rates and services are regulated by a public agency.

Rate Design

Although testimony was received concerning various types of public utilities, the committee's major focus was on the PSC's ratemaking authority regarding electric public utilities. Electric rates had received substantial public attention and this concern was evident during the committee's work.

Electric rates customarily have been based on a declining block design. Under this design, rates decrease as consumption increases. The committee received extensive testimony encouraging consideration of electric rate designs based on philosophies other than the declining cost philosophy prevalent in the utility industry. The various rate designs suggested would have provided for inverted rates, flat rates, time-of-day rates, and life-line rates. These rate designs are based upon philosophies which, to some extent, discourage increased consumption, promote conservation, or attempt social improvement through low cost basic service.

Rate design is not statutorily prescribed in North Dakota and the PSC has substantial discretion in designing utility rates. The only limitation is that rates cannot be "unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law." The PSC has operated under the philosophy that utilities provide service on a decreasing cost basis. Thus, rates have been established on a declining block design. However, the PSC has tempered its reliance on the decreasing cost philosophy due to the substantially higher costs utilities now face in constructing additional facilities to meet service demands. As a result, the PSC has flattened declining block rates in recent rate cases, i.e., rates for the first kilowatt-hours are increased a lesser amount than the rates for the end step kilowatt-hours.

Recommendations Made to the Committee

The committee encouraged citizen input, and at public hearings designed expressly for citizen testimony the committee received many recommendations for possible approaches to the study. These recommendations primarily concerned utility finance, consumer representation, rate design, and ratemaking procedures.

Concern was expressed to the committee that utilities are facing financing problems with respect to facility construction. While the testimony indicated the PSC has been reasonable in establishing

utility rates, possible problem areas pointed out were: a lack of assurance that the PSC will set a reasonable rate of return necessary to attract investment capital; and the present refusal by the PSC to allow a utility to include cost of construction of a new facility in its rate base prior to the facility being put into service. This results in higher debt cost and possibly higher utility rates in the future.

On the other hand, concern was expressed to the committee that the PSC has not strictly scrutinized rate proposals presented by utilities. Individuals appearing before the committee recommended a statutory prohibition on allowing rate proposals to go into effect prior to a PSC hearing. In addition, support was expressed for additional PSC funding to obtain assistance in reviewing utility proposals and in aiding cities in establishing municipal power facilities.

Consumer representation and the effect of utility rates on consumers were also concerns expressed to the committee. The committee heard proposals for providing tax relief for individuals faced with higher utility rates and for requiring utilities to provide funding for research and consumer advocacy.

Concern was also expressed to the committee over the PSC's present rate design policies. Individual proposals for rate design reform included statutory adoption of rate designs other than the declining block design and statutory prohibition of the automatic fuel adjustment clause. This clause allows a public utility to adjust its rates to reflect changes in fuel costs without going through normal rate proceedings. In North Dakota the PSC allows such rate adjustment on a modified basis. Public utilities present fuel cost information to the PSC and, on a monthly basis, the PSC approves or disapproves of any rate adjustment based on fuel cost.

With respect to ratemaking procedures, the PSC presented several recommendations. Generally accepted by the committee, the recommendations concerned funding of a pricing division within the PSC, recovering costs incurred in conducting utility rate hearings, and appointing hearing examiners.

Recommendations

The committee recommends establishment of a pricing division within the PSC and urges support of the concept of the pricing division proposed by the PSC. The committee directed special study of the PSC's ability to adequately examine utility rate

proposals to determine reasonable rates to consumers, with a fair and reasonable return to the utilities. While basic procedures appear adequate, the existing PSC staff cannot accurately evaluate proposed utility rate structures due to present workload. This inability to do economic and statistical analysis may result in rate discrimination between classes of North Dakota consumers. The PSC's proposed pricing division would consist of staff members with economic and statistical modeling expertise. Responsibilities would include research in utility and transportation pricing policies, and design and development of economic and statistical modeling to allow analysis of proposed or needed rate changes. A pricing division should result in better performance by the PSC with respect to regulated utilities and greater quality of pricing regulation. As proposed by the PSC, the biennial cost of a pricing division would be \$348,100.

The committee recommends a bill to amend Section 49-02-02 to authorize the PSC to charge public utilities for costs incurred in conducting utility rate hearings and investigations. The PSC presently hires experts and, under the utility valuation fund, bills the utilities involved. However, the present procedure may be subject to criticism due to differing interpretations of the authority to use the utility valuation fund in this manner. The bill eliminates possible questions over the PSC's authority to recover the costs incurred in conducting utility rate hearings and investigations from the utilities.

The committee recommends a bill to amend Section 49-01-08 to authorize the PSC to appoint hearing examiners in addition to those persons specifically designated by the statute. The PSC would be authorized to designate any person as a hearing examiner. The bill eliminates the situation where a hearing is not held due to unavailability of any of the four persons specifically authorized to conduct hearings.

PSC JURISDICTION STUDY

The PSC has general supervision over public utilities. By statute, this jurisdiction extends to railroads; express companies; sleeping car companies; common carriers transporting persons or property; telegraph and telephone companies; pipeline companies; companies providing electricity, gas, water, or heat; companies engaged in warehousing, packing, or cold storage; and stockyard companies. However, jurisdiction does

not extend to public utilities owned and operated by the state, by its political subdivisions, or by non-profit public utilities, except for telephone and telegraph utilities. Jurisdiction includes granting utility franchises and regulating rates and services.

In addition to the entities classified under public utilities, the PSC has authority to supervise and control: weights, weighing devices, gasoline pumps, coin weighing machines, and measures; auctioneer licensing; surface mine reclamation and operator licensing; and energy conversion and transmission facility siting.

Previous Jurisdiction

Jurisdiction over certain areas has previously been transferred from the PSC to other state agencies. Jurisdiction over air carriers was transferred to the State Aeronautics Commission in 1947, livestock dealer licensing was transferred to the State Dairy Commissioner in 1957 (then to the State Department of Agriculture in 1973), and livestock auction market licensing was transferred to the State Dairy Commissioner in 1957 (then to the State Livestock Sanitary Board in 1961).

Other Agency Economic Regulatory Authority — Recommendation

The State Aeronautics Commission's authority over air carriers may be considered as public utility economic regulatory authority. The Aeronautics Commission assists in the development and coordination of aeronautical activities, registers aircraft and airmen, licenses aeronautics instructors and air schools, issues certificates to aircraft common carriers, and licenses aerial spray applicators. Testimony presented to the committee indicated that the Aeronautics Commission represents the state in all actions regarding aeronautics and is especially suited to provide the study and expertise necessary in promoting intrastate air transportation. It was emphasized to the committee that the primary workload of the Aeronautics Commission involves airport finance and construction. The commission staff is also specialized in air matters and in promoting state interests before appropriate federal agencies.

The committee recommends a bill to amend Section 49-02-01 to expressly exclude air carriers from PSC jurisdiction. The bill also ensures that communications utilities would remain under PSC jurisdiction, clarifies the application of jurisdiction

over gas utilities (by extending jurisdiction to utilities which distribute synthetic gas and by removing jurisdiction over utilities which manufacture synthetic gas), and removes the authority over stockyard companies (which are regulated by the State Department of Agriculture).

PSC Noneconomic Regulatory Authority — Recommendation

The PSC's Department of Weights and Measures is responsible for inspecting and testing weighing and measuring devices. It does not exercise any type of economic regulation. The committee compared this responsibility to the State Laboratories Department's responsibility to act as the state's consumer protection agency and ensure compliance with statutory requirements of accurate product labeling with respect to weight, measure, and numerical count.

The duties of the State Laboratories Department and the PSC's Department of Weights and Measures are similar, but they were not found to be duplicative. While evidence indicated a transfer of weights and measures responsibility to the State Laboratories Department could result in a more coordinated interpretation of laws and regulations, there was no finding that such a transfer would decrease the cost of service, nor would it allow inspectors to interchangeably inspect measuring devices and sanitary conditions of food establishments.

The committee makes no recommendation regarding the appropriateness of transferring PSC weights and measures responsibility to the State Laboratories Department.

The PSC also exercises general supervision over public warehouses, with authority to license public warehouses and track buyers and to establish rates for transporting grain and grain products. Testimony was solicited regarding transfer of the noneconomic nature of this authority to other state agencies; however, testimony presented to the committee urged continuation of PSC responsibility rather than a transfer to any other state agency.

The committee makes no recommendation concerning the appropriateness of transferring warehousing responsibility from the PSC to another state agency.

Another area of noneconomic regulation by the PSC is auctioneer licensing. The committee received

substantial testimony urging a transfer of licensing responsibility from the PSC to a separate professional licensing board in recognition of the right of auctioneers to regulate themselves as do other occupations. No one appeared in opposition to such a proposed transfer.

The committee recommends a bill to transfer auctioneer licensing from the PSC to a professional licensing board. The bill repeals Chapter 51-05.1, relating to auctioneer and clerk licensing by the PSC, and replaces it with an Act to provide for the licensing of auctioneers and clerks by a board of auctioneer licensing. The proposed board would consist of five members appointed by the Governor. The basic licensing and bonding requirements of auctioneers and clerks, as they exist in Chapter 51-05.1, are retained in the proposed Act, with any variations the result of recommendations by the PSC and representatives of the North Dakota Auctioneers Association.

Natural Resource Regulation Responsibilities — Conclusion

The PSC's natural resource responsibilities began in 1969 with the passage of the Surface Mine Reclamation Act, which gave it the responsibility and jurisdiction over surface mine operations. Resource responsibility was expanded in 1975 with passage of the Energy Conversion and Transmission Facility Siting Act, which gave the PSC control over the siting of energy conversion and transmission facilities. Because of the relatively recent creation of these responsibilities, the committee did not review this jurisdiction in relation to natural resource regulation placed with other state agencies. Instead, review was limited to the authority of the State Industrial Commission over oil and gas regulation.

While the Industrial Commission was described as meeting once a month for oil and gas regulation activities, it was pointed out in testimony before the committee that the North Dakota Geological Survey provides the permanent staffing required for oil and gas regulation. The Industrial Commission emphasized its extensive use of the Geological Survey, and the need to continue administration of the oil and gas conservation statutes in an effective and efficient manner by persons knowledgeable in the field.

The committee makes no recommendation concerning the appropriateness of transferring oil and

gas regulation authority from the Industrial Commission to the PSC.

Other Recommendations

The committee recommends a bill to authorize the PSC to assess a civil penalty of not more than \$10,000 for any violation of a PSC rule or related statute. According to the PSC, this bill is intended to restore authority eliminated by the 1975 criminal penalty statute revision.

The committee recommends a bill to amend and create several sections to Chapter 38-14, relating to surface mining. The bill: requires the PSC to issue a notice of noncompliance prior to suspending or revoking surface mine operator permits; clarifies the application of the Act to affected lands rather than just mined areas; requires the results of a soil survey to be included only with limited mining plans rather than with both limited and extended mining plans; provides for the stockpiling of material outside the permit area; and repeals obsolete definitions. The proposals contained in the bill came from the PSC and are intended to make the language of the chapter consistent, eliminate unnecessary requirements, and provide a procedure to obtain compliance with the chapter without revoking a permit.

The committee recommends a bill to amend Section 49-03-01 and to create Chapter 49-03.1. Chapter 49-03 is the territorial integrity law for electric public utilities, but language in Section 49-03-01 concerns certificates of public convenience and necessity for utilities other than electric public utilities. As proposed by the PSC, the bill removes this broad language and places the requirement for certificates of public convenience and necessity for utilities not covered as a result of the amendment to Section 49-03-01 in the new Chapter 49-03.1.

The committee recommends a bill to amend Section 49-04-05 to remove the requirement that the PSC approve the sale of public utility securities registered with the Federal Securities and Exchange Commission. This bill removes what the PSC describes as a statutorily imposed rubber stamp process.

The committee recommends a bill to amend Sections 64-02-02 and 64-02-10 to allow scales to be installed under special permit and to provide for certain vehicle scale inspection fees. The bill specifically authorizes the PSC to grant special permits and thus reflects current procedure. In

addition, the bill reinserts provisions for inspection fees inadvertently left out of 1975 amendments.

MOBILE HOME STUDY

This study was approached in basically two parts — mobile home quality problems and mobile home ownership problems.

Mobile Home Quality Problems

The mobile home is the only type of low cost single family housing generally available. While initial costs of owning a mobile home are somewhat lower than owning a conventional home, other factors may diminish this.

Testimony presented to the committee by mobile home owners and the Attorney General's office indicated problems exist with respect to construction quality and warranty repair service of mobile homes. Under state law, the State Construction Superintendent is authorized to adopt a uniform construction standards code for mobile homes based upon standards of the American National Standards Institute. No state law concerns mobile home warranty service.

Federal statutes have recently been enacted which concern mobile home construction and warranty protection. The Federal Trade Commission has promulgated trade regulations concerning mobile home sales and service and mobile home warranties. In addition, the Secretary of Housing and Urban Development has been statutorily directed to promulgate federal mobile home construction and safety standards that supersede state standards, with state enforcement upon development of a state enforcement plan.

The committee found that while previous construction and warranty protection standards were inadequate or nonexistent, the new federal standards give substantial and adequate construction and warranty protection to mobile home owners.

Mobile Home Ownership Problems

Testimony was also presented to the committee by mobile home owners, the Attorney General's office, and the State Laboratories Department with respect to practices engaged in by some mobile home park operators. The committee received complaints concerning mobile home park conditions, park

operators who refuse to rent lots to anyone who has not purchased a mobile home from sales firms which own the parks, and park operators who require mobile home owners to either consign any sale of their mobile home to the operator or pay a commission to the operator upon the sale of their mobile home.

The Bureau of Governmental Affairs at the University of North Dakota conducted a survey of mobile home owners at the committee's request. The survey was to ascertain the type, nature, and frequency of abuses being encountered by mobile home park residents. A questionnaire was sent to a random sample of 1,535 mobile home residents throughout the state, and the response rate was 58 percent. The survey results indicate that: most park residents rent their individual lots; city provided services are generally rated high; lot rental does not appear to be excessive; and parks are ranked relatively high in pleasant physical layout, maintenance, and upkeep. Suggestions to improve the satisfaction of living in mobile home parks included increasing lot size and allowing sale of the lot to the mobile home owner.

A major concern expressed to the committee was the possibility that mobile home parks could be constructed under inadequate health and safety standards. The State Laboratories Department has authority over trailer courts, but it is questionable whether present authority over "transient guests for parking trailers" extends to authority over mobile home parks.

Recommendations

The committee recommends a bill to substantially revise Chapter 23-10, which presently authorizes the State Laboratories Department to regulate motor courts and trailer courts. The bill changes the present direction of the chapter from motor courts and trailer courts to a three-facility concept of mobile home parks, trailer parks, and campgrounds. As proposed, the bill provides a "grandfather" clause allowing eight years for existing facilities to comply with new requirements. The bill revises or establishes guidelines for plumbing and electrical installations, streets, lighting, fire protection, and playgrounds. In addition, unreasonable service fees are prohibited, and park operators are required to post regulations and inform the Laboratories Department of any change in park ownership. Facilities would be inspected at least annually and license fees would be based on the type and size of the facility. The bill also authorizes the Laboratories Department to accept city or county enforcement of local sanitation, safety, zoning, and inspection requirements in lieu of state requirements. The department could waive license fees for facilities subject to local requirements accepted by the department.

The committee recommends a bill establishing an appeals procedure from mobile home tax assessments similar to the appeals procedure for real property tax assessments. The bill adds a new section to Chapter 57-55, the Mobile Home Tax Decal Act, to treat mobile home owners in a manner similar to conventional homeowners with respect to taxation procedures. The committee found that mobile home owners have no procedure to appeal mobile home tax assessments, so the bill provides such a procedure.

INDUSTRY, BUSINESS & LABOR "B"

The Committee on Industry, Business & Labor "B" was assigned three study resolutions. Senate Concurrent Resolution No. 4076 directed a study of the administration, operation, and investment policies of the Bank of North Dakota; House Concurrent Resolution No. 3067 directed a study of the powers, duties, functions, and operations of the Department of Banking and Financial Institutions and of state banking laws; and House Concurrent Resolution No. 3043 directed a study of the economic feasibility of a privately owned fertilizer manufacturing plant. In addition, the Chairman of the Legislative Council authorized the committee to review the operation of the feed department of the State Mill and Elevator Association.

Committee members were Senators Theron Strinden, Chairman, Harold Christensen, Emil Kautzmann, Duane Mutch, Rolland Redlin, and Jay Schultz; and Representatives William Goetz, Byron Langley, Robert Martinson, Michael Timm, Wilbur Vander Vorst, Francis Weber, Gerhart Wilkie, and Dean Winkjer.

The report of the Committee on Industry, Business & Labor "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

BANK OF NORTH DAKOTA STUDY

The Bank of North Dakota was established in 1919 to encourage and promote agriculture, commerce, and industry. Presumably, its establishment was based upon five main principles:

1. Existing banking systems were inadequate to meet the credit requirements of the agricultural community.
2. New banking machinery should take the form of a state-owned bank with public money an important factor in its operation.
3. A state-owned bank would be a central reserve bank in which state banks could concentrate reserves to mobilize the entire financial worth of the state to the best advantage.

4. A state-owned bank would merge mortgage banking and reserve banking.
5. Control of a state-owned bank should be by a body composed of elected state officials.

Original Bank Authority

In its enabling statutes the operation, management, and control of the Bank was placed with the Industrial Commission, which was given the power to acquire property for the Bank, appoint the Bank president, and appoint employees necessary for the operation of the Bank. The Bank was granted the authority to do anything any other bank could do, subject to the restrictions in its enabling provisions. The Bank was to be the depository for all state, county, township, municipal, and school district funds and for funds of all penal, educational, and industrial institutions. In addition, the Bank was authorized to receive deposits from any source and to be utilized as a reserve depository by state banks. Interest rates were to be set by the Industrial Commission. The Bank was authorized to deposit its funds in any banking association, transfer funds to other state departments, institutions, utilities, industries, or enterprises, and make loans to political subdivisions and banks; however, the Bank could not make loans to individuals or private corporations unless the loans were secured by first mortgages on real estate or by warehouse receipts. The Commissioner of Banking and Financial Institutions was to inspect and verify the Bank's assets at least twice a year and was to report the results of each examination to the Industrial Commission.

Changes in Bank Authority

The activities of the Bank have been statutorily modified over the years. With respect to limiting Bank activities and operations, political subdivisions are not required to deposit their funds in the Bank, direct loans to individuals are restricted to specific areas, and the Commissioner of Banking and Financial Institutions is required to inspect the Bank only once a year. With respect to expanding Bank activities and operations, the Bank is authorized to make loans for student scholarships, loans for construction of nursing homes and homes for the aged and infirm, and loans insured or guaranteed by the federal government. The Bank is

also authorized to participate in loans made by banks, savings and loan associations, and credit unions. In addition, the investment authority of the Bank has been expanded and under special programs, the Bank is authorized to encourage industrial and irrigation development and municipal bond finance. The Bank is also to be audited annually by a certified public accounting firm.

Select Senate Committee

Senate Resolution No. 3 (1975) created the Select Senate Committee on the Bank of North Dakota to study and review the administration, operation, and investment policies of the Bank. The committee met during the 1975 Legislative Session and made several recommendations concerning the operation of the Bank. The recommendations concerned the management structure of the Bank, operating procedures, expansion of Bank activities in recent years, and profit motivation in Bank activities.

Other than the recommendation for a Legislative Council study of the Bank, there were 10 recommendations made by the Select Senate Committee. Of special interest to the Committee on Industry, Business & Labor "B" was the extent of implementation of seven recommendations without statutory direction.

The Select Senate Committee recommended that the Industrial Commission restructure the senior management of the Bank to include qualified senior vice presidents and other staff personnel. During the interim, the management structure of the Bank was changed from eight departments directly under the President of the Bank to three major departments, with three divisions in each department, and three independent departments.

The Select Senate Committee recommended that the President of the Bank put into effect a manual of standard operating procedures for Bank personnel. During the interim, administrative policies and operating policies and procedures were put into effect concerning the advisory board, investments, lending limits, interest supplements, and computer room accessibility.

The Select Senate Committee recommended that the Industrial Commission review the loan policies of the Bank. During the interim, the Industrial Commission adopted an administrative policy establishing lending limits for Bank personnel, the Investment Committee of the Bank, the Advisory

Board of Directors to the Bank, and the Industrial Commission.

The Select Senate Committee recommended that the Industrial Commission review the standards and qualifications of investment firms with which the Bank does business. Information presented during the interim indicated that every firm with which the Bank does security business is a major firm and the financial statement of each firm is annually reviewed by the President of the Bank and the vice president and assistant vice president of the securities department. In addition, the advisory board reviews the standards and qualifications of investment firms on a monthly basis.

The Select Senate Committee recommended that the Industrial Commission establish a policy that the Bank be expanded as a service institution for political subdivisions and financial institutions in the state. During the interim, Bank management indicated that this recommendation is being met through implementation of the Municipal Bond Bank Act passed by the 1975 Legislative Session. In addition, the Bank has developed a program to expand its commercial lending and correspondent banking services to correspondent banks through a program of personal contact with local financial institutions.

The Select Senate Committee recommended that the space of the Bank building be totally utilized by the Bank in its operations. With the transfer of the State Laboratories Department to its new building, the Bank will be able to use the entire building. Information presented during the interim indicated that a portion of the additional space will be immediately used by the Bank, while the remainder will be available for other uses.

The Select Senate Committee recommended that the Industrial Commission establish a policy for the Bank that interest rates on overlines and on participation loans should not exceed prevailing rates charged by private financial institutions. The response to this recommendation was a reemphasis of Bank policy to be competitive in the local market to fulfill the basic purpose of the Bank. During the interim, specific testimony indicated that the Bank serves the entire state and should not give preferential treatment to borrowers. In addition, the Bank's interest rates are reviewed at least monthly to reflect market rates.

Recommendations Made to the Committee

The Greater North Dakota Association urged the establishment of a disaster loan program within the Bank of North Dakota. The proposal arose due to the 1975 floods in the eastern part of the state. The concerns expressed to the committee involved the severe losses sustained by young farmers in the flood areas, the restrictions on the availability of federal disaster loans, and the substantial effect of the disaster on the state's agricultural economy.

As a result of this testimony, the committee considered a bill to establish a disaster loan program within the Bank of North Dakota. The bill would have authorized the Bank to participate in disaster loans made by financial institutions to agricultural, commercial, and industrial operations. The bill would have established a disaster loan fund within the Bank as a revolving fund, with the Bank to participate in disaster loans only to the extent of covering the actual loss caused by the disaster.

The committee rejected the bill to establish a disaster loan program. The committee concluded that the Bank could provide such loans under present authority. In addition, disaster aid is available under federal disaster programs.

The Independent Bankers Association urged that the Bank of North Dakota be authorized to make bank stock loans to individuals. The proposal was presented as a means to expand the use of the Bank as a central bank to North Dakota banks. While other states have authorized establishment of private wholesale banks as central banks, it was pointed out that an independent bank would be difficult to establish in this state due to the presence of the Bank of North Dakota.

To enable specific discussion of the proposal, the committee considered a bill similar to Senate Bill No. 2453 (1975). The bill would have authorized the Bank to make loans to state residents for the purpose of purchasing stock in banks located in the state. Loans could not have exceeded 25 percent of the Bank's capital, surplus, and total deposits in the Bank by correspondent-respondent banks located in the state.

The committee rejected the bill to authorize bank stock loans after concluding that such authorization may result in the Bank of North Dakota acquiring a bank upon failure of the loan.

Other proposals presented to the committee concerned topics not considered in bill draft form. The proposals urged legislation to: authorize the Bank to make loans to credit unions; increase the real estate loan limit to farmers from 50 to 65 percent; and create a statewide housing authority operated by the Bank.

Advisory Board — Recommendations

A substantial portion of the report and recommendations of the 1975 Select Senate Committee on the Bank of North Dakota concerned the role and function of the Advisory Board of Directors to the Bank. The major recommendation of the Select Senate Committee was to expand the membership and authority of the advisory board. In addition, the advisory board was to be renamed as the operations board to reflect active participation in establishing policies and recommending procedures to be followed by Bank personnel in their transactions. In conjunction with the recommendation for an expanded advisory board, the Select Senate Committee also recommended that the Industrial Commission employ a qualified auditor who would be the executive director of the operations board, with responsibility to review the operations of the industries under control of the Industrial Commission. However, the recommendations could not be put into effect due to the failure of Senate Bill No. 2453 during the 1975 Legislative Session.

The committee received substantial testimony concerning the "new" role of the present Advisory Board of directors to the Bank as a result of the recommendations of the Select Senate Committee. An administrative policy on the advisory board was adopted by the Industrial Commission after the 1975 Legislative Session. The policy sets out the purpose and duties of the advisory board and provides for monthly board meetings as well as quarterly meetings with the Industrial Commission. In addition to the administrative policy, the Industrial Commission has placed certain loan approval authority with the advisory board.

The committee also received testimony concerning advisory board membership. The testimony centered on the need for more than five members so that various segments of the state's economy would be represented on the advisory board. Concern was also expressed that there should be some type of assurance that advisory board members represent appropriate areas of expertise.

The committee recommends a bill to amend Section 6-09.1-02 to expand the five-member Advisory Board of Directors to the Bank of North Dakota to nine members, and to create Section 6-09.1-02.1 to subject the appointments to Senate confirmation. Appointments are to be for four-year terms, with the maximum service on the board limited to two 4-year terms. The bill requires members appointed to the advisory board to represent agriculture, finance, industry, and other appropriate segments of the state's economy. Subjecting the appointments to Senate confirmation was determined to be the best means to assure adequate representation of different segments of the state's economy without writing restrictive legislation.

The committee recommends a bill to amend Section 6-09.1-03 to specifically designate the authority and responsibility of the advisory board. The bill requires the advisory board to meet with Bank management to review Bank operations; make recommendations to the Industrial Commission concerning Bank operating policies, additional objectives of the Bank, and appointment of Bank officers; and meet with the Industrial Commission to present any recommendations. In addition, the bill authorizes the advisory board to act in the Bank's behalf if assigned to do so by the Industrial Commission and deletes language concerning development of a long-term first mortgage industrial development capital pool. The first advisory board appointed in 1969 studied the capital pool concept and found it to be unworkable in North Dakota. Basically, the bill statutorily enacts responsibilities granted by the Industrial Commission to the advisory board during this interim.

Private Deposits — Recommendation

The Select Senate Committee also recommended that the primary emphasis of the Bank of North Dakota should be its relationship with other financial institutions and with political subdivisions, and that retail operations of the Bank with private depositors should be deemphasized towards the goal of elimination of private accounts. Bank management testified that the Bank does not advertise for nor solicit private accounts and that private accounts usually come to the Bank due to dissatisfaction with or lack of confidence in private financial institutions. During the interim the advisory board adopted a policy that Bank fees, rates, and various other charges be in competition with or no lower than local banks and that the Bank continue its present policy of not actively soliciting private checking accounts.

Financial association representatives testified that the competition created by the Bank in offering private checking accounts with no service charge or minimum balance requirements is unfair to private banks. Testimony also indicated that private deposits in the Bank reduce funds available to private banks and other financial institutions which serve local communities.

Information presented by the Bank of North Dakota pointed out that individuals, unions, rural electric and other cooperatives, and businesses hold 1,050 certificates of deposit totaling over \$13,004,000; 2,235 savings accounts totaling over \$2,728,000; and 3,829 demand deposit (checking) accounts totaling over \$4,083,000.

The committee recommends a bill to amend Section 6-09-09 to limit the sources from which the Bank may receive deposits. The bill authorizes the Bank to receive deposits only from the United States government, and any foreign or domestic annuity company, bank, credit union, investment trust company, nonprofit association, rural electric cooperative, safe deposit company, savings and loan association, surety company, trust company, municipality, or government. Thus, the bill prohibits individuals and private businesses from having accounts at the Bank. The bill also provides for a timed phaseout of existing accounts from nonauthorized sources. Checking and savings accounts are required to be removed by January 1, 1978, and certificates of deposit are required to be removed on or before their first renewal dates after January 1, 1978. Section 6-09-09 was approved in a 1919 Special Election on a referral of the original Enabling Act of the Bank. Consequently, the bill requires a two-thirds vote for passage.

BANKING LAW STUDY

This study concerned two subjects — the Department of Banking and Financial Institutions and state banking laws. For ease in conducting the study, the approach was to direct separate attention to each subject.

Department of Banking and Financial Institutions

The Department of Banking and Financial Institutions is under the supervision of the Commissioner of Banking and Financial Institutions and the State Banking Board or the State Credit Union Board, depending on the type of financial institution

involved. The commissioner is chairman of both boards, and the members of the boards, as well as the commissioner, are appointed by the Governor.

The State Banking Board has jurisdiction over state-chartered banks, trust companies, savings and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, except the Bank of North Dakota. The State Credit Union Board has jurisdiction over state-chartered credit unions. Both boards have similar powers with respect to the financial institutions subject to their jurisdiction in that each board is granted the authority to prescribe rules governing financial institutions, review reports of such institutions made by the commissioner, appoint receivers for insolvent institutions, and make orders necessary to protect the public.

The commissioner exercises constant supervision over all financial institutions within the jurisdiction of the department, with emphasis on semiannual financial examinations of banks and annual financial examinations of other financial institutions. However, the commissioner is statutorily authorized to accept financial examinations of banking institutions made by the Federal Deposit Insurance Corporation (FDIC) in lieu of examinations by the department. In addition to supervision over private institutions, the commissioner supervises financial accounts of public agencies and institutions subject to examination by the commissioner.

Dual Banking System

With respect to banks, credit unions, and savings and loan associations, a dual system of regulation exists. While similar conditions apply to banks, credit unions, and savings and loan associations, this report focuses on the banking system, for that was the prime directive of the resolution.

There are two alternative methods of entry into the business of banking, each with its own statutory and supervisory scheme. One banking system is state administered and the other is federally administered. A clear choice is offered between state or federal regulation. However, the two systems are not completely separate and distinct. A state bank is subject to the law of the state in which it is chartered, but if it joins the Federal Reserve System, it also becomes subject to the Federal Reserve Act, as well as other federal laws. In addition, if it elects to obtain federal deposit insurance, it becomes subject to the Federal Deposit Insurance Act. A national

bank is subject to the National Banking Act. As a member of the Federal Reserve System it must also comply with the Federal Reserve Act, and it is required to obtain federal deposit insurance and comply with the Federal Deposit Insurance Act.

Testimony presented to the committee indicated that the dual banking system offers three advantages:

1. The alternative routes of entry reduce the possibility that a meritorious application for a charter will be rejected.
2. The alternate supervisory scheme offers banks an opportunity to select a system which best satisfies their business needs.
3. A dual banking system requires both systems to adjust to changing circumstances to retain their banks.

In North Dakota there are 127 state-chartered banks under the supervision of the Department of Banking and Financial Institutions. Of that number, 126 have federal deposit insurance (and are subject to regulation by the FDIC) and four are members of the Federal Reserve System (and are subject to regulation by the Federal Reserve Board). There are 43 nationally chartered banks supervised and regulated by the Comptroller of Currency, the Federal Reserve Board, and the FDIC.

With respect to other financial institutions, the state has three state-chartered savings and loan associations (with 12 branches), with two supervised and regulated by the department and one supervised and regulated by the department and the Federal Home Loan Bank Board, and 10 federally chartered savings and loan associations (with 33 branches) supervised and regulated by the Federal Home Loan Bank Board. There are 83 state-chartered credit unions supervised by the department, with 33 also supervised by the National Credit Union Administration, and 29 federally chartered credit unions supervised and regulated by the National Credit Union Administration.

The committee reviewed the possibility of extensive duplication in department and FDIC examinations. Testimony pointed out that the department and the FDIC work independently of one another. However, both agencies exchange information and work closely in scheduling examinations in an attempt to examine all state

banks at least annually. While the department receives copies of FDIC exams, each agency concentrates on different factors when examining banks. The FDIC is concerned with insurability and compliance with federal regulations, while the department is concerned with safety of depositors' funds and compliance with state requirements.

Recommendations presented to the committee emphasized the need to adequately fund the Department of Banking and Financial Institutions to attract and retain qualified examiners. It was emphasized that the quality of examiners is reflected in the examinations, which are primarily made to protect and benefit the people of the state as well as the depositors of the institutions involved.

Another recommendation presented to the committee urged review of the examination fee structure. Information presented by the department indicated that department income is 50.4 percent of department expenditures. This was supported as an acceptable ratio, for a substantial increase in examination fees could have an adverse effect on small financial institutions. In addition, state funding was supported because department examinations and activities benefit state citizens as well as the financial institutions.

Recommendations

The commissioner is statutorily required to examine each state-chartered bank at least twice a year, with authority to accept FDIC examinations in lieu of state examinations. Testimony presented to the committee indicated that the focus of state examinations and FDIC examinations differs and total reliance should not be placed on FDIC examinations for the purpose of state supervision and regulations. In addition, to bring the department up to the strength required to conduct twice yearly examinations of state-chartered banks would require an increase in the staff of the department by 11 personnel and a biennial appropriation of \$1,500,000.

The committee recommends a bill to amend Section 6-01-09 to replace the requirement that the Commissioner of Banking and Financial Institutions inspect state banks at least twice a year with a requirement that the commissioner inspect state banks at least once a year. In its budget request, the department is proposing an increase in staffing of two additional examiners and a proposed total budget for the 1977-79 biennium of \$1,015,985. This

proposed staff and funding increase should result in a staff able to conduct at least annual examinations of state banks. The bill does not change the authority to accept FDIC examinations in lieu of state examinations and recommendations presented to the committee suggested that the department conduct annual examinations and use the FDIC examination as a second yearly examination of state banks. This approach, though not specified in the bill, can be used by the department as a means of obtaining semiannual examinations.

The committee recommends a bill to repeal Section 6-07-50 which authorizes additional compensation for terminating insolvent banks to the Commissioner of Banking and Financial Institutions and the chief deputy examiner. This additional authorized compensation has not been provided as a separate line item appropriation since 1967. Thus the bill merely reflects the fact that the compensation provided by the appropriation to the Department of Banking and Financial Institutions includes the total compensation received by the commissioner and personnel in the department.

Banking Laws

Representatives of the banks, savings and loan associations, and credit unions appeared before the committee and presented several suggestions concerning statutory changes in NDCC Titles 6 (Banks and Banking) and 7 (Savings and Loan Associations).

Banking association representatives generally supported additional funding for examiners in the Department of Banking and Financial Institutions, statutory change in the number of bank examinations to reflect actual practice, legislative action to clarify the ability of savings and loan associations to branch, and legislative awareness of problems associated with extensive use of electronic fund transfer systems.

Savings and loan association representatives urged statutory changes to allow public funds to be deposited in savings and loan associations and a tax deduction for interest earned on savings deposited in North Dakota financial institutions. Opposition was expressed against any proposals requiring interest to be paid on escrow accounts, prohibiting financial institutions from offering premiums, and establishing any state housing authority.

Credit union representatives presented several proposals for statutory changes regarding credit union authority and operations. The proposals concerned credit union insurance, authority of the board of directors of a credit union, acceptance of public funds, general powers of a credit union, and authority of the Bank of North Dakota to make loans to credit unions.

The Department of Banking and Financial Institutions presented two bill drafts to the committee. One proposal would have clarified the maximum limits on loans to bank officers, and the other would have treated trust departments as separate from banks for the purpose of determining examination fees.

The committee determined that the proposals presented by interested persons and the Department of Banking and Financial Institutions involved special interest legislation. The decision was that the proposals would not be recommended by the committee but should be properly presented to individual legislators for introduction or should be introduced by the department through executive agency request.

Recommendations

The committee recommends a bill to amend Sections 6-01-01, 6-01-02, and 6-02-01, and subsection 2 of Section 6-06-06. The bill removes references to "savings banks," replaces the term "state examiner" with "commissioner of banking and financial institutions," and changes the definition of "credit union." The authority for savings banks was repealed in 1967; the State Examiner was renamed the Commissioner of Banking and Financial Institutions in 1969; and the definition of credit union is replaced with the definition found in the Credit Union National Association Model Act. The new definition more accurately describes a credit union.

The committee recommends a bill to amend Sections 6-05-22 and 6-05-34 to eliminate references to repealed sections and insert references to appropriate replacement statutes or to statutes which the North Dakota Supreme Court has held appropriate for referencing. The bill reflects current statutory sections which are applicable due to previous legislative action or through State Supreme Court decisions.

FERTILIZER PLANT STUDY

The focus of this study was on the economic feasibility of a privately owned fertilizer

manufacturing plant using lignite coal. Of special interest were two feasibility assessments presented to the committee.

ANG Coal Gasification Company

ANG Coal Gasification Company, a subsidiary of American Natural Resources Company, presented an updated version of a May 1974 report assessing the relative feasibility of producing anhydrous ammonia from lignite coal and natural gas feed stock.

The ANG report included consideration of these variables applicable in determining economic feasibility:

1. Whether the facility is financed through normal utility financing or through tax free low cost municipal financing.
2. Different lignite coal and natural gas costs.
3. Two facility sizes — one with an output of 600 tons of anhydrous ammonia per day and one with an output of 1,000 tons per day.
4. An on-line time of 1975 or 1981, with figures based on 1975 dollars or on 1975 dollars increased to 1981 estimates.

The information indicated that, based on projected 1981 dollars, a coal-fed plant with a capacity of 1,000 tons per day and an on-line date of 1981 would be competitive with a natural gas-fed plant of similar size and on-line time:

1. If the facility were financed by normal utility financing, the wellhead price of natural gas must average over \$3 mcf if coal is \$8 per ton.
2. If the facility were financed by tax free low interest municipal financing, the wellhead price of natural gas must average slightly under \$3 mcf if coal is \$8 per ton.

The ANG report estimated the current price of lignite coal at \$5 per ton. The current wellhead price of natural gas is controlled by the Federal Power Commission of 52 cents mcf for large producers (over 10 billion cubic feet of gas per year) and at 67.6 cents mcf for small producers. By way of illustrating unregulated prices, the current price of natural gas received from Canada is \$1.60 mcf.

Dreyer Brothers

Dreyer Brothers, a subsidiary of Burlington Northern, described its concept for a project in McCone County, Montana. The Circle West project envisions the production of anhydrous ammonia, methyl alcohol, and diesel fuel. The plant would have a capacity to produce 1,000 tons of anhydrous ammonia per day.

The feasibility study conducted by Dreyer Brothers determined a present price differential of \$1.25 per 1 million Btu in assessing whether it is economical to produce anhydrous ammonia from coal or from natural gas, e.g., the process would be at a breakeven point if coal is \$.35 per 1 million Btu (approximately \$4.90 per ton) and natural gas is \$1.60 per 1 million Btu.

Conclusion

Lignite coal can be made into anhydrous ammonia by baking the coal with oxygen and steam to produce hydrogen and other gases, cleaning the gases to form a clean hydrogen product, and then reacting it with nitrogen to make anhydrous ammonia. About three tons of lignite coal would be required to produce one ton of anhydrous ammonia, and a 1,000 ton per day facility would require the surface mining of approximately 50 acres per year. If the facility has its own power supply, an additional two tons of lignite coal per ton of anhydrous ammonia would be required.

Anhydrous ammonia is not the only nutrient used in making fertilizer. A balanced fertilizer blend would have to be made. The studies conducted by both companies indicated that agreements would have to be worked out to obtain other nutrients and market the final fertilizer product.

The information presented to the committee indicated that the technology is available to produce fertilizer products from lignite coal, and projects are being considered to implement that technology.

The committee makes no recommendation concerning methods to encourage the development of a fertilizer manufacturing industry in North Dakota. The primary effect of the study was the receipt of information describing the technology and economic feasibility of such facilities, whether owned and financed on a private industry or government assisted basis.

FEED DEPARTMENT REVIEW

Although no study resolution had been assigned to the committee concerning the feed department of the State Mill and Elevator Association, the Chairman of the Legislative Council authorized the committee to review the feed department to obtain an insight into the future of the department.

The committee reviewed the relevant portion of the management study of the State Mill and Elevator Association conducted by Peat, Marwick, Mitchell & Company, for the Budget "C" Committee during the 1973-75 interim. The committee also toured the Mill facility and met with Mill management.

The feed department operates only one shift and employs 10 people. The department runs at approximately 50 percent capacity and produces from 12-13 thousand tons of feed per year. Profits of the feed department were \$87,000 in 1973; \$79,954 in 1974; and \$100,100 in 1975.

Notwithstanding the profitable operation of the feed department, Mill management reported that the future of the feed department is questionable due to high feed distribution costs, expansion of privately owned feed milling plants in the department's service area, and reduction of cattle feeding. The Mill management emphasized that operating the feed department is not necessary as a means to use the byproducts of the durum and spring wheat activities of the Mill. However, management did not recommend that the feed department be closed, primarily due to plant investment and current profit levels of the department. While the operating costs of the feed department are higher than the industry average (due to operating at one-half capacity), testimony indicated that the department has operated at a profit due to the use of low cost high protein byproducts not readily available to private milling operations.

Individuals appearing before the committee expressed concern over the state operating a feed department primarily serving the local area. Concern was also expressed over the tax-free nature of the feed department which contributes to its competitive advantage over private industry. In addition, testimony indicated that the feed market is very volatile, with animal production and feed use going down, and the department operation may readily result in losses instead of profits.

Recommendation

The committee recommends a bill to require the North Dakota Mill and Elevator Association to discontinue its feed department operation. The bill also amends Section 54-18-04 to delete the Industrial Commission's authority to acquire, manufacture,

store, distribute, and sell animal feed and feed products. The Industrial Commission is to dispose of feed inventory and equipment and machinery not necessary to other Mill activities as soon as possible after July 1, 1977.

INDUSTRY, BUSINESS & LABOR "C"

The Committee on Industry, Business and Labor "C" was assigned two study resolutions. House Concurrent Resolution No. 3027 directed a study of North Dakota's insurance laws for purposes of modernizing existing statutes and examining areas where there may be a need for additional laws. Senate Concurrent Resolution No. 4063 directed the Legislative Council to study labor laws, especially public employee labor relations.

Committee members were Representatives Charles Mertens, Chairman, Terry Eriksmoen, Brynhild Haugland, Alvin Hausauer, William Kretschmar, Luther Kristensen, Charles Orange, and Royden Rued; and Senators Stella Fritzell, S. F. Hoffner, Evan Lips, and Chester Reiten.

House Concurrent Resolution No. 3027 provided for a rather broad examination of insurance laws and a study of the feasibility of making policies of insurance easier to read and more comprehensible to consumers. The committee narrowed the study subject to include revision of existing insurance laws, readability of insurance policies, and medical malpractice insurance. The committee also narrowed Senate Concurrent Resolution No. 4063 to labor law revision, collective bargaining for public employees, and problems of public employees.

The report of the Committee on Industry, Business & Labor "C" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

INSURANCE STUDY

Revision of Insurance Laws

The committee examined insurance laws and received testimony indicating a need for revision of existing insurance laws or adoption of additional insurance laws in several areas. In addition, the Insurance Commissioner presented a memorandum regarding the magnitude of necessary revision. After an exhaustive review of these recommendations, the committee recommends a bill to create a procedure for the revocation or suspension of the authority of a foreign insurance company to do business in the state; to amend the procedure for filing sample policy forms and articles of incorporation (and amendments) with the Commissioner of Insurance

(and registers of deeds in certain cases); to raise the capital asset and surplus requirements for certain domestic and foreign insurance companies; to outline the procedure for revocation of authority of a foreign insurance company to do business in the state; to clarify the liability of insurance company officers to stockholders and policyholders; to clarify collection of premiums by mutual insurance companies; to clarify the procedure by which domestic insurance companies may be consolidated or dissolved; and to repeal outdated laws relating to procedures on revocation of authority of insurance company for discrimination, notice of impairment of capital, assessment of stock, and selection of application of surplus, and laws relating to the assessment plan accident and sickness insurance companies and crop hail insurance.

The committee recommends a bill to continue family medical hospital insurance coverage for incarcerated juvenile delinquents. The committee also recommends a bill to allow a custodian of a court-placed child to consent to emergency medical treatment. Both bills address insurance difficulties experienced by children who have been placed by a court, providing continuity of hospitalization insurance coverage and assuring prompt medical treatment. The latter bill clarifies the liability of custodians of court-placed children to encourage foster parents and other quasi-official custodians to provide these children prompt medical attention without unnecessary concern for insurance coverage for the custodians to cover these emergency situations. Since the Committee on Judiciary "B", which studied the juvenile justice system, approved an identical bill, that committee will introduce the bill.

The committee recommends a bill to prohibit discrimination in the choice of optometric services. Where optometric services under a group policy may be provided by either a physician or an optometrist, the group policy contract cannot require a policyholder to receive these services from only one or the other, but the bill does not require mandatory insurance coverage for optometric services, does not affect Blue Cross or Blue Shield insurance contracts, and does not grant optometrists the right to insurance contracts, and does not grant optometrists the right to practice medicine. Forty-one states have similar antidiscrimination statutes regarding the dispensing of optometric services through a public

program, and forty-four states have antidiscrimination statutes applicable to the private sector.

These recommended changes will clarify and modernize archaic and outdated provisions of insurance law.

Readability of Insurance Policies

House Concurrent Resolution No. 3027 provided that the study of insurance laws be undertaken with the purpose "that the language of the statutes in the provisions of the insurance policies specified by statute be simplified where possible to make them more comprehensible to consumers desiring to purchase the policies." The committee received testimony from various representatives of the insurance industry, the Insurance Department, and other sources. According to a Harris poll requested by an insurance company, only 11 percent of the public said they would try to read their own policy to find out what it covered. Some states and insurance companies have undertaken to change insurance policies to enable laymen to understand them. Most suggestions for improvement involved shortening sentences, simplifying wording, using definitions carefully and sparingly, providing a simple format, and omitting unnecessary, ambiguous, or lengthy sentences and words.

There are several reasons which have been advanced to explain the verbal complexities of insurance policies. Many parts of policies are governed by state law or by Insurance Department regulations. In several instances, the exact language is prescribed by statute, and if an insurance company chooses to use different language, the policy could conflict with state law and certain portions of the policy may be invalid. Also, requiring inclusion of such language by statute represents an attempt to protect the policyholder. An insurance policy is a legal contract, and over the years a body of law based on court interpretations has developed regarding the meaning of insurance contract provisions. Legal and technical terms used in insurance policies have assumed certain fixed meanings. Thus, a so-called simplified policy may be harder to interpret than a policy containing precise legal terminology. Specific contract language is required in life, accident, and sickness policies (Chapters 26-03 and 26-03A). In addition, several other statutes require notices to be included in policies which notices require certain information designed to protect policyholders. However, in

practice the standard form contracts required by law are not the forms used in policies issued to policyholders because insurance companies generally do business in several states, issuing a standard policy drawn by each insurance company in those states and placing an endorsement on the face of those policies to comply with state law. Therefore, to some extent simplified policies are precluded by existing laws and if simplified insurance policies are desired, simplified state laws have to precede them.

The committee explored methods by which the "readability" of an insurance policy could be determined. One such test, the "Flesch test" which was developed by Rudolph Flesch has proved to be an important tool in analyzing the readability of insurance policies. By combining weighted averages of word length and sentence length the test arrives at a "readability score." But the Flesch test is a supplementary method of evaluating a policy and involves considerations and judgments which cannot be legislated. It cannot replace the common sense evaluations that are the ultimate test of readability.

Imposing mandatory readability standards for all insurance policies would be economically unrealistic and could result in fewer insurance companies doing business in the state, especially if the insurance companies had to devise special insurance policies to comply with these standards. The insurance industry has recognized the problem of readability, and policies are becoming easier to understand. Additionally, it would be impossible to write an insurance policy which could be easily understood by everyone.

Instead, the committee recommends a bill which gives the Insurance Commissioner the authority to issue rules and regulations to require insurance companies to issue an index of relevant provisions with each insurance policy. This index would allow policyholders to locate each provision and exclusion of the policy without causing adverse economic effects in the insurance industry. Additionally, the indexing requirement would give the Insurance Commissioner the authority to address specific readability problems in various segments of the industry without affecting the industry as a whole.

Medical Malpractice Insurance

Although many factions involved in what is loosely called the medical malpractice insurance problem — insurance companies, physicians, attorneys, and consumers — ascribe often differing and sometimes conflicting reasons for the present

malpractice crisis, all agree there is no one answer to the problem nor any one reason for it. Proposed committee approaches to the medical malpractice crisis involved balancing interests in modifying or extinguishing rights.

During the past few years, several states have been affected by doctor strikes and slowdowns. These doctors are protesting rapidly rising medical malpractice insurance premiums, which in some cases have increased over 400 percent annually. Insurance companies providing medical malpractice insurance claim the reasons for these increases are the increased number of medical malpractice suits being filed and larger claims payments, both in the form of settlements and judgments.

The medical malpractice insurance crisis started in California on May 1, 1975, when physicians and anesthesiologists said they would perform only emergency surgery. In New York where the crisis had been building since January 1976, the medical malpractice problem prompted a similar doctors' strike. In addition, slowdowns in medical service occurred in at least 20 states, and proposed legislation attempting to elevate the problem has been introduced in a majority of states.

The reasons for the medical malpractice insurance crisis are numerous and varied. However, the immediate cause for the crisis was precipitated by a large conglomerate entering the medical malpractice insurance market, cornering a large portion of the market, and suddenly withdrawing once it realized its entry into the market was ill advised. The impact of one of the largest insurers leaving the field was enormous because other insurance companies offering medical malpractice insurance coverage could not absorb the tremendous number of physicians in need of insurance coverage. Another reason for the medical malpractice crisis is the increased number of claims. However, only two percent of physicians in the United States are sued each year.

The increased cost of settlement has driven up insurance premiums. Although it appears that these claims are not in line with inflationary factors, this inflation in the cost of settlement appears to be leveling off. Another reason for the medical malpractice problem is the high administrative costs. Most of the estimated \$1 billion in insurance premiums which the industry takes in annually is spent for court costs, legal fees, and other charges incurred in settling medical malpractice claims. The injured person only receives approximately one-fifth of this amount.

Another reason put forth to explain the increase in medical malpractice insurance premiums is the so-called "Marcus Welby" syndrome. Some people feel that patients have come to expect too much from medicine. Televised medical shows often deal with controversial and experimental treatments involving a high degree of risk and low assurance of a cure which are not adequately explained to the television audience. The lack of personal contact with patients is claimed to be a partial cause in the increase of medical malpractice insurance claims. Perhaps the depersonalized atmosphere of modern clinics and hospitals foster a climate in which patients who do not receive satisfactory results are more likely to sue than patients who have been treated for years by the same family physician in a comfortable environment.

It is also contended that patients are increasingly likely to sue. As more patients have become aware of their legal rights, the number of malpractice claims has increased. However, it is clear that all potential claims against physicians have not been made in the past. It is estimated that approximately five to 10 percent of all patients who are admitted to a hospital in the United States incur "iatrogenic" damage, which is an injury induced by a physician. It is estimated that the number of iatrogenic injuries exceeds 500,000 per year, although less than one in 25 of these injuries results in a claim. Thus, it would appear that the number of justified claims will continue to increase unless certain rights of claimants are curtailed or eliminated so as to place the medical malpractice insurance industry on an actuarially sound basis. However, this must be balanced with other recommendations to reduce the costs of litigation, to protect the rights of patients, and to provide adequate information regarding medical malpractice claims. The problem in North Dakota is not the cost of medical malpractice insurance coverage, although premium increases have been startlingly high, but rather the availability of coverage. The insurance industry should be encouraged to do business in the state, but the method by which rates are determined does not account for the low incidence of claims and low settlements and judgments in North Dakota.

The committee recommends a bill to limit professional liability of qualifying health care providers to patients selecting to be bound, and to create a trust fund for the benefit of patients suffering damage caused by negligence of the health care provider.

The bill calls for review of claims by a medical review panel, establishes a commission on medical competency, and makes an appropriation.

This bill establishes a dual system of recovery for medical malpractice claims; the common law recovery, and this statutory recovery. A patient would have to elect not to be bound by the "statutory recovery" provisions by filing notice with the Insurance Commissioner every two years, and the patient would also have to inform the physician of this election before the patient received treatment. The physician would elect to follow this statutory procedure by filing proof of financial responsibility with the Insurance Commissioner.

The basic features of the bill are that it establishes a patients' trust fund to pay judgments which exceed the limitation on financial responsibility of physicians, provides a recording requirement of malpractice claims, establishes a medical review panel to review all claims before trial where the report of the panel would be admissible in evidence, and would establish a commission on medical competency to screen physicians and complaints against physicians.

The North Dakota Medical Association proposed this bill because the association felt it necessary to address the medical malpractice insurance problem through comprehensive legislation rather than through piecemeal legislation to address specific problems. This bill is based upon a bill recently enacted in Nebraska. There are some constitutional questions regarding the establishment of a dual method of recovery and of requiring persons to make an election periodically to pursue a common law right of action. An advisory opinion by the Nebraska Supreme Court may be available by January 1977. Increasingly, courts in other states have struck down or modified legislation which establishes physicians as a special class in regard to tort liability. However, this bill provides the legislature with several alternatives because it incorporates all of the proposals of the association, including proposals previously rejected by the committee. Although the committee believes that some of the aspects of the bill may be unworkable, undesirable, or unnecessary in the context of North Dakota's situation, the committee recommends this bill on the basis of rapidly changing conditions which, by the time the legislature convenes, may be drastically different than the situation which the committee contemplated at the time it recommended the bill. Moreover, this bill does provide the legislature with a vast array of alternatives regarding medical malpractice which may be wholly or partially adopted.

The reason for adopting a state-operated insurance fund for physicians is to take advantage of the low incidence of claims made in North Dakota. A major part of the medical malpractice insurance problems is the fact that medical malpractice insurance carriers do not consider the incidence of claims for small states such as North Dakota because of the inability of insurance companies to project the number of anticipated claims. States which have adopted a state-operated insurance fund have not met with overwhelming success in the operation of the fund because, to make such a fund actuarially sound, the medical malpractice insurance rates must be higher. These higher rates are necessary because the risk spread is reduced by limiting the number of physicians to only one state. However, testimony indicated that these rates could be lower than present levels by taking advantage of the state's low incidence of claims and low settlements.

The remainder of the bills recommended by the committee regarding medical malpractice insurance are remedial in nature rather than comprehensive, and these recommendations would improve the existing common law method of recovery. The committee recommends a bill to eliminate a statement of the dollar amount of damages in the pleadings presented to the court to commence a legal action. The purpose of this bill is to eliminate or reduce the adverse news publicity which a person receives when it is stated that a person is being sued for a large sum of money. The statement of damages in the pleadings may have no actual relationship to the ultimate settlement or judgment. Rather than allowing physicians to be established as a special class allowed to avoid such adverse publicity, the committee thought freedom from adverse publicity should be extended to all persons involved in civil actions because everyone, not just physicians, suffers when insurance rates are artificially driven up by unrealistic expectations. Presently, a statement of exact damages is not necessary in pleadings. Rather, it is only necessary that a person alleges that he has been damaged in order to recover. An exact statement of damages is not necessary in the pleadings because the damages must be proven in court. The practice of setting out specific damages in a complaint is only customary, and all damages must still be proven in court.

The committee recommends a bill to provide for the reporting and review of medical malpractice claims, settlements, and final judgments to assure patients of receiving competent medical care. The bill requires all persons making a claim or receiving a

claim against a health care provider, which phrase is defined to include all types of health care providers, must report the claim to the Insurance Commissioner. The commissioner then forwards copies of all these claim reports to the appropriate board of professional registration, examination, or licensure. The board may then review all reports which it receives and may take necessary disciplinary action against health care providers. The powers of these boards are expanded to allow them to impose censure, probation, or to suspend or revoke the health care provider's license.

This bill insures minimum standards of competence by health care providers. There is no clear relationship between a physician's competence and the number of malpractice claims made against the physician. It is often the most competent surgeons and physicians who are sued because of the great risks involved in their practice. However, testimony indicated there is a need to provide licensing boards with the authority to revoke or suspend a health care provider's license on the grounds of professional incompetence. The committee believes the medical profession should be allowed to police itself to eliminate incompetence, and this bill authorizes licensing boards in all areas of health care to review medical malpractice claims made against professionals.

One of the most difficult problems encountered by the committee in examining the medical malpractice problem was that accurate records of malpractice claims have not been kept even by insurance companies writing this coverage. Therefore, it was difficult to get accurate information on the number of claims made in North Dakota, the settlements involved, and the grounds upon which these claims had been made. A reporting requirement for medical malpractice claims would provide future legislatures with adequate information to address this problem.

The committee recommends a bill to require physicians to inform patients to the point where they can give informed consent to medical procedures in any case where there is a grave risk of injury from a proposed course of diagnosis or treatment. The bill also provides for the rights of patients of health care facilities, and requires reporting of maltreatment of patients. This bill defines and clarifies patients' rights. Several states have enacted patients' rights legislation, and enactment of this bill is designed to promote the interest and well being of patients and residents of health care facilities. This bill recognizes the right to privacy of persons receiving health care services, and the bill attempts to preserve the

personal integrity of persons receiving these services while in health care facilities.

The committee recommends a bill to establish medical review panels to review or arbitrate medical malpractice claims. The bill sets out the method by which the panel may be selected and prescribes the powers and duties of the panel. The report by the panel is admissible into evidence in any subsequent action based on a medical malpractice claim.

In 1969 the North Dakota Supreme Court was asked to adopt a rule of procedure for the state's district courts which would have required the clerk of the North Dakota Supreme Court to maintain a panel of doctors designated by the State Medical Association and a panel of attorneys designated by the Executive Committee of the State Bar Association. From this panel a subpanel was to be drawn when a claimant sought its use. The subpanel was to consist of two doctors, two attorneys, and a district judge who was to act as chairman. Use of the subpanel was to be on a voluntary basis, and the subpanel's conclusions were to be limited to a finding of whether there existed a reasonable basis for the claim. In the event the subpanel found there was no reasonable basis for the claim, the attorney for the claimant would then be precluded from initiating any action on the claim. The claimant, however, would not be prevented from obtaining other counsel and proceeding with his claim. It was this latter factor which caused a number of physicians to resist the adoption of the rule, which apparently caused the State Medical Association to drop its support for the adoption of the rule. The rule was approved by the State Bar Association, with limited consent from some lawyers and an expression of dissent from one of the district judges who asserted that the Supreme Court had no authority to adopt such a rule. Under these circumstances, the court has declined to adopt this rule of procedure.

The medical review panel bill attempts to overcome both of these objections by: (1) providing that any report issued by a medical review panel would be admissible as evidence in any subsequent legal proceedings; and (2) establishing the panel pursuant to statutory enactment rather than rule of the court. The panel's report would not be determinative or conclusive of any of the facts, issues, or opinions presented to the panel unless the parties voluntarily submitted their matters of difference to the panel and agreed to abide by its judgment. The panel is made up of two physicians, two attorneys, and one citizen member, unlike the medical review panel established in the State Medical Association's

proposal which has three physicians and one non-voting attorney on the panel.

The idea of using panels to screen or review claims to see if they are warranted is not new in North Dakota. In 1921 North Dakota became the first state to establish a statewide tribunal of conciliation. The constitutionality of this conciliation statute was upheld in *Klein v. Hutton*, 49 N.D. 248, 191 N.W. 485 (1922). This bill is based upon the original conciliation statute, which has since been repealed, and a recently enacted Indiana law concerning medical review panels. The medical review panel would screen the claims but would deny no one his day in court. However, since the opinion of the medical review panel would be admissible in evidence in any subsequent action based upon that claim, the plaintiff against whom an opinion is given would be more inclined not to pursue his claim.

LABOR LAW STUDY

Senate Concurrent Resolution No. 4061 directs a study of Title 34. Particular emphasis was to be given to the study of public employees' rights, duties, and obligations in the selection of exclusive bargaining representatives and in negotiations for wages, hours, and other conditions of employment. These labor laws were to be reexamined in light of the problems of public employees and expected industrial development in North Dakota. The committee limited its review of labor laws to ambiguities or shortcomings in existing law, to public employees' collective bargaining, and to problems of public employees which could be remedied through legislation.

Although state law allows private sector employees to organize for purposes of bargaining collectively and for determining exclusive representation of all employees, these rights have not been extended to public employees. Public employees do have the freedom to associate with and designate representatives to negotiate with public employers, but there is no provision for public employees to hold an election to make a determination regarding representation nor to engage in collective bargaining with public employers. Most labor disputes in the private sector are resolved pursuant to federal law, and testimony before the committee indicated that these labor disputes were not an area of concern which could be resolved through legislative action.

Labor Law Review

The State Labor Commissioner appeared before the committee and presented proposals to eliminate archaic or obsolete labor provisions, improve existing labor procedures, and establish new labor legislation. After studying the proposals, the committee makes the following recommendations to implement the Labor Commissioner's proposals.

The committee recommends a bill to amend Section 34-14-03 to provide that if an employer fails to pay wages due an employee within 24 hours of the employee's discharge or termination at the employer's place of business or within 15 days by certified mail, the employee may collect his regular wages for up to 30 days after this default. Presently, this law requires employers to pay terminated employees within 24 hours, but modern business practices, such as computerized payrolls, make this unfeasible. Moreover, the present law does not provide a penalty, and these proposed amendments make the law more realistic and provide employers with an incentive to pay wages shortly after an employee has been terminated.

The committee recommends a bill to broaden the definition of the terms "employment agent" or "employment agency" in Section 34-13-01 (1) to include an employment service association furnishing other business associations with persons to provide desired temporary services for a fee. Since the furnished persons are employees of this employment service association, there is some confusion whether these employment service associations come under the licensing requirements of Chapter 34-13. The bill requires such associations to be licensed.

The committee recommends a bill to amend Sections 34-13-04 and 34-13-05 to increase the annual licensing fees of employment agencies to \$200 (from \$150 maximum) and the bonds required of those agencies to \$5,000 (from \$2,000). The bill forbids discriminatory distinctions, based on sex, by employment agencies.

The committee recommends a bill to create a new subsection to Section 34-05-01.3 to authorize the Labor Commissioner to conduct elections to determine the exclusive representative and appropriate bargaining unit of public employees for purposes of labor negotiations. Presently, while public employees have a constitutional right to join unions and may exercise various rights under state law in regard to membership in such unions, there is no procedure by which an employee organization

may conduct elections for these purposes. It should be noted that this bill does not authorize public employees to engage in collective bargaining.

The committee recommends a bill to establish a North Dakota Equal Employment Opportunity Act. Basically, the bill follows the format of the Federal Equal Employment Opportunity Act, except it authorizes the Labor Commissioner to administer the Act rather than the regional Federal Equal Employment Opportunity Commission office and coverage under the proposed Act has been expanded to provide additional protection to employees within the state.

To date, 38 states have adopted similar legislation including Minnesota, Montana, South Dakota, and Nebraska. There are 51 state and local agencies designated as "706" agencies by the Secretary of Labor. This designation allows these agencies to hear discrimination complaints locally. Presently, North Dakota only has a designated notice agency, and all complaints must be forwarded to the federal regional office.

The bill prohibits an employer, employment agency, labor organization, or licensing agency from discriminating in employment practices because of race, color, religion, national origin, sex, age, or marital status. However, discriminatory employment practices would not be prohibited with regard to religion, national origin, or sex in instances where religion, national origin or sex are bona fide occupational qualifications necessary for the operation for the business or enterprise.

A complaint would be filed with the Labor Commissioner, who would notify the party charged, investigate the complaint, and either dismiss the complaint or seek settlement through conciliation. If conciliation does not result in settlement, the commissioner could hold a hearing on the complaint, receive evidence and testimony, and issue a decision either dismissing the complaint or requiring the charged party to cease and desist from the discriminatory practice. Any persons aggrieved by the Labor Commissioner's order would have the right to appeal the decision to district court. The provision in the bill regarding discrimination on basis of age is in conformity with Section 34-01-17 which prohibits discrimination on the basis of age, except when reasonable demands of employment require an age distinction.

Political Activities by Public Employees

Recent amendments to the Federal Hatch Act have greatly expanded the types of political activities in which federal employees and state and local employees in federally aided programs may engage. However, state and local laws—so-called little Hatch Acts—which establish stricter prohibitions on state and local employees remain in effect.

The committee examined state laws affecting the political activities of public employees, especially in regard to safeguard prohibiting the use of state-owned property for political purposes. Although these laws were viewed as reform legislation when they were enacted, they have remained substantially unchanged for many years, and in many instances the legislation was overbroad or no longer addressed modern problems of public employment since much of this legislation was enacted in response to the original Federal Hatch Act. Moreover, many of these laws are too restrictive and do not accomplish the purposes for which they were enacted.

The committee recommends a bill to prohibit all public employees from engaging in political activities while on duty or in uniform. Political activities are defined, and state officers and employees are allowed to collect expenses only while engaged in state activities but may not collect such expenses while engaged in political activities. The bill also repeals miscellaneous sections of law prohibiting special employee groups from engaging in political activities which conflict with the general prohibition upon public employees from engaging in political activities while on duty or in uniform.

The Legislative Council at its November 15-17, 1976, meeting rejected the portion of the committee report regarding collective bargaining for public employees. Pursuant to Legislative Council rules, that portion is set out below for information purposes.

Collective Bargaining for Public Employees

During the previous interim, the Committee on Industry, Business & Labor "B" studied collective bargaining for public employees and recommended two bills which would have permitted state employees and firefighters to engage in collective bargaining. Both bills were defeated, but the committee used these bills as a starting point for major policy considerations regarding collective bargaining.

The committee examined the reasons for the failure of these two bills. The committee received testimony from representatives of state agencies, political subdivisions, the Board of Higher Education, and public employees. Testimony from representatives of public employee groups indicated these groups would not support legislation which would permit only select categories of public employees to engage in collective bargaining. Several studies introduced into evidence indicated that many public employees desire to engage in collective bargaining. A Bureau of Governmental Affairs (UND) study of North Dakota public employees showed that 42.7 percent of North Dakota public employees desire to engage in collective bargaining. Also, many public employees in higher education, such as instructors who are not covered by the Central Personnel Classification System wish to engage in collective bargaining. Nationally, 72 percent of all faculty members are in favor of collective bargaining. Moreover, representatives of the state employees at Grafton filed with the committee a petition containing 200 signatures urging the committee to consider collective bargaining for public employees.

Testimony also indicated that present mediation procedures for public employees pursuant to Chapter 34-11 are not working because this mediation of disputes is not binding on the parties. Chapter 34-11 only requires state, county, and city officials to meet with employee and employer groups to discuss grievances or other matters in dispute, but it does not provide a procedure by which these disputes may be settled if one or both sides refuses to agree to a settlement. Since this law only applies to the state, county, and city governments, public employees of political subdivisions other than a county or city who have a grievance or dispute are left without a procedure by which the dispute may be settled.

The committee received testimony regarding the level of wages for public employees, especially employees of political subdivisions and the Grafton State School. Representatives of both management and labor agreed that in some instances the wages and fringe benefits offered to political subdivision employees equal or even exceed the wages offered in the private sector, but in many instances the wages of employees of political subdivisions fall below this level. Testimony also indicated that some employees at the Grafton State School receive such low wages that they might qualify for food stamps. Further, it is those employees who receive lower wages who generally have a stronger desire to engage in collective bargaining. For example, the Bureau of

Governmental Affairs study indicated that the desire to engage in collective bargaining is strongest among state employees receiving a wage of \$15,000 or less. Testimony also indicated that public employees' salaries in states which allow public employees collective bargaining are somewhat higher than for public employees in noncollective bargaining states.

Testimony from Grafton State School employees and other employee representatives indicated a feeling of dissatisfaction with the Central Personnel Classification System. Many of these employees felt they have been misclassified, and the salary ranges within the lower classifications were so small that wage increases were negligible. These employees also complained that the probationary period during which the minimum salary ranges do not apply was used to keep salaries artificially low. Although the committee believed the Central Personnel Classification System was accomplishing the purposes for which it had been established by equalizing salary ranges for employees at different state institutions, the committee recognized the Central Personnel Classification System was never intended to resolve employee grievances or labor disputes.

Public employees complained about a lack of due process and uniform labor-management relations policies. Undisputed testimony before the committee by political subdivision employees indicated instances wherein these employees were threatened and intimidated for attempting to exercise constitutional and statutory rights regarding public employment and some state employees testified there is an element of fear involved in making complaints regarding wages and working conditions because there is a veiled threat of loss of employment.

All representatives of public employee groups who testified urged the committee to provide a method by which labor disputes could be resolved with finality, either by granting public employees the right to strike or through a binding arbitration procedure. The committee received information to the effect that states which allow collective bargaining have fewer public employee strikes whether authorized by law or not. However, the committee also noted that collective bargaining states which allow some or all public employees to strike have somewhat higher instances of work stoppages than those which do not. Virtually all representatives of management who testified in favor of collective bargaining for public employees urged the committee to adopt binding arbitration procedures to resolve labor disputes, and

most representatives of public employees felt the strike was inappropriate in the public context because public employees should not be allowed to withhold services.

The committee examined the question of whether public employees are leaving public employment for higher salaries in the private sector. Although it is pointed out that this problem is generally restricted to urban areas because of the lack of job alternatives in smaller communities, the committee noted there is a problem in keeping good employees in public employment once they are trained. Moreover, those who have been employed by the state for 10 years or less are more inclined to desire to engage in collective bargaining according to the bureau study, and this may indicate a higher level of frustration among these employees.

The committee also examined the budgeting procedures of the state, the Board of Higher Education, and political subdivisions. State offices and departments are budgeted biennially by the legislature based upon recommendations by the Governor. These state offices and departments are to submit their budgets to the Governor's Executive Budget Office within a sufficient time prior to the legislative session to allow the Governor to prepare his recommendations. According to Article 54 of the North Dakota Constitution, the heads of the institutions of higher education are to submit budget requests to the Board of Higher Education, and the board is to present a single unified budget request to the Executive Budget Office and the Legislative Assembly. Political subdivisions formulate their budgets annually and must have their budgets for the next year prepared on or before a date set by law.

The majority of states have some form of "meet and confer" or collective bargaining law covering some or all public employees. By 1976, 31 states had enacted such laws affecting some or all educational employees, and 24 states have collective bargaining laws applicable to higher education, including Montana, South Dakota, Minnesota, Iowa, and Nebraska. Many states also allow employees of some or all political subdivisions to bargain collectively. By contrast, there are over 41,000 nonfederal public employees in North Dakota who have no established procedures to guide employer-employee relations. Most collective bargaining laws are comprehensive in that they allow several different groups of public employees to bargain collectively rather than allowing only one group to bargain. For example, the 24 states which have enacted collective bargaining legislation applicable to higher education employees, only one is specifically addressed to higher education

employees rather than to other public employees in general.

The committee requested information regarding specific problems affecting political subdivisions, state offices and departments, and the Board of Higher Education in regard to collective bargaining. Using the bill introduced during the last session which was applicable to state employees, House Bill No. 1041 (1975), the committee invited representatives of public employers and employees to submit alternatives regarding collective bargaining and requested these representatives to assist the staff in drafting the proposed collective bargaining bill draft. The committee decided to submit a comprehensive bill applicable to all public employees rather than individual bills affecting specific employee groups because of a need to treat state employees, political subdivision employees, higher education employees, elementary and secondary education employees, and other employee groups, such as firefighters, equally. These representatives submitted various alternatives, which were examined by the committee, and the committee drew the bill based upon these alternatives.

The bill allows all public employees, except confidential employees and administrative employees and elected or appointed officials, to elect a representative employee organization and requires the state and political subdivisions to bargain collectively with appropriate bargaining units designated by public employees. Employee organizations would be certified as exclusive representatives by employer recognition or by certification by the Public Employment Relations Board, consisting of four appointees of the Governor, with the State Labor Commissioner as chairman. Certification by the board would result from a representation election and a determination that the unit is appropriate for the purpose of collective bargaining due to community of interest, wages, hours, and other working conditions; history of collective bargaining; and the desires of the employees, but supervisory employees could not be placed in units which include nonsupervisory employees.

The rights of public employees and public employers are set out, and unfair practices are specifically listed. The parties would have the duty to meet and negotiate in good faith with respect to wages, hours, and other terms and conditions of employment. Where state employees are involved, the employer is the Governor or his designated

representative, and where political subdivision employees are involved, the employer is the governing body of the political subdivision or its designated representative.

Strikes and work slowdowns are prohibited, but the bill contains an impasse procedure to resolve labor disputes which culminates in last best offer binding arbitration. If the parties cannot agree at a predetermined time prior to the budget submission date—the date by which under law or practice a public employer's proposed budget is submitted to the State Department of Accounts and Purchases or to the governing body of a political subdivision—and if the parties have not previously agreed to an alternative impasse procedure, an impasse is declared. Mediators are appointed and meet with the parties. If the impasse persists for 10 days after the mediators are appointed, the mediators are named to a fact-finding panel to make findings of fact, which are to be made public if the parties still cannot agree.

If the impasse still persists, an arbitration panel is appointed, and each party submits its final offer to the arbitration panel. The panel then selects one or the other final offer, and the panel's decision is final and binding on both parties. Because the committee felt the strike is inappropriate in public employment, there is a need for a method by which labor disputes can be resolved. Last best offer binding arbitration creates public pressure on both parties to be reasonable, and it is the intent of the committee that labor disputes be resolved in a manner that is reasonable, quick, and final.

Once an agreement is reached through negotiations or binding arbitration, the Legislative Assembly or the governing body of political subdivisions must

approve those items in a written agreement involving wages, hours, and other terms and conditions of employment which are subject to appropriation. If any of the items submitted are rejected, either party may reopen all or part of the agreement subject to such appropriation for further bargaining. Also, if upon approval of the agreement there is a conflict between the agreement and any rules, regulations, ordinances, or statutes adopted by the political entity, the terms of the agreement prevail.

Chapters 15-38.1 and 34-11, relating to collective bargaining for teachers and mediation of public employee grievances would be repealed to eliminate portions of existing law which would conflict with this bill. It is the committee's intent that public employees be afforded a method by which labor disputes and grievances may be resolved and that these procedures have an element of finality to encourage public employees to remain in public service. To ensure due process and uniform labor-management policies for all public employees, the committee intends that statutory procedures be established where the parties cannot agree to such procedures, and the committee intends that insofar as the state is concerned, the Governor, who is responsible for making budgeting recommendations to the legislature and who is in the best position to oversee and standardize benefits among state employees, be considered the employer for purposes of collective bargaining. This would not preclude individual agencies and employees from requesting larger appropriations from the legislature regarding collective bargaining agreements in the same manner that agencies and individuals may presently appeal to the legislature despite the Governor's budget recommendations.

JUDICIARY "A"

House Concurrent Resolution No. 3017 directed the Legislative Council to revise and modernize the state's election laws in order to clarify voting procedures and responsibilities, and eliminate factors which tend to disenfranchise voters. The resolution also provides that the Council direct its efforts toward revising the substance, form, and style of current voting statutes, toward integration and correlation of those statutes wherever possible, and toward deletion of outmoded or unnecessary statutory material or procedures. The election law study for the 1975-77 interim was assigned to the Committee on Judiciary "A", which consisted of both legislative and citizen members.

Legislative committee members were Senators S.F. Hoffner, Chairman, Howard A. Freed, Pam Holand, and Ernest Sands; and Representatives Myron Atkinson, Kay Cann, William Kretschmar, Eugene Laske, Henry Lundene, and Janet Wentz.

Citizen committee members were Mr. David Strauss, Executive Director of the State Democratic Party, and Mr. Allan Young, Chairman of the State Republican Party.

The committee benefited from the participation and advice of Mr. Ben Meier, Secretary of State; Ms. Gladys Pederson, Ward County Auditor; Ms. Alyce Shefstad, Divide County Auditor; and Mr. Otto Vetter, McLean County Auditor.

The report of the Committee on Judiciary "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

STUDY PROCEDURE

The committee decided to reorder and consolidate Title 16 in the chronological sequence of election events, and to deal with city (Title 40) and school district (Title 15) elections only by reference.

Because of the anticipated controversy involved in some topics considered by the committee, it decided to submit bills on those topics separate from its principal revision effort. Those topics are encouraging voter turnout, state reimbursement to counties for the expenses of statewide elections, and voter registration, all of which will be considered separately in this report.

Because of its length, the principal revision bill will not be discussed section by section but rather chapter by chapter. A new title is created and existing Title 16 is repealed. It is important to note that some of the repealed sections are initiated measures, and therefore require a two-thirds vote of both houses of the Legislative Assembly to repeal. The new title, Title 16.1, has 16 chapters; whereas, present Title 16 has 20 chapters. The fewer chapters results from consolidation of subject matter.

PRINCIPAL REVISION BILL Chapter 1 — General Provisions

Chapter 1 of the principal revision bill covers general provisions of the election law and procedure. The chapter provides for the Secretary of State to be, ex officio, the supervisor of elections. Designating the Secretary of State the supervisor of elections is intended to centralize authority over election procedures in one officer. As indicated, the Secretary of State's position as supervisor of elections is ex officio, and provision is made for the hiring of a special deputy to conduct the day-to-day responsibilities of election administration.

The chapter grants the Secretary of State general rulemaking authority and, in addition to various duties provided throughout the election law, provides several specific duties. Those duties include the authority to declare ballots in compliance with the election law, as well as to approve materials or machines used at elections; the duty to develop training programs for election officials; the duty to prepare information on voting procedures; and the duty to publish and distribute to each county a political calendar, a manual on challenge procedures, and an election district map for each county. The specific duties also require the Secretary of State to hold an annual state election conference of county auditors to discuss uniformity in the application of election procedure; to prescribe the form and wording of ballots according to law; to investigate nonperformance of duties by election officers; and to prepare reports on the conduct and costs of elections.

The chapter creates an Advisory Commission on Elections composed of the Attorney General, two representatives of the County Auditors' Association, and the state chairmen of the two major political parties. The advisory commission is directed to meet at least twice in each general election year, and at such other times as it deems necessary, or at the

request of the Secretary of State. The commission is to provide guidance and advice to the Secretary of State, especially if the decision on any issue has potential political ramifications, involves practical administration, or involves legal questions.

The chapter also designates each county auditor as that county's administrator of elections. In addition to various statutory duties provided throughout the title, the general election duties of the county auditor are to procure and distribute election supplies, prepare and distribute voter information as prescribed by the Secretary of State, conduct training programs for election officers, and handle complaints on voting procedures, including referral to the Secretary of State or a prosecuting authority. The designation as the county administrator of elections is to continue the centralization of authority over the election process which begins with the Secretary of State, and to provide the first level of administrative remedy if problems develop in the conduct of elections.

The general provisions chapter expands the definition of qualified electors to include the intent to be a resident of North Dakota and to provide that an elector may have only one voting residence. The 30-day precinct residency requirement is maintained, but other criteria are added in light of court decisions holding various durational residency requirements to be valid only if they are related to the administration of voter registration. Because North Dakota does not require voter registration, it is somewhat doubtful whether the 30-day durational residency requirement would be upheld if challenged.

The chapter also provides for publishing both the existing law and the proposed changes in the law or Constitution, when changes are proposed by the initiative or referral process. This provision would allow a direct comparison between the existing and proposed law, without deciphering the deletions and additions that are now combined in one publication.

Initial responsibility for correcting errors on ballots is given to the Secretary of State, who may call upon any county auditor for assistance in solving the problem. This change places administrative problems in the hands of an administrator, and not with the court as the law currently provides. Recourse to the courts is still allowed after exhaustion of administrative remedies.

The chapter changes the requirements involved in the circulation of initiative or referral petitions by lessening the prospective personal liability of the

circulator. The circulator will not be required to swear that signatures on petitions are genuine and that the signer is a qualified elector, but will be required to swear only that the petition was signed in his presence and that the petition was circulated in its entirety. The typed or printed list that must be submitted with all petitions would be amended to require the addresses and telephone numbers of all signers to be included.

The requirement that copies of petitions be circulated in their entirety was added to prevent the circulation of only long lists of names without the actual provisions of the law or Constitution being initiated or referred. The requirement that the entire copy of a petition be invalidated for a false affidavit has been removed, because it was believed that the petitioners should not be so heavily penalized, and that the validity of each signature should be determined on a more individualized basis.

The requirement that the Secretary of State check the validity of petition signatures through a postcard questionnaire procedure is removed. The 35-day limitation for passing on the sufficiency of petitions is maintained, but the method of determining the validity of petitions is at the discretion of the Secretary of State. He is directed not to count invalid signatures and may ask the Advisory Commission on Elections for advice in determining the validity of petitions or signatures.

Changes in the initiative or referral petition process are designed to make it less structured and less likely to inflict criminal liability on the circulator. The changes recognize that the petition process is only a procedure for placing an issue on the ballot, and not the final determinant of what the law will be. Also, an Attorney General's opinion issued during the 1971 Legislature said the postcard requirement would be unconstitutional in light of Section 25 of the Constitution because it tended to hamper, restrict, and impair the exercise of the initiative and referral right of the people, rather than only facilitate the petition procedure.

Penalties are added for the offenses of voting when not qualified, failing to perform the duties of an election officer after taking the oath of office, violating a rule or regulation of the Secretary of State, and making a false canvass or return of votes. In addition, offenses which had been described throughout the chapter were consolidated into one section on offenses.

Chapter 2 deals with voter registration and will be considered later in this report because of its political significance.

Chapter 3 — Political Parties

Chapter 3 of the principal revision bill deals with the organization of political parties. Party organization begins with the election of precinct committeemen at a precinct caucus instead of at the primary election. Precinct caucuses are to be held throughout the state on the second Tuesday in January of every general election year.

The committee believes precinct committeemen should be elected at precinct caucuses instead of at the primary because of the apparent lack of interest in running for the office. It was believed partisanship in the political process should begin at the precinct level, and that the true partisans are those interested in attending the precinct caucus. The committee's research indicated that most precinct committeemen are appointed by the district committee because few names ever appear on the ballot as candidates for the office.

Participation at the precinct caucus is limited to qualified electors who affiliated with the party at the last general election or who intend to affiliate with the party at the next general election. The right of any person to participate at a caucus can be challenged, but a person may be excluded from participation only upon the vote of two-thirds of those present. No one may vote or participate at more than one precinct caucus in any one general election year. Precinct committeemen may be elected by only those political parties which had a set of presidential electors on the ballot at the last preceding presidential election and whose candidates received at least five percent of the total vote cast for presidential electors within the state. Those parties are entitled to elect one precinct committeeman for each 250 votes cast in that precinct for the party's presidential electors at the last presidential election, and the precinct committeemen serve for a two-year term. Each precinct is entitled to at least one precinct committeeman for each qualified party.

Chapter 3 requires a district committee meeting to be held within 15 days after the date of the precinct caucuses. The district committee organizes by electing officers, who need not be precinct committeemen, but who become voting members of the district committee. The chapter also provides for the state committee to meet on or before March 15 of each general election year. The state committee

organizes by electing officers who also become voting members of the state committee.

State party conventions are to be held in each presidential election year at a place and time designated by the state committee. The present requirement that the conventions be held before July 15 is removed as unnecessary.

The chapter provides that expenses of delegates to national party conventions will be paid from the state treasury to a maximum of \$400, an increase from the present \$200. The oath taken by delegates to national party conventions has been amended to require only a pledge to uphold the Constitutions of the United States and of North Dakota, and to delete the requirement that delegates swear to carry out the wishes of the political party represented. That deletion recognized the fact that national convention delegates could not realistically be controlled by law.

Chapter 3 also provides for the reorganization of political parties after apportionment has been directed by nonlegislative authority. The section provides for the establishment, by the Secretary of State, of a timetable for party reorganization, in close conformance with the provisions of the chapter on regular political party organization. The reorganization is designed to take place as rapidly as possible through communication between the Secretary of State and each county auditor. The county auditor is responsible for publishing a description of the new legislative districts and the dates, times, and places of precinct caucuses and district committee meetings to be held in the county.

The timetable established by the committee for precinct caucuses, district committee meetings, and state committee meetings is designed to get the political parties organized early in the general election year. The additional section on political party reorganization after apportionment by nonlegislative action is designed to answer some of the questions raised during party reorganization following the recent federal court decision establishing new legislative districts. The committee considered alternatives on total reorganization of parties after such an occurrence and partial reorganization, and decided that reorganization was necessary only for those districts or parts of districts that were disturbed by court-ordered reapportionment.

Chapter 4—Precincts and Polling Places

Chapter 4 of the principal revision bill covers the establishment of precincts and voting places by certain governing bodies. The board of county commissioners is given the responsibility to establish precincts and voting places in each county, except in incorporated cities, where the responsibility is placed on the city's governing body. Governing bodies are given the authority to alter the number of precincts and the location of voting places at their discretion. The board of county commissioners may relinquish its jurisdiction over townships or parts of townships to an adjacent city if the governing bodies of each of those jurisdictions so agree.

In correlation with the section in Chapter 3 relating to political party reorganization after apportionment by nonlegislative action, boards of county commissioners and city governing bodies are directed to establish new precincts and voting places within 10 days after the effective date of apportionment. In addition, establishment of precincts and voting places must be accomplished no later than 30 days before an election.

The committee believes the present highly structured chapter on the establishment of voting precincts and voting places is not needed, and that the governing bodies with the responsibility for making those determinations should have discretion. Mandating a time period within which action must be taken is inserted to ease the administrative load on the county auditor who must organize election board officials and distribute election material.

Chapter 5 — Election Officers

Chapter 5 of the principal revision bill deals with election officers. Election inspectors are to be selected by either the city governing body or the board of county commissioners, depending on which of those bodies established the precinct in question. The election judges are the two precinct committeemen receiving the highest vote at the precinct caucus and representing the two major political parties.

The chapter maintains the procedure of the election judges appointing poll clerks, but adds, as a basis for appointment, that the prospective clerks have knowledge of election procedures and be able to write legibly.

The change in the method of selection of election inspectors from the current procedure of township supervisors serving, to the election inspector being appointed by the city or county commission, is to alleviate persistent problems of many township supervisors not wanting to serve as an election inspector. In addition, certain organized townships included in one voting precinct had a continual controversy over which township supervisor should serve as the election inspector. These problems, combined with the fact that the boards of city commissioners or county commissioners had to fill numerous vacancies, indicate that a change is required. The selection of election judges had to be changed to coincide with the election of precinct committeemen at caucus instead of on the ballot.

The chapter clarifies the qualifications for members of the election board and poll clerks by limiting the disqualification involving being a candidate in an election to the election at which the election board member or poll clerk is serving. Also, the disqualification for being related to a candidate at an election is limited to the election at which the prospective election board member or poll clerk is serving.

Chapter 5 of the principal revision bill also requires election board members to attend training sessions on election law and procedure before serving as an election board member if the session is conducted after the election board member's appointment.

If a vacancy occurs on the election board at the opening of the polls, the remaining members shall fill the vacancy. In filling a vacancy in the office of election judge, the remaining board members select a person of the absent person's political party if such a person is reasonably available. In filling a vacancy in the office of election inspector, the remaining members of the election board may choose any qualified person without regard to political affiliation. Chapter 5 also requires the Secretary of State to prepare information and instructions deemed necessary to inform members of the election board of their duties and of the election laws affecting their office.

The county auditors are directed to conduct a training session on election law and procedures for all members of election boards in the county. The auditors are given the discretion to conduct the session at any place or places deemed necessary, and the state's attorney of the county is directed to

attend all training sessions. The instruction is to be given by the county auditor, instead of the state's attorney as is currently provided, because the county auditor is more familiar with the practical aspects of procedures at the polling place and the counting of ballots. The state's attorney is directed to attend sessions of the training class to give needed advice on election law.

Poll clerks' duties are changed to require them to keep pollbooks in the form and manner prescribed by the Secretary of State. This change was inserted so the pollbooks could be maintained in a manner that allowed their use as a form of voter identification. Pollbooks from previous elections shall be used as one of the bases for identifying electors.

The State Commissioner of Labor, before each statewide election, is to determine the state minimum wage applicable to election inspectors, judges, and poll clerks. This amount is to be certified to the Secretary of State, and in turn to the county auditors for payment of election workers. In addition, election board members who attend the training session provided for earlier in the chapter are to be paid 25 percent more than the minimum wage determined by the Labor Commissioner during the time spent in performance of their election duties. The committee determined that payment of at least the minimum wage would encourage qualified persons to work at the polls. The committee heard several comments on the difficulty involved in encouraging people to work at the polls, primarily due to low pay and long hours.

The chapter provides for a voter challenged at the polls to execute an affidavit stating that he is a qualified elector of the precinct. The information on the affidavit includes the voter's name, age, street address, phone number, occupation, name of employer, and the period of time the affiant has lived in the precinct. The production of a driver's license, if available, is also required as a form of identification. Before allowing a challenged person to sign an affidavit and vote, the election inspector must advise the person that making a false affidavit is a criminal offense, and that the affidavit will be turned over to the county auditor for verification. The county auditor is directed to verify a 10 percent random sampling of all affidavits signed in the county, and to report all violations to the state's attorney.

The committee believes the more stringent affidavit procedures will deter fraudulent voting and will be a reasonable means of voter identification without formal voter registration.

Chapter 6 — Election Materials

Chapter 6 of the principal revision bill covers ballots, voting machines, and election supplies. Provisions for paper ballots and voting machine ballots, for both partisan and no-party elections, have been combined in one chapter.

Because of anticipated political controversy, the committee decided to leave two alternatives to the form of paper ballots in the bill submitted to the Legislative Council. The first alternative ballot form is the same as current law. The second form removes the party columns from the ballot, and inserts a list of the offices to be voted for, with the candidates' names appearing below the office with an indication of the party affiliation of the candidates appearing after each name.

Chapter 6 also provides for the use of voting machines in any election precinct in the state, instead of the current provision allowing them in city precincts only. This change attempts to reduce the amount of time spent counting ballots. The committee received testimony from various county auditors on the greatly reduced time necessary to tally votes when using voting machines. It was indicated that votes could be tallied in as short a time as one-half hour after the polls close. As under current law, the bill provides for the cost of voting machines to be shared by the city or township governing body and the board of county commissioners.

The committee received testimony which compared the effectiveness and costs between mechanical voting machines and the newer electronic voting systems, which use punch cards or sheets and computerized tallying. The testimony indicated that ordinary mechanical voting machines are more secure, more foolproof, and cost less over their normal service life, which is normally over 50 years.

The bill deletes the requirement that unstamped official ballots be posted in each voting booth because the committee believes such posting could be opening the door to fraud and there are sufficient ballot copies posted throughout the polling place.

Chapter 7 — Absentee Ballots

Chapter 7 of the principal revision bill deals with absentee ballots. After considerable discussion and testimony, the committee decided to broaden the use of absent voters' ballots by allowing their use by anyone who will be absent on election day from the

city, township, or consolidated voting precinct in which he is an elector. The physical disability provision is also maintained. The current provision allows the use of absent voters' ballots if the elector will be absent from his county on the day of the election. The committee determined that the geographical area should be reduced to stimulate voter turnout.

The committee heard comments from some election administrators that the absentee ballot procedure is abused on a somewhat regular basis. The information indicated that some people use the absent voter's ballot merely to avoid going to the polls and standing in line to vote. This is true despite the fact that the law requires a sworn statement that the person using an absent voter's ballot would be away from the county on election day and unable to appear at the polls.

In response to the criticism over the abuse of the absentee ballot process which resulted in increased administrative time and expense, the committee approved provisions in the chapter which prevent a person who has voted absentee from returning to the precinct on election day, having his absentee ballot withdrawn, and voting in person. In addition, the application for an absent voter's ballot is changed to require a statement by the applicant on the reason for the request to vote absentee. The application form would also provide that the applicant understands that the officer to whom the application is submitted may refuse to issue an absent voter's ballot if the application is unreasonable under the law, and that the applicant understands making a false statement in order to obtain an absent voter's ballot is a criminal offense. The application would also require the inclusion of information on how long the applicant has resided in his precinct, his phone number, his occupation, and the name of his employer.

The committee also heard comments from election administrators that current law on absent voters' ballots, as it relates to persons in the military service, is impossible to administer. Maintaining an accurate list of the persons in the military service is an impossibility, they said, and the military services conduct a rather extensive program to encourage their members to vote absentee. As a result, the committee decided to delete from the chapter any reference to military personnel and special treatment for them in the absentee voting process.

In line with the requirement that the application

for an absent voter's ballot give notice to the applicant of the penalty for making a false statement to procure an absent voter's ballot, the bill provides that county auditors shall verify a random sample of at least 10 percent of the applications filed for absent voters' ballots. In addition, the sworn statement accompanying the absent voter's ballot will provide that the voter understands that the statement will be verified.

The committee heard comments from election administrators on the difficulty involved in determining whether mailed absent voters' ballots had been mailed on time. The testimony indicated that the post office no longer uniformly stamps a postmark date on all mail. To alleviate the problem involved in determining the validity of absent voters' ballots received after election day, but postmarked prior to election day, the committee adopted a provision for Chapter 7 that envelopes containing absent voters' ballots which have no postmarks or illegible postmarks be received by the proper official before the meeting of the county canvassing board, city governing body, or school board, as the case may be, to be counted.

The committee received testimony that some electors have been disenfranchised because their absent voters' ballots had been forwarded to the wrong precinct by the county auditor. The receiving election board rejected the ballots because the absent voters were not electors of the precinct. The committee adopted a provision which requires election inspectors to return to the county auditor any absent voters' ballots inadvertently sent to the wrong precinct. Those returned ballots would then be canvassed by the county canvassing board with other absent voters' ballots received too late to be forwarded to election precincts.

Chapter 7 also provides that absent voters' ballots may be registered on voting machines either during the election day or at the close of the election day and before the voting machines are unlocked for tallying. The alternative of registering absent voters' ballots after the close of the polls recognizes the fact that some election precincts are too busy during the normal voting day to take time for registering absent voters' ballots.

Chapter 8 — Contributions and Expenditures

Chapter 8 of the principal revision bill deals with campaign contributions and expenditures disclosure.

North Dakota law does not currently provide for comprehensive regulation of contributions and expenses. After considerable discussion on the problems involved in regulating the amounts of contributions, and the fact that, constitutionally, the amount of expenditures may not be regulated, the committee determined the bill should provide only for the disclosure of contributions and expenditures, and not regulate the amount of either.

Chapter 8 provides for the reporting of all individual contributions and expenditures that exceed \$100. The statements must be filed seven days before any general, primary, or special election, and within 30 days after the close of the calendar year in which an election has occurred. In addition, a supplemental statement is required for any contributions in excess of \$500 received after the date of the initial statement; the supplemental statement must be filed within 48 hours of receipt of the contribution.

Certain provisions from the existing corrupt practices law have been placed in this chapter. Those include the prohibition of contributions from corporations, the requirement that the actual contributor's name be disclosed, and the provision requiring testimony on violations in return for immunity from prosecution based on the testimony.

The committee determined that contributions should be prohibited from corporations, cooperative corporations, and certain membership associations. The prohibition on membership associations applies to any club, union, brotherhood, fraternity, or organization of two or more persons which assesses any fee or dues and maintains a treasury fund in any amount. Such corporations, cooperative corporations, and associations are allowed to contribute from "political action funds" which have been assembled for the express purpose of making political contributions. The reason for the corporation and association prohibition is to prevent the use of commercial profits or membership fees for political purposes when the stockholders or members may not agree or know about the use of the funds.

The chapter allows campaign contributions from individuals, political parties, and political committees. Political committees are defined as any association which receives contributions or makes expenditures for political purposes.

Chapter 8 provides that any willful false statement in any required document is a Class A misdemeanor,

and that any person nominated or elected to an office who is proved to have committed a violation of the chapter shall forfeit the office or shall be removed from the ballot.

It is important to note that the bill limits the disclosure requirements to candidates for public office, which is defined as every statewide or legislative office. The intent of the committee is to exclude local offices from coverage under the bill.

Chapter 9—Financial Disclosure

Chapter 9 of the proposed revision bill covers the disclosure of financial interests. There was some discussion on whether the financial interest chapter should be amended to apply only to statewide or legislative candidates; however, the bill as approved is virtually the same as existing law, with some minor changes in phraseology.

Chapter 10—Corrupt Practices

Chapter 10 of the proposed revision bill deals with corrupt practices. The offenses of treating, undue influence, and impersonation have been removed from the corrupt practices chapter as separate offenses. Inserted in their place is a reference to the criminal code which contains penalties for the same offenses. The committee believes there will be less confusion over the definitions of the offenses if they are defined only once in the law.

The current sections in the "corrupt practices" law relating to campaign expenditures and contributions have been moved to Chapter 8 of the principal revision bill, which deals with that subject.

Chapter 10 omits offenses, which are denominated corrupt practices under current law, such as agreeing to appoint or procure the appointment of any person in return for a vote or in return for aid in procuring the election of a candidate, prohibiting charitable contributions except those to which the candidate has regularly contributed in the past, and paying a person for attendance at the polls or transporting people to the polls. Those sections are deleted because they are ridiculous, nearly impossible to enforce, and contrary to modern-day thinking on stimulating voter turnout. The committee believes there is such a fine line between right and wrong under the sections that they are not worth the problems they create. As an example, many organizations, both political and nonpartisan, have a regular service for transporting

elderly or shut-in persons to the polls to encourage voter turnout. Such activities are commendable, but under state law they could be interpreted as illegal.

Chapter 10 also adds television stations to those to be penalized for neglecting to disclose the names of sponsors of political advertisements, and adds radio and television stations to the prohibition on being paid to editorially oppose or advocate a candidate.

Chapter 11—Primaries

Chapter 11 of the principal revision bill deals with primary elections. The date of the primary is changed from the first Tuesday in September to the third Tuesday in June of every general election year. The committee concluded that the administrative benefits of an earlier primary outweighed possibly longer campaigns.

A committee memorandum indicated that if all recount procedures were used, and all of the time periods allowed were in counting ballots, the procedure could not be completed between the 1976 primary and general elections as now scheduled. Election administrators pointed out the difficulty involved in ballot preparation and distribution when the time between the primary and general elections is so short. The committee consensus was that the date of the primary had only slight effect on the length of campaigns, because many people believe campaigning starts with the New Hampshire primary, or at least when the individual is endorsed to run for office.

In conjunction with the change in the primary date, certain notice requirements to county auditors from the Secretary of State are moved up to an earlier date in the election year.

Chapter 11 also combines requirements for partisan and no-party elections in the area of filing of petitions with the Secretary of State or the county auditor. In addition, the petition or certificate of endorsement for Governor or Lieutenant Governor is changed to require that names for both of those offices be included in any petition filed with the Secretary of State.

The 1975 Legislature increased the time for filing petitions with the Secretary of State or the county auditor to get a name on the ballot from 41 to 46 days before the primary. However, the section for filling a vacancy on the primary election ballot when no one had filed for that office was not changed,

which resulted in the old 35-day cutoff period being the actual filing limit when there was no other petition filed. This bill provides that the petition to fill a vacancy caused by no other petition being filed for the office must be filed no later than 41 days before the primary election.

Current law does not provide for filling a vacancy in an office on the no-party ballot before the primary election. Chapter 11 provides for filling such a vacancy if petitions were filed before the 41st day prior to the primary election.

Chapter 11 also provides for a change in the form of the primary election ballot. The change requires that the title "Consolidated Primary Election Ballot" be printed at both ends of the ballot so there is an upright title no matter which way the ballot is held. The committee believes such a form would be fairer to all political parties.

Another change requires the offices of Governor and Lieutenant Governor to appear together on the primary ballot. This correlates with the previously noted requirement that both those offices appear on the same petition or certificate of endorsement.

Current law provides that names of candidates appearing on voting machines shall be alternated so the name appearing first in one precinct is last in a succeeding precinct. This is to avoid the same person's name appearing first on the list of candidates in all precincts, including those with a high voting population. The committee believes this rotation should be based upon the geographical area by which the office is filled. Therefore, Chapter 11 provides that offices to be filled by the electors of the state, the entire county, or any district which includes the entire county, be rotated as one series, and that offices to be filled by the electors of districts smaller than the county be rotated in a separate series.

Chapter 12—Nominations

Chapter 12 covers nominations for partisan, independent, and no-party candidates. It only deals with general elections and combines portions of two existing chapters and one section of the North Dakota Century Code. The chapters included are Chapter 16-03, relating to requirements for individual nominations; Chapter 16-05, relating to nominations for office and filing requirements; and Section 16-08-07, relating to filling vacancies on the no-party ballot. They are combined without significant change. A new section is added to define

the term "certificate of nomination" to include the certificate issued by the county canvassing board or the certificate of nomination by petition.

The section relating to filling a vacancy in a no-party office was changed to require a maximum of 300 signatures on a petition filed with either the Secretary of State or the county auditor.

Chapter 13—General and Special Elections

Chapter 13 deals with general and special elections. It is a combination of parts of current Chapters 16-06, relating to general elections; 16-07, relating to special elections; 16-08, relating to the no-party ballot; and 16-12, relating to the conduct of elections.

The chapter includes provisions on the date of the general election, the officers to be elected at the general election, publication of notice of the general election, the names to be placed on the general election ballot, the names not to be placed on the general election ballot, the no-party ballot at general elections, filling vacancies in the office of United States Senator, and filling vacancies in the legislature. There are provisions on the location of polling places, ballot boxes, delivering ballots to electors, stamping ballots, write-in candidates, assistance for disabled electors, the required number of election booths or compartments, the time limit in a voting booth, and securing a new ballot if one is spoiled. These provisions are consolidated into one chapter without significant change from current law.

Chapter 14—Presidential Electors, New Voters

Chapter 14 deals with presidential electors and voting by new or former residents. It is substantially the same as Chapter 16-16 except for some changes in phraseology. Also the one-year residency requirement is changed to the 30-day precinct residency requirement to match the general qualifications for electors.

Chapter 15—Election Returns

Chapter 15 deals with election returns and is comprised of current Chapter 16-13 with additional sections on voting machines and canvassing no-party ballots. The subject of election recounts, formerly a part of the chapter on election returns, is included in the chapter on election contests in the principal revision bill.

Chapter 15 includes provisions on counting ballots, preparation of reports on the ballot count, forwarding election results to the county auditor, canvassing of ballots by the county canvassing board, the preservation of ballots, the duties of the county canvassing board, election statements certified by the county canvassing board, the composition and duties of the State Canvassing Board, determination of tie votes, statements prepared by the State Canvassing Board, ordering of a special election in case of a tie vote for state office, and the issuing of certificates of election by the Secretary of State.

Aside from minor changes in phraseology, the changes from current law require that the county auditor shall request return of the pollbooks given to the clerk of the United States District Court and the clerk of the North Dakota District Court. This return of pollbooks is mandatory because pollbooks used at former elections are one of the bases for identifying qualified electors at ensuing elections.

Chapter 15 changes the requirement that ballots be wrapped and sealed with sealing wax. Testimony indicated the use of sealing wax is outdated, very clumsy, and not very well employed by election workers. This bill provides that ballots be sealed in a secure manner prescribed by the Secretary of State so the wrappers cannot be opened without an obvious and permanent breaking of the seal.

The chapter also provides that the determination of a tie vote for an office in the Legislative Assembly shall be by lot, and after the parties' assent to determination of the election by lot, they may not thereafter demand a recount.

The State Canvassing Board, under this bill, will meet no later than 16 days following any election, instead of the present 14-day limitation. The additional time is to ease the rush involved in getting election returns from local precincts, to county canvassing boards, and to the State Canvassing Board.

Chapter 16—Recounts and Contests

Chapter 16 deals with election recounts and contests, and is a complete redraft of the current Chapters 16-14 and 16-15. It includes a new recount procedure.

The chapter provides that a recount may be demanded following any primary, special, or general

election for any congressional, state, legislative, or county office, or for the approval or disapproval of any measure or question submitted to the electors. The demand may be made by any candidate who failed to be nominated in the primary by less than two percent of the highest vote cast for a candidate of his party, by any candidate who failed to be elected in a general or special election by less than one-half of one percent of the highest vote cast for a candidate for the office, or by five electors when a question or measure submitted to the electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question.

The demand for a recount must be made within ten days after the canvass of the votes of the election in question. The demand must be in writing and must cite one of the conditions for demanding a recount. It must be filed with the Secretary of State for congressional, state, or legislative office, or a question submitted to the electors of the entire state, and with the county auditor for a county office or a question submitted to county electors. The Secretary of State or the county auditor fixes the date for recounts, which date shall be within ten days after receipt of the recount demand.

All participants are given notice of the time, date, and place of the recount. The county auditor, who is to conduct the recount, may employ up to four county electors to assist him. The county auditor and any assistants review all paper, machine, and absentee ballots and determine whether the ballots were cast and counted according to law. The persons entitled to participate in a recount are the candidates involved, either personally or through a representative, or electors favoring each side of a question submitted to the electors.

The persons participating are allowed to challenge the decision of the county auditor on any ballot. That ballot is then set aside and referred to a recount board composed of the state's attorney, the chairman of the board of county commissioners, and the county clerk of the district court for a final decision on its validity. Various provisions are made for alternates to serve in the place of the county auditor or members of the recount board in the event of a conflict. The decision of the recount board is final, subject to the right of the parties to contest the election in court.

After the recount, the county auditor certifies the results and, in the case of a statewide election

recount, forwards them to the Secretary of State, who assembles the State Canvassing Board to review the corrected abstracts and certify the new election results. The Secretary of State is directed to issue new certificates of election if the election results change. Expenses incurred in a recount of a county election are paid by the county, and expenses incurred in a recount of a congressional, state, or legislative election are paid by the state. Provision is made in Chapter 16 for the results of any legislative recount to be admissible in either house of the legislature, or before a committee thereof, as evidence to aid in the determination of an election contest pending in that house.

The recount procedure has been substantially changed because the existing procedure appears to be at least potentially unconstitutional. Current procedures require district court judges to decide all recount issues. Those recount duties are not judicial duties as required by the North Dakota Constitution. A recount tends to be an administrative or executive function because no legal controversy has been filed by a complainant. This is different than an election contest which involves a legal cause of action from the outset.

The committee discussed the problems involved with a number of different persons throughout the state deciding the validity of ballots, and the resulting need for a uniform interpretation or for stricter requirements for marking and processing ballots. It was decided that making the balloting procedure too strict, e.g., the type of mark used to mark a ballot, would tend to disenfranchise too many voters, especially when the voter's intent could be determined.

Chapter 16 provides that a defeated candidate or 10 qualified electors may contest the nomination or election of any person or the approval or rejection of any question or proposition submitted to a vote of the electorate. The contest action is commenced and conducted as other civil actions, except as expressly provided by the chapter. Any contest action must be commenced within five days after a recount is completed, or within 14 days after the original canvass of the votes if no recount is demanded. If the basis for the contest action is the illegal payment of money or other valuable thing subsequent to the filing of any statement of expenses required by the title, the action must be commenced within 14 days after the discovery by the contestant of the illegal payment.

Chapter 16 provides that the grounds for an election contest are:

1. Any deliberate and material violation of the title, or of any other law relating to the election process.
2. That the contestee, at the time of the election in question, was not eligible to hold the office.
3. Illegal voting or an erroneous or fraudulent count, canvass, or recount of votes.

Contest actions are given precedence on both the Supreme Court and district court calendars so that elections may be determined as soon as practicable. If the contest involves irregularity of ballots, either party to the action may secure an order from the district court preserving the ballots then in the custody of the county judge.

The judgment in an election contest action shall pronounce which candidate was elected or nominated, or whether any question or proposition was approved or rejected. Certificates of election shall be issued in accordance with the judgment, and any vacancies declared by the court shall be filled according to law. The chapter does not allow an election or nomination to be set aside because of illegal votes unless:

1. The contestee had knowledge of or connived in the illegal votes; or
2. If the number of illegal votes is taken from the contestee, it would reduce the number of his legal votes below the number of votes cast for some other person for the same nomination or election, after deducting any illegal votes from the other person.

Chapter 16 allows an appeal to the Supreme Court from the decision of the district court by filing notice of appeal with the clerk of the trial court within ten days of the notice of entry of the judgment in the district court.

A person desiring to contest a legislative election must serve on the contestee and file with the Secretary of State a statement of contest specifying the grounds for the contest. The statement must be served and a copy filed within five days after a recount is completed or within 10 days after the canvass of votes if no recount is demanded. The contestee then has 10 days to serve the answer to the

contest and file a copy of the answer with the Secretary of State. Provision is made for the taking of depositions and the issuance of subpoenas in legislative contest actions, which procedures are essentially the same as those followed in civil actions. Anyone refusing to respond to a subpoena without good cause is guilty of a Class A misdemeanor. Either party may preserve the ballots if the contest involves the validity or count of the ballots.

All records and testimony taken in a legislative seat contest must be filed with the Secretary of State. He must deliver all such material to the presiding officer of the house of the legislature in which the contest action is pending on or before the second day of the Organizational Session of the legislature. The contest shall be heard and decided as provided by the Legislative Assembly. The Secretary of State shall issue a certificate of election to the person declared elected. Fees for officers and witnesses in a legislative election contest are paid by the party at whose instance the service or attendance was performed, and are in an amount equal to the fees for similar services in civil actions in state courts of record. Any payment by the legislature to either party to an election contest for expenses incurred in that contest is prohibited.

VOTER REGISTRATION

The subject of voter registration was thoroughly discussed by the committee many times during the interim. There was no general consensus on the need for a voter registration system, so the committee is submitting a bill on the subject as part of its responsibility to review all areas of the election process. It is submitted to the Legislative Council without specific approval or recommendation. The committee believes the subject will arise during the 1977 Legislature, and that a basis from which to work will be necessary.

The committee heard proposals on voter registration ranging from a completely voter-initiated system to a completely government-initiated system. The government-initiated system involves door-to-door canvassing of every household in the state to determine qualified electors. The committee also considered proposals to provide branch offices for registration and to allow registration by mail. Committee members were concerned that voter registration might become a deterrent to voting, especially in rural areas where voter identification is a minor problem. Other

members believe the existing affidavit system does not prove whether or not there is fraudulent voting in the state, and believe a system of voter identification is necessary.

STATEWIDE REGISTRATION

As a compromise measure, the bill provides for statewide voter registration, but allows any county containing no city with a population of 5,000 or more to be exempt from the system by resolution of the board of county commissioners. The requirements of registration under the bill would first apply to the 1978 statewide primary election.

The voter registration chapter, which would be Chapter 2 of the principal revision bill if inserted, requires the Secretary of State to prescribe registration forms. The forms shall include information on the voter's name, address, immediate past address, date of birth, and any other information the Secretary of State deems necessary to ensure an accurate and reliable elector registration. The chapter also prohibits designation of political party affiliation on the registration form.

The county auditors would have the responsibility of supervising the registration system, including the purging of elector registers. The county auditor is given authority to appoint deputy registrars for the purpose of assisting with the registration process, and may provide extra locations throughout the county for registration.

Any person who has or will have the qualifications of an eligible elector at the next election may register in the precinct in which he actually resides at any time prior to the 30th day preceding any election by completing a registration form and submitting it personally or by mail to the county auditor. Registration on election day is allowed at the polls if the person is qualified to vote. Registration at the polls is conducted by the election judges. Election judges may not receive the vote of any person whose name is not registered in accordance with the provisions of the chapter.

The chapter provides for the transfer of registration from one precinct to another within the county. If a registered elector makes such a move, it would be the duty of the county auditor to transfer the registration. In the event the precinct boundaries are changed, the county auditor would be required to automatically transfer the elector's registration to the proper precinct and mail the elector notice of the

change. Also, an elector who changes his residence within the state to a different county must re-register under the provisions of the chapter. His former registration would be purged by the county auditor of the county of his former residence upon notification from the county auditor of the new county of residence. Provision is also made for notification by the county judge of each county about any person of the age of 18 years or over who has, during the month preceding the date of the report, been placed under guardianship as an incapacitated person, and on each person who has been restored to capacity. The county auditor is directed to adjust the elector registers accordingly.

Registration is permanent unless one of the conditions cited above occurs, or unless the elector fails to vote in two consecutive general elections. Any elector whose name is purged from the elector register may re-register in accordance with this chapter. The county auditor may provide copies of the elector register upon payment of the cost of copying, but those copies may not be used for any purpose other than elections or partisan political activities. Use of elector registers for commercial purposes to produce a pecuniary gain through promotion or sale of a good or service is a Class B misdemeanor.

VOTER TURNOUT

The committee gave serious consideration to ways to increase voter turnout at North Dakota elections. The committee noted that the State Constitution allows the legislature to provide a penalty for failing to vote when qualified. The committee reviewed a bill to provide a \$20 civil penalty for failing to vote, and criminal penalties for stating a false reason for not voting. Also considered was a bill requiring the Secretary of State to notify all newly qualified 18-year-old North Dakotans of their duty and responsibility to vote. The committee believes there is a correlative responsibility in addition to the right to vote.

Despite the committee's concern over the low voter turnout, it did not believe either of the above bills would be workable. The committee noted that the voter turnout problem is nationwide, and that it has not been successfully dealt with in other states because voter turnout in North Dakota is actually one of the highest in the nation.

The committee is recommending one bill to create a new section to Chapter 15-47 relating to school

instruction on the responsibility of voting. The bill provides that every school board shall ensure that all students from the fourth through the 12th grade receive instruction on the duty and responsibility of all citizens of the age of 18 years or older to vote. The instruction would be equivalent to one 45-minute class period each month, and could be included as part of the instructional material in courses on civics, political science, or other similar courses. The committee understands that schools currently offer courses on government and history, but believes there is not sufficient emphasis on the particular problem of participation in the functioning of government through the exercise of the elective franchise.

EXPENSES OF STATEWIDE ELECTIONS

The committee heard considerable testimony from representatives of county government relating to the financial burdens on counties, and how the costs of elections increase those burdens. The testimony indicated that the expenses of statewide elections, whether primary, special, or general, should be paid from state funds, and not be a part of the counties' responsibilities. As an alternative, it was proposed by some county auditors that the mill levy limit could be increased to allow for the expenses of elections.

The committee is submitting two alternative bills on election expenses, and does not have a specific recommendation on either bill. The first bill provides that each county auditor is to determine the costs of any statewide primary, special, or general election. The costs would include the wages paid to election workers, mileage expenses, election supplies,

printing and distributing ballots, publication of ballots, the use of voting machines, and all other related expenses. The county auditor would submit a statement of those expenses to the Secretary of State. The Secretary of State would review the statements and forward them to the Department of Accounts and Purchases for payment. The actual amount the state would reimburse each county would be left to legislative determination, and would be a percentage figure of reimbursement.

Under the second alternative the Secretary of State is to determine, from the abstract of votes filed in his office, the total number of votes cast in each county during any statewide primary, special, or general election. He would then certify those figures to the Department of Accounts and Purchases, which would reimburse each county for the expenses of elections based on \$3 per vote cast in the county. The purpose of this alternative is to encourage the consolidation of voting precincts to reduce expenses and speed the election process. The consolidation effort in counties will be made easier by the committee's recommendation allowing voting machines to be used in any voting precinct.

SUMMARY

Much of the principal revision bill will be familiar to those who work with the election law. The committee did not assume that all of the present election laws are bad, but reviewed the entire election code to deal with problem areas and generally refine the language. The committee believes the principal revision bill is a substantial improvement over existing law, especially because those persons who are charged with the responsibility of administering the law participated in all of the committee's meetings.

JUDICIARY "B"

The Legislative Council's Judiciary "B" Committee conducted three studies during the 1975-77 interim.

Senate Concurrent Resolution No. 4067 (1975) directed a study of the state's prosecutorial system and any feasible alternatives to it, including a statewide system providing full-time prosecutorial services.

A review of the state's juvenile justice system was mandated by House Concurrent Resolution No. 3075 (1975). The resolution directed a broad-based study covering all aspects of the juvenile justice system, including juvenile delinquency, consistency and coordination within the system, lack of standards and training for juvenile justice personnel, juvenile courts, and juvenile correction procedure.

The committee's third study did not come via legislative resolution (the usual way the Council is assigned studies), but rather at the request of the North Dakota Combined Law Enforcement Council (LEC). The study involved a review of the security and privacy of criminal history record information in light of new federal regulations on the subject. In accordance with Council rules, Senator Robert Melland, Council Chairman, acceded to the LEC's request and asked the Judiciary "B" Committee to accept the additional study.

Committee members were Senators Howard Freed, Chairman, Harold Christensen, Harry Iszler, Elton Ringsak, and Roderic Schuster; and Representatives George Benedict, Aloha Eagles, Arnold Gronneberg, Fern Lee, and Ruth Meiers.

Throughout its study the committee received the cooperation and assistance of the Social Service Board's State Youth Authority, the Judicial Council's Juvenile Court Procedures Committee, the Attorney General and his office's criminal division, the North Dakota State's Attorneys Association, the North Dakota Criminal Justice Commission, the State Industrial School, the LEC, the Department of Public Instruction, the Bismarck Police Youth Bureau, the North Dakota Juvenile Corrections Association, the North Dakota Supreme Court Administrator's office, and the North Dakota Director of Institutions' office. Numerous individuals and other organizations were also of

assistance to the committee, particularly in supplying information and appearing as witnesses at committee hearings. Mr. Art Lieb, Cass County Juvenile Supervisor-Referer, and Mr. Bill Blore, Ward County Juvenile Supervisor, were particularly helpful.

The committee received financial assistance with its study through an LEC grant.

The report of the Committee on Judiciary "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

JUVENILE JUSTICE STUDY

Background

The study resolution directed a broad, all-encompassing study of the state's juvenile justice system. However, the committee soon learned there is no "system" as such, but rather a loose federation of public, semi-public, private, and semi-private agencies and institutions, operating in most instances independently of one another and not following any overall comprehensive plan or program.

The committee reviewed, with the aid of witnesses and a staff memorandum, the background, history, and current operations of the state's juvenile justice system.

The state's first juvenile laws were enacted in 1911 and revised considerably in 1943. They lay fairly dormant until 1969 when North Dakota became the first state to enact the Uniform Juvenile Court Act (UJCA). The UJCA (NDCC Chapter 27-20) designated the state's district courts as juvenile courts.

The courts in turn appoint other juvenile personnel such as probation officers, supervisors, and referees. A juvenile referee must be an attorney, and may conduct certain juvenile hearings.

Another basic component of the state's juvenile justice system is the State Youth Authority (SYA), a division of the Social Services Board created by the

1969 Legislature as the result of a Legislative Council interim study. It provides a central authority for determining alternative methods of dealing with children judged unruly or delinquent by the juvenile court.

When the juvenile court determines a child to be unruly or delinquent, it has a number of options regarding disposition. The juvenile may be: placed on probation under the supervision of a juvenile supervisor or the director of a county social service board; placed in an institution, camp, or other facility for delinquent children run on either a public or private basis; committed to the SYA with care, custody, and control lodged with the SYA director; or, if delinquent, committed to the State Industrial School. Unruly children may be committed there if their first disposition is not successful.

When the SYA receives custody of a delinquent or unruly child, it has the child tested and evaluated to help determine an appropriate disposition. The best interests of the child and the state are prime considerations.

After SYA testing and evaluation, the child may be returned home (with SYA supervision), placed in a foster home, placed in a group home, placed in a vocational training or similar institution for children and young adults, or placed in the State Industrial School (SIS). Unruly children may be placed in SIS only by court order.

Children are generally placed with SYA for two years, or until they are 18, whichever comes sooner.

Under the UJCA, a juvenile may be determined to be delinquent (violation of a crime, excluding minor traffic offenses), unruly (violation of truancy rules, disobeys parents, commits an offense applicable only to a child, or is dangerous to himself or others), or deprived (is without proper care, education, control, etc.; has been unlawfully placed for adoption or care; or has been abandoned).

Formal and informal adjustment play a major role under the UJCA. Before a petition is filed against a juvenile for any offense, the juvenile supervisor or referee may seek informal adjustment of the matter if this is deemed in the child's best interests, if the child and his parents consent, and if the child admits to the offense. The referee or supervisor may then order up to a 90-day probation period that may be extended by court order for an additional 90 days.

There are no formal court hearings under the informal adjustment.

Formal adjustment, on the other hand, means formal hearings before the juvenile court.

The juvenile court has various optional dispositions available. If a child is adjudicated delinquent, he or she can be: placed on probation; placed in an institution; committed to SIS or a state agency designated to work with delinquent and pre-delinquent children (e.g., SYA); or placed with the director of a county social service board for placement deemed in the child's best interests (e.g., foster home, Home on the Range for Boys, Dakota Boys' Ranch, etc.)

Disposition for an unruly child is the same as for a delinquent, except for initial commitment to SIS. However, if the court finds after making disposition for an unruly child that the child is not amenable to treatment or rehabilitation under its previous disposition, it may commit the child to SIS.

The System

As mentioned earlier, the juvenile justice system is not so much a system as a collection of parts.

For instance, there are six judicial districts in North Dakota and 19 district court judges, so there are 19 juvenile court judges in North Dakota. The six districts have been divided by the courts to produce 15 jurisdictions. There are 21 juvenile supervisors. Four supervisors, who are also designated as juvenile referees, are attorneys. There were 6,941 cases referred to the juvenile court in 1974.

Seven of the 15 juvenile courts employ juvenile counselors or probation officers. The courts without probation officers or counselors use juvenile supervisors, social service agencies, clergy, and other interested citizens and volunteers to supervise youth.

The LEC has a Juvenile Crime and Delinquency Subcommittee and a staff position assigned directly to juvenile matters. In addition to awarding grants for many juvenile programs, the LEC also implements federal juvenile programs, such as the 1974 Juvenile Justice and Delinquency Prevention Act.

The North Dakota Criminal Justice Commission, which reviewed and recommended criminal justice

standards and goals for the state, had a juvenile justice task force. It prepared several proposals reviewed by the committee during its study.

The Department of Public Instruction, through its Guidance Services Division, works on educational programs to meet juvenile problem areas.

Area social service centers and area mental health and retardation centers, as well as the combined human resource centers around the state, deal with juvenile problems through testing, diagnosis, and counseling.

Several police departments and some sheriffs' departments now have police-youth programs of some sort, and many have officers working entirely in the juvenile area. Statistics indicate law enforcement agencies are playing an increasingly larger role in juvenile matters. Police and sheriffs made 87.9 percent of the referrals to juvenile court in 1974. A study in the Jamestown Police Department showed that 75 per cent of its cases were juvenile related.

The State Health Department's Division on Alcoholism and Drug Abuse works on specific juvenile problems with both public and private agencies and institutions.

The Bureau of Outdoor Recreation funds special juvenile programs and works with state and local officials in planning recreational facilities and projects aimed at delinquency prevention.

The Social Service Department's Vocational Rehabilitation Division offers services to emotionally and physically disabled juveniles. The State Employment Service and the Department of Vocational Education also work to some extent with juveniles.

There are any number of private and semi-private institutions and programs working in the juvenile justice system. These include church-sponsored operations such as Catholic Family Services, Lutheran Social Services, Villa Nazareth, the Svee Rehabilitation Home, Luther Hall, Home on the Range for Boys, Dakota Boys' Ranch, and others. There are group homes, halfway homes, and foster homes of all sorts run by area social service centers, county social service boards, SIS, and private organizations. These include such operations as Awareness House, Children's Village, Oppen Home, Williams County Group Home for Girls, Cass

County Group Home for Boys, Friendship House, and others.

There are many private youth operations, such as the Charles L. Hall Youth Services, various YMCA and YWCA programs, Involved, Inc., Young Life, and others.

The state's colleges and universities, through their regular departments and course offerings, and unofficially through departmental and personal projects, work in several juvenile justice areas, including family training, counseling, social services, legal services, etc.

Various county and city public defender and legal aid programs provide legal service and counseling to juveniles.

Some public and private hospitals offer certain juvenile services, primarily through counseling and health-related matters. Shelter care facilities such as the operation in Rugby make use of hospital services.

The committee believes that the foregoing listing of various parts of the juvenile justice system, while by no means inclusive, points to the inherent problems in planning, coordination, communication, funding, data collection, and administration.

Witnesses

The committee sought as much input as it could from persons involved in the diverse parts of the juvenile justice system to determine specific problem areas.

During the course of its study, the committee heard testimony from several juvenile supervisors, legal counsel with the Director of Institutions' office (which oversees SIS), the LEC's Juvenile Justice Coordinator, the SYA Director, the SIS Superintendent, representatives of the Judicial Council and the North Dakota Criminal Justice Commission, a sheriff and a police chief from rural areas, mayors and a city attorney from small towns, a public defender, clergymen from urban and rural areas, social service workers in area centers, juvenile probation officers, two juvenile offenders, the North Dakota Indian Affairs Commission and representatives from each of the reservations in the state, and a mental health counselor.

The committee also toured SIS and the Bismarck

Police Youth Bureau. The latter is one of the few full-time juvenile diversion programs in the state.

All these witnesses made numerous recommendations, some specific and some general. The following is a summary by categories of their recommendations:

Personnel

1. Increase juvenile justice personnel manpower, particularly the number of juvenile supervisors (now 19) and probation officers (now 11).
2. Develop specific standards for juvenile justice personnel, particularly juvenile supervisors and probation officers.
3. Develop in-state training programs for juvenile justice personnel, and make it possible for them to attend more out-of-state training sessions.
4. Develop specific training programs in dealing with juveniles for police and others who come in contact with juveniles.

Statutes

1. Review Section 27-20-34 (transfer of juveniles to adult court) to perhaps make such transfer easier and to lower the minimum age for transfer.
2. Review Section 27-20-10 concerning informal adjustments and the need to admit guilt in exchange for a 90-day probation to perhaps make this procedure more courtlike; and remove vagueness.
3. Review Section 27-20-35 to clarify the juvenile court's power to commit juveniles for specific treatment.
4. Review Section 27-20-24 (electronic recording of juvenile proceedings) for consistency with the recording of adult proceedings.
5. Review Section 27-20-26 (parents paying for counsel for juvenile offenders) regarding the loyalty of the counsel to either the parent or the juvenile.

6. Consider amending the laws on minimum ages for youth employment to make it easier for youths to get jobs.
7. Review the laws concerning the confidentiality and sealing of juvenile records.
8. Review Section 14-10-17 (treatment of minors for VD, drug abuse) to allow for short-term emergency care.
9. Review child abuse legislation to consider formally involving area social service and mental health centers.
10. Review Section 31-01-06 to extend privileges of confidentiality to psychologists.
11. Consider an Emancipated Minors Act for North Dakota.
12. Review the possibility of getting the State Industrial School and similar institutions licensed for residential services.
13. Consider legislation to shorten the timelag between the citing of a juvenile and his or her court appearance.
14. Consider clarification of juvenile probation.
15. Consider the problems of illegal search and seizures in schools.
16. Consider general clarification of the legal rights of juveniles.
17. Consider more formalized methods of followup of actions taken regarding the juvenile with the particular sheriffs, police, schools, and other concerned.
18. Review the policy on sentencing of first offenders. Is this perhaps too lax?
19. Consider tightening probation regulations for juveniles.
20. Consider clearly defining juveniles' rights to counsel.
21. Consider the apparent conflicts in state law concerning schools filing truancy reports on students who have been committed to the State Industrial School.

Funds

1. Consider a more realistic distribution of available juvenile justice funds across the state.
2. Consider funding juvenile justice efforts on the state level rather than on the local level.
3. Consider additional funding for area social service and mental health centers to handle juvenile matters.

Procedures

1. Consider establishing a family court system in North Dakota.
2. Consider methods to force parents to get involved in all aspects of the juvenile justice process.
3. Consider methods to coordinate the state's juvenile justice system, perhaps through a state juvenile court administrator.
4. Examine all available juvenile programs and services on a statewide basis.
5. Seek methods to involve other professions such as the clergy, the educators, attorneys, etc., in the juvenile justice system; more of a "team approach."
6. Consider more formal followup procedures on all levels.
7. Consider methods to coordinate and unify juvenile data collection procedures.
8. Consider methods to have the juvenile justice system work more closely with schools. Look particularly at the ways the State Industrial School could work more closely with local schools.
9. Consider ways the juvenile justice system could work more closely with area social service and mental health centers.
10. Consider ways of dealing with children in need of assistance but not meeting the legal definition of a deprived child.

Facilities

1. Establish juvenile detention facilities other than jails throughout the state.
2. Develop emergency, short-term care facilities for juveniles.
3. Consider methods to establish more foster homes and similar situations for juveniles.

Programs

1. Establish definite programs in the state for juvenile substance abusers.
2. Develop better diversion and probation programs.
3. Work on establishing more community-based programs.

Miscellaneous

1. Clarify and establish an overall state policy on juvenile justice.
2. The particular juvenile justice problems of Indians must be specifically addressed. This would include looks at the jurisdictional problems, the establishment of preventive and protective services on reservations, the extension of State Youth Authority (SYA) programs to the reservations, and establishment of concurrent juvenile jurisdiction between state courts and tribal courts.
3. The State Youth Authority should be encouraged to provide more legal counsel for its field workers, perhaps to the point of transferring SYA to the Social Service Board's Legal Counsel Division. In addition, SYA should develop job descriptions for area correctional representatives and should seek to have a separate SYA budget item in the overall Social Service Board budget.

The committee discovered, through its research and from testimony, that there are almost as many views and ideas concerning the juvenile justice system as there are diverse parts of the system, and that there is little consensus within the system of what, if anything, really needs to be done to improve it. This is not an unexpected or unusual situation when a system is structured as the state's juvenile justice system is. However, it did present committee

members with difficulties in determining exactly which directions its study should take.

The committee decided, because of its relatively small size (nine members) and the fact that it had to divide its work between three assigned studies, that it could not attempt any major revisions of the state's entire juvenile justice system. It believes such work would need a larger committee working with just that study over a longer period of time than two years.

Therefore, the committee reviewed the specific and not so specific suggestions as detailed in the "laundry list" and winnowed out the following specific items.

Waiver of Juveniles to Adult Court

The committee heard suggestions that Section 27-20-34 be amended to make it easier to transfer juveniles in certain instances to adult court. It was also suggested to consider making this transfer automatic in some instances. The court can now transfer a juvenile delinquency case under two circumstances. The first is if the juvenile is over 17 and requests it. The second is if these conditions are met: the juvenile was over 16 when the offense was committed; a proper transfer hearing is held; the court finds reasonable grounds to believe the juvenile committed the delinquent act; the juvenile is not amenable to treatment or rehabilitation as a juvenile through available facilities; the juvenile is not treatable in a mental institution; and the interests of the community require that the juvenile be placed under legal restraint or discipline.

The committee considered a bill to change the first circumstance of transfer to eliminate the age and allow transfer to any child represented by counsel who requests it. The proposed changes under the second set of circumstances would leave the 16 or older language, but would have added 12 or older if charged with murder and 14 or older if charged with a felony.

Witnesses told the committee the public is disenchanted in some instances with the light sentences given out in juvenile court. A hypothetical example was given where a 14- or 15-year-old juvenile could commit a murder and, in juvenile court, might be sentenced to SIS for two years.

Other arguments went to the fact that juveniles are still children and need special protection.

After considerable committee discussion of the philosophies and public safety aspects of trying juveniles who commit serious crimes in adult court, the committee defeated this bill.

Extend Informal Adjustment Probation Period

Juvenile supervisors told the committee it is difficult to properly supervise children placed on probation under the present informal adjustment laws because the juveniles knew they only get a maximum 90 days probation. It was suggested this defeats the theory behind informal adjustment since juveniles just "play out the string" on the 90 days without any meaningful rehabilitation. Committee members said they had heard juveniles talk about this as a mere slap on the wrist.

One supervisor suggested a longer probation period so juveniles could earn their way off probation.

The committee recommends a bill amending Section 27-20-10 increasing the initial maximum probation period under informal adjustment from three months to 12 months and increasing the extension allowed from three to six months. The committee said this does not mean every child will receive a maximum of 18 months probation, but that the court will have a more flexible limit within which to work.

Mental Health Commitment of Juveniles

Testimony before the committee indicated there was some confusion about the jurisdiction of the juvenile court in committing juveniles to institutions for mental health care. Section 27-20-04 says the juvenile court has concurrent jurisdiction with the county mental health board in proceedings to treat or commit a mentally retarded or mentally ill child otherwise subject to the court's jurisdiction. However, Section 27-20-35 indicates that, after the court has had a child examined or evaluated regarding mental illness, and it appears treatment is needed, the court shall direct that the **appropriate authority** initiate proceedings to have the child committed. (emphasis supplied)

Some juvenile courts commit children for periods of treatment, while others believe the above two statutes mean the court can commit for evaluation and examination, but that the county mental health board must commit for a definite period of treatment.

The committee recommends a bill amending Section 27-20-35 to state clearly that, after the examination, if it appears the child needs further mental health treatment, the court will resume proceedings in juvenile court for the child's commitment to an appropriate institution or agency. (emphasis supplied)

Juvenile Right to Counsel

There was considerable testimony concerning a juvenile's right to counsel. Committee attention was focused on Section 27-20-26 that says a child shall not be considered needy (and therefore eligible for a court-appointed and court-paid attorney) if his parents, without undue financial hardship, can pay for counsel. Witnesses said many parents, who did not want to pay attorneys' fees, pressure their children into waiving their rights to counsel when the children should really be represented. Somewhat similarly, said witnesses, in instances where the parents had to pay for counsel, they obtained an attorney who was basically doing what they wanted in regard to the case, rather than what the actual client, the juvenile, wanted or what might have been best for him or her.

Committee members agreed there are problems in this regard and asked the staff for two bill drafts to change this situation. One amended Section 27-20-26 to provide that the court could, in the best interests of justice, appoint a counsel for a juvenile regardless of the juvenile's needy status. The other proposal accomplished about the same thing, except it allowed a juvenile to knowingly waive his right to counsel even if the court thought he or she should have one. It also specified that if the court determines that the child needs counsel, and the parents, while able to afford it, refuse to pay for counsel, then the court could appoint a counsel and order the parents to pay counsel fees.

The North Dakota Criminal Justice Commission (NDCJC) also presented two proposals for committee consideration on this subject. One was essentially the same as the staff's second proposal, but provided for standby counsel in all cases where counsel was knowingly waived. The other provided that the court assure itself in all instances that the child is adequately represented by counsel. No waiver would be allowed. Thus, under the NDCJC's second proposal, all juveniles would always be represented by counsel.

After considerable discussion and debate, the committee voted to recommend the NDCJC's second

proposal which essentially requires counsel in all juvenile cases.

Short-term Emergency Treatment

Mental health professionals testified that there is a need to be able to treat juveniles in life-threatening situations. This help cannot now be given without the permission of the juveniles' parents. They said the juveniles are often in trouble and need the help precisely because they cannot or will not talk to their parents.

The committee agreed, and asked for a draft proposal to allow minors to receive emergency short-term mental health care or counseling without their parents' permission. This was prepared as an amendment to Section 14-10-17 which now allows minors to receive examination, care, and treatment for venereal disease and drug abuse without their parents' permission.

There was considerable committee discussion about the appropriateness of this type of legislation, particularly as it might further erode or weaken parental authority. There were also questions about the definitions of such terms as "short-term" and "mental health care and counseling." The Judicial Council's Juvenile Court Procedures Committee suggested language calling just for emergency examination, care, or treatment in a life-threatening situation without parents' permission, and said this should be a new section rather than an amendment to Section 14-10-17.

Committee members generally agreed, but also thought alcoholism should be included along with drug abuse and venereal disease under the provisions of Section 14-10-17 since it is a form of drug abuse.

The committee recommends a bill amending Section 14-10-17 to provide that a juvenile can receive examination, care, and treatment for venereal disease, drug abuse, and alcoholism without their parents' permission. The bill also creates Section 14-10-17.1 to allow minors to receive examination, care, and treatment in life-threatening situations without their parents' permission.

Automatic Sealing and Destruction of Juvenile Records

Committee members and witnesses generally agreed it is now too difficult to have juvenile records sealed, and that consequently few are sealed.

Committee members believe there is no need for a juvenile's record to continue past the time he or she reaches majority.

Juvenile records can now be sealed if: two years have elapsed since the juvenile's final discharge; he or she has not subsequently been convicted of a felony, a misdemeanor involving moral turpitude, a delinquent act, or is under some pending charge; and if he or she has been rehabilitated. Such procedure is initiated either upon the court's own motion, or upon a juvenile's application, and includes a hearing to determine the facts required as stated above.

The committee recommends a bill providing for the automatic sealing of records when the juvenile reaches 21, or if two years have passed since the final disposition or discharge, or if the charges were dismissed against the juvenile. The bill also provides for the automatic destruction of juvenile records two years after their sealing. However, certain information could be retained for administrative, statistical, and planning purposes if all names are expunged.

Speedy Hearings

Several witnesses said the timelag between the time a juvenile is apprehended and the time he or she actually has a hearing before juvenile officials is sometimes so long as to destroy any connection between the eventual punishment and the offense.

Most juvenile officials who testified before the committee said they make every effort to hold these hearings as soon as possible, but that in some instances delays are unavoidable.

The committee recommends a bill requiring that a juvenile hearing be held within 30 days of the time the juvenile is cited, but allowing the court to extend this time period for good cause shown. The bill also provides that if a hearing is not held within 30 days, and no extension has been granted, the petition against the juvenile is to be dismissed.

Emancipated Minors Act

The committee heard testimony about the problems facing minors who move out of their parents' home for whatever reasons, and who are self-supporting, but who, because they are still minors, cannot legally enter into binding contracts. This is particularly difficult, it was noted, for minors who are married.

The committee recommends a bill providing that emancipated minors are self-supporting persons 16 years or older who are either married, divorced, or separated from their spouses, or who are living apart from their parents or guardians. They are to be deemed adults for entering into any contract or transaction involving property or their estate.

Juvenile Court Jurisdiction Over Adults

One of the common themes voiced by nearly every witness during the committee's study was the "parent problem" and its relationship to juvenile problems. Time and again the witnesses, ranging from sheriffs and police officers to juvenile supervisors to the clergy, said one of the biggest juvenile problems is lack of concern and involvement by parents.

Juvenile supervisors and probation officers told the committee it is next to impossible to get parents involved in any way in the probation and supervision involving their children. And, said one probation officer, there appears little the juvenile court can do to force parents to get involved.

The committee, realizing you cannot legislate good parenting, nevertheless believes specific jurisdiction over adults in certain instances would aid the juvenile court.

Therefore, the committee recommends a bill giving the juvenile court jurisdiction over adults to the extent juvenile courts think necessary for the physical, mental, or moral well-being of children under its jurisdiction. Any court order under this provision must be related to the purpose for which the court is exercising its jurisdiction over the child.

Emergency Medical Treatment

The committee heard testimony at its last meeting that problems have been arising when children under a court-ordered custody need emergency medical care. It was reported that in these situations the foster parents or custodian need to be able to give permission to go ahead with the emergency treatment, and not have to try to secure permission of the court or the juvenile's parents.

The committee recommends a bill giving a legal custodian the right to give permission for his or her ward to receive emergency medical treatment that, in the opinion of a licensed physician, is required.

Juvenile Services Coordinator

Many witnesses involved with the juvenile justice system spoke of the problems of communication and coordination within the system, saying each of the 15 juvenile court jurisdictions operates on its own and does things a little bit differently. Other witnesses cited the lack of any standards for juvenile personnel and few, if any, in-state training opportunities.

While the committee believes that many of the problems mentioned above can be solved by closer cooperation within the system, it also believes the juvenile court could benefit from the services of an administrator just as the Supreme Court and district courts have benefited from the Supreme Court Administrator position.

Therefore, the committee recommends a bill creating the position of Juvenile Services Coordinator to be located within the Supreme Court Administrator's office. The coordinator would: work to establish uniform practices and procedures within the state's juvenile justice system; conduct research and planning; prepare and conduct training program for juvenile justice personnel; and prepare, after consultation with juvenile justice personnel and juvenile judges, standards for juvenile justice personnel to be adopted by the Judicial Council and the Supreme Court.

This bill carries an appropriation of \$55,000 for the biennium.

Miscellaneous Juvenile Justice Matters

The committee reviewed an incident in Minot involving a 12-year-old girl with a drug abuse problem who was unable to obtain treatment or assistance in North Dakota. Dr. Hubert Carbone, Superintendent of the State Hospital, told the committee the girl had received temporary treatment at the hospital, but that she did not fit into the hospital's youth program which is generally designed for persons 16 years and older. He said that with lack of funds and personnel, the hospital is not able to develop programs that might only be needed for one or two individuals. He said it may be a wiser policy in such instances for the state to provide adequate assistance to have these one or two people go out of state for treatment rather than develop special programs for them.

The LEC suggested to the committee during its study that, to be in compliance with provisions of the 1974 Juvenile Delinquency and Prevention Act, the state, should it accept money under the act,

might have to amend state laws to ensure that no juveniles are detained where they might come in regular contact with adult offenders, and that status offenders never be detained in correctional facilities. Status offenders are juveniles who commit offenses that are not crimes if committed by an adult, such as truancy, failure to obey parents, running away, etc. However, the LEC told the committee at its last meeting that such amendments would not be needed since the state would not be attempting to qualify for funds under the act.

PROSECUTORIAL SERVICES

Background

The committee's study of the state's prosecutorial system grew out of a bill that was defeated in the 1975 Legislature (Senate Bill No. 2244). This measure would have established a regional system of prosecutors in the state.

While the Attorney General has some prosecutorial powers in North Dakota, most of these powers rest with state's attorneys. The Constitution (Section 173) requires that each of the state's 53 counties elect a state's attorney for a four-year term.

Section 11-16-01 states that the state's attorney is the public prosecutor and spells out the office's specific duties. Section 11-16-05 prohibits state's attorneys in counties with a population exceeding 35,000 from practicing law privately.

Thus, with the exception of the four counties with a population over 35,000—Burleigh, Cass, Grand Forks, and Ward—all state's attorneys are considered part time in the sense they are allowed to conduct a private practice while serving as state's attorney. The time each state's attorney devotes to his county duties and the time he devotes to his private practice vary widely between counties.

Section 11-10-10 (2) sets the salaries for state's attorneys based upon county population. The effect of these salary schedules is to restrict the availability of full-time state's attorneys to counties with populations exceeding 35,000.

State law allows boards of county commissioners to appoint one or more assistant state's attorneys (Section 11-10-10) or special counsels to assist in particular matters (Section 11-16-02). There are no restrictions on the number of or salary for these assistants.

Several national and state organizations, such as

the American Bar Association, the President's Crime Commission, the National Advisory Commission on Criminal Justice Standards and Goals, the National District Attorney's Association, the National Association of Attorneys General, the Law Enforcement Assistance Administration, the North Dakota Criminal Justice Commission, the North Dakota Judicial Council, and the North Dakota Law Enforcement Council, support the concept of full-time prosecutorial services of some sort.

Testimony

Attorney General Allen Olson supported a serious look at various prosecutorial concepts, and offered his office's assistance in the study. He said it was imperative North Dakota get a more effective law enforcement system.

Mr. Cal Rolfson, Deputy Attorney General and Chief of the Attorney General's Criminal Division, cited various problems with the current status of state's attorneys, including: no experience is required to run for the office; the splitting of practice between private and public raises problems of conflicts of interest and the amount of time given to the lower paying position (usually the state's attorneys post); no specific training for prosecutors; the position, because it is elected, has limited and uncertain tenure; lack of adequate supportive services for many state's attorneys; too many duties are assigned by counties in addition to prosecution chores; salaries remain too low; and state's attorneys often have inadequate working facilities and libraries.

Alternatives he suggested included: the Oklahoma Plan that served as the basis for the regional plan defeated in the 1975 Legislature; an attorney/coordinator for the state's attorneys who could serve as an executive director of the North Dakota State's Attorneys Association; a special prosecution unit in the Attorney General's office; a change in the law regarding the qualification of state's attorneys and the establishment of standards for prosecutorial conduct, training, and experience; a revenue sharing or foundation aid type of program to support prosecutorial functions; contract prosecution on a regional basis; and a constitutional change to allow a full-time state's attorney system for felony prosecutions.

Several members of the State's Attorneys Association testified at several committee meetings. The association, which had opposed the regional

prosecutor plan in the 1975 Legislature, said it was not taking any position regarding the committee's study, but would offer assistance and advice as the study progressed. It did say it would support any state's attorney-coordinator proposals.

The individual state's attorneys who testified were divided in their feelings concerning the state's present system and the need for change. Some believed it was working well and should be left unchanged unless major fault is found with it. Others supported changes allowing more full-time state's attorneys, either by allowing each county to decide if it wants a full-time state's attorney, or by allowing counties to share the services of one full-time state's attorney.

Other views included: any change in the present system would be unconstitutional; most state's attorneys are not "part-time" state's attorneys, but full-time state's attorneys who are allowed to practice law privately; a stronger State's Attorneys Association would help coordinate and assist state's attorneys in their work; and that the larger counties which now have full-time state's attorneys should split the duties between civil and criminal matters.

LEC Full-Time State's Attorney Project

During the committee's study, the LEC kept it informed of a project it had funded in Mercer, McLean, Oliver, and Dunn Counties to provide those counties with a full-time state's attorney. The prosecutor, while officially serving all four counties, actually concentrated his time in Mercer and McLean Counties. The committee heard from the prosecutor, the area state's attorneys, sheriffs and others involved in the project. All said it was working well.

It was pointed out that the population of a county has no real bearing on its criminal caseload. Such factors as construction impact, contract policing, and nearness to larger populated areas can cause dramatic increases in criminal caseloads.

The advantages of the system were said to be that the full-time state's attorney can become an expert in the fast changing and highly complicated area of criminal law, he can work closely with the police and other law enforcement officials, and that any conflicts between an attorney's public and private practices is eliminated.

One of the drawbacks in the project, it was noted, is that the full-time prosecutor has to split his time among too many jurisdictions. It was also suggested by persons involved in the project, and by other state's attorneys, that the loss of "local control" in prosecution might be resisted by the people. It was indicated persons feel strongly about electing their local state's attorneys, and do not want regional state's attorneys, or state's attorneys that work in several counties.

The Constitution (Section 173) now requires that each state's attorney be an elector of his or her county. This, and the requirement that each county must elect a state's attorney, makes it difficult for counties to share or consolidate state's attorneys services under the state's joint exercise of governmental powers laws (see NDCC Chapter 54-40). There are provisions under the county managership form of county government (Const. Section 170, NDCC Chapter 11-09) for appointment of state's attorneys who could be shared with other counties, but no counties in the state have adopted this form of county government.

There is nothing in state law nor the Constitution that would prevent an assistant state's attorney from serving more than one county, and in fact the LEC full-time project used this means to have its full-time prosecutor serve the several counties.

RECOMMENDATIONS

The committee believes some changes are needed in the state's prosecutorial system. This was the general idea voiced by nearly all of the witnesses before the committee, although there was little agreement on what the changes should be.

Increasing caseloads in many counties, the fast changing aspect of criminal law which makes it difficult to keep abreast for a person who tries just a few criminal cases a year, the potentially large population impacts in some of the state's smallest counties possible with coal development, and possible conflicts between an attorney's public and private practices all seem to be strong reasons to support some change.

Increase the Number of Full-Time State's Attorneys

The committee considered a bill to increase the number of counties that could have full-time state's attorneys by dropping the population requirement

for the full-time salary level from 35,000 to 10,000. This would have increased to 15 the number of counties that could have full-time state's attorneys. However, the committee rejected this bill as imposing too much of a financial burden on small counties.

Full-Time Option

The committee instead recommends a bill giving any county, regardless of its size, the option, upon resolution of its board of county commissioners, of having a full-time state's attorney. The salary of these positions would be set at the current provisions for full-time state's attorneys, a range of from \$16,100 to \$24,000 annually, as determined by the county commissioners. County commissioners are also now authorized by law to increase the salary of any full-time county official by 20 percent if they deem the increase merited.

State's Attorney Coordinator

The committee also recommends a bill establishing an office of prosecutor coordinator within the Attorney General's office. The coordinator would assist state's attorneys in all aspects of their work except actual trial practice; would provide research and other similar assistance to the state's attorneys; would maintain a "brief bank" of the latest criminal law information; would maintain communications between state's attorneys through workshops, training sessions, and newsletters; and would serve as a liaison between state's attorneys and other government agencies and officials. Actual trial assistance is prohibited to avoid tying up the coordinator's time at one or two trials. The Attorney General, if requested, could still provide trial assistance as he can now.

Three possible coordinators would be chosen by a committee composed of the president and president-elect of the State's Attorneys Association, the head of the Attorney General's Criminal Division, the LEC Executive Director, the President of the North Dakota Peace Officers Association, the President of the State Bar Association, and a representative of the Judicial Council. This group would submit three names to the Attorney General for his final selection. A Coordinating Council composed of some of the individuals named above would actually supervise the work and activities of the coordinator. The coordinator's salary would be determined by the council.

The bill provides for an assistant coordinator and at least one full-time secretary, and carries an appropriation of \$155,000 for the biennium.

CRIMINAL RECORDS SECURITY AND PRIVACY

Background

The North Dakota Combined Law Enforcement Council, in a July 1975 letter to Legislative Council Chairman, Senator Robert Melland, asked the Council to include in its interim studies a review of the security and privacy of criminal records.

The letter indicated the study should follow Senate Concurrent Resolution No. 4057, a measure calling for such a review that was defeated in the 1975 Legislature. The letter indicated that since that time, the United States Justice Department had promulgated extensive and very restrictive rules and regulations regarding the privacy and security of criminal records, and that while the state had until March 1976 to comply, a plan had to be submitted by December 1975, and portions of the rules went into effect in June 1975.

Legislative Council rules allow the chairman to grant such a request when he deems the matter of some urgency. Senator Melland accepted the study and assigned it to the Judiciary "B" Committee.

Although the State Crime Bureau is supposed to collect records of all felonies in North Dakota, there are no penalties nor systematic methods to assure such collection. Thus, the records are not complete nor entirely accurate since they either do not reflect all the cases or lack ultimate disposition (e.g., was the person convicted, released, jailed, released on probation, etc.)

Each law enforcement agency in the state keeps its own records for better or for worse. Where there are one-man or part-time police departments, very few records are kept. The larger law enforcement agencies are able to do better, but lack uniformity in their procedures.

In all instances, there are no state laws, rules, or regulations regarding the use and dissemination of these records. Each agency which keeps its records operates on its own regarding who is allowed to see and use the records, what information is kept, and what measures are taken to assure the security and privacy of the records.

The LEAA Requirements

The Law Enforcement Assistance Administration (LEAA) rules and regulations for the security and privacy of criminal records changed greatly during the course of the committee's study. They started out requiring the system to use computers dedicated solely to criminal justice uses (a requirement strongly protested by most small states, including North Dakota, as financially impossible), prohibiting almost all dissemination of all types of criminal information, and giving very short deadlines for compliance with various portions of the plan.

The requirements for a dedicated computer were dropped and the dissemination provisions were loosened considerably. Most deadlines were extended.

Perhaps most important to North Dakota was a ruling in April 1976 that the state is exempt from all the regulations since it had not used LEAA funds for the collection, storage, or dissemination of criminal records.

The original LEC-prepared plan submitted to the committee contained six parts dealing with the completeness and accuracy of records, limits on their dissemination, audits and quality control of the record system, security of the records, individual access and review of the records by the subjects of the records, and the establishment of a Security and Privacy Council.

The LEC told the committee it believes that, even though the state does not have to comply with the LEAA regulations, the committee should still consider legislation on this matter for several reasons.

First, it said, it is likely that federal legislation covering much the same ground as the federal regulations would probably pass Congress in 1977 or 1978, and the state will then have to comply. Secondly, while there are some obvious shortcomings and undesirable aspects of the proposed plan, there are also several good concepts that are worth putting into state law.

It suggested the committee consider proposals designating or establishing a central state repository for criminal records and that a rigid system of disposition reporting be established.

Concern for improper and harmful dissemination of criminal record information, and for the privacy of

state citizens, should prompt legislation regarding the dissemination of conviction and nonconviction data, said the LEC.

Individuals should have the right, said the LEC, to review their own records and to challenge and correct misinformation in the reports. And, it said, there should be audit and quality control standards to assure the provisions are being followed.

Testimony

The LEC held a series of eight regional public meetings around the state in February 1976 to review the proposed plans with local citizens and officials. There was almost universal displeasure expressed over the plans as written, and most of the procedures required by the plans. The LEC reported the results of these meetings to the committee. Most of the opposition centered on the red tape and strict dissemination provisions of the plan.

The committee heard a great deal of testimony from the North Dakota Peace Officers Association, the North Dakota Sheriffs Association, individual sheriffs and police officers, the North Dakota Police Chiefs Association, the North Dakota Broadcasters Association, the State Crime Bureau, and a number of private citizens and private employers. The testimony was unanimous in opposition to the plans as prepared, but strongly supported some of the concepts involving privacy, accurate and complete records, and the right of individual access and review.

RECOMMENDATIONS

The committee recommends a bill including what it believes are the most necessary and salient aspects of the various plans, rules, and regulations proposed over the interim by the LEC and the LEAA concerning the security and privacy of criminal records.

The bill can be looked at in four parts. First, under the bill, a person can review the criminal records law enforcement agencies may be keeping on him or her. The information can be challenged for its accuracy,

completeness, contents, or dissemination. If the agency does not accept the challenge, the person may take an administrative appeal to the Attorney General and, failing in this effort, may then seek judicial review in accordance with the state's administrative appeal procedure.

Secondly, the bill places no restrictions upon the dissemination of conviction data and criminal history information contained in court records of public proceedings or pertaining to offenses for which a person is currently involved in the criminal justice system. However, dissemination of certain criminal history information and nonconviction data to noncriminal justice agencies is tightly restricted to juvenile courts and to persons or agencies compiling statistical information. In the latter case, the information is to be provided with names and other identification removed.

Thirdly, the bill authorizes the State Crime Bureau to operate as a central criminal records repository, to establish rules and regulations governing the operation of the records system, to establish procedures for individual inspection and challenge of the records, and to check up on the system to ensure it is operating as it should.

Finally, the bill completely amends Section 12-60-16 to clarify and broaden what exactly is expected of the state's criminal justice agencies regarding disposition reporting.

SUMMARY OF PROPOSED BILLS

In summary, the Judiciary "B" Committee is recommending 13 bills:

1. 10 bills dealing with various aspects of the juvenile justice system;
2. 2 bills dealing with the state's prosecutorial system; and
3. 1 bill concerning the security and privacy of criminal records.

JUDICIARY "C"

The Committee on Judiciary "C" was assigned two study resolutions. Senate Concurrent Resolution No. 4016 directed the committee "to study the general area of administrative hearings and all of the various factors involved in the hearings, including the procedures and practices prior to and after such hearings, the appeals available, the measures for safeguarding the rights of persons appearing before the hearings, the desirability and feasibility of bringing uniformity to all of the state laws concerning administrative hearings, and the overall role of administrative hearings in state government to ensure the constitutional guarantee of due process of law."

Senate Concurrent Resolution No. 4004 directed the committee "to study the statutory basis for all administrative rules, orders, and regulations to which criminal liability may attach to determine the necessity for those statutes and whether they are in need of revision; to study all administrative rules, orders, and regulations, in effect or which become effective during the course of the study, to which criminal liability may attach, to determine their constitutionality, desirability, whether criminal sanctions are necessary, and the procedures used in adopting and enforcing those rules, orders, and regulations; to study the constitutional, statutory, and case law bases for criminal and civil contempt proceedings and punishments, to determine if a comprehensive statutory procedure can be established for both criminal and civil contempt; to study and determine the appropriate usage of the words 'child,' 'children' 'minor,' 'minors,' 'step-children,' 'foster children,' and related words in the Century Code; to study sentencing procedures and the appropriateness of appellate review of sentences; and to study and revise, if necessary, the substance and form of all statutory statements of loss of civil rights or other disqualifications resulting from conviction of a crime."

Legislative committee members were Representatives Myron Atkinson, Chairman, Garry Bye, Kay Cann, Arthur Ekbald, Terry Eriksmoen, William Gackle, Eugene Laske, Henry Lundene, Robert Martinson, Charles Orange, Alvin Royse, and Janet Wentz; and Senators David Nething and Frank Shablow. Citizen committee members were Messrs. Joseph Feeney, Joseph Maichel, Elmer Roswick, Gerald VandeWalle, and Rodney Webb; Judge Douglas Heen, and Mrs. Louise Walker.

Because of the large number of assigned study areas, the committee found it necessary to narrow its study to three general areas—(1) Senate Concurrent Resolution No. 4016, directing an administrative law study, (2) appellate review of criminal sentences, and (3) the substance and form of all statutory losses of civil rights and other disqualifications resulting from conviction of a crime.

The report of the Committee on Judiciary "C" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

ADMINISTRATIVE LAW STUDY

North Dakota was the first state in the union to adopt an Administrative Procedure Act, enacting its present law in 1941 based partly on an early tentative draft of what became the 1946 Model State Administrative Procedure Act approved by the Commissioners on Uniform State Laws. The Model Act was revised in 1962, and today more than half of the states have general and comprehensive statutes substantially based on the 1946 Model Act or the 1962 Revised Model Act.

Administrative Rules and Regulations

The present North Dakota Administrative Agencies Practice Act (Chapter 28-32) provides for promulgation of rules and regulations by administrative agencies. Section 28-32-02 gives every administrative agency the authority to promulgate, amend, and repeal rules and regulations in conformity with the provisions of any state statute administered or enforced by the agency, and to prescribe methods and procedures required in connection therewith. It also requires that every rule or regulation proposed by an administrative agency be submitted to the Attorney General before adoption for an opinion as to its legality.

Section 28-32-03 further requires that all adopted rules and regulations are to be filed by each agency with the Attorney General's office, and when so filed shall have the force and effect of law. The section provides further for supplemental filing of rules with the district court clerk of each county with such rules to be available for public inspection. Each agency is

also required to file its rules with the secretary of the State Bar Association.

Section 28-32-02

The Administrative Agencies Practice Act and most other statutes providing for rules and regulations have no requirements for public hearings before rules and regulations are adopted. Many agencies contact affected interest groups for their input prior to adoption of rules, but other agencies promulgate and adopt rules and regulations without either affected interest group input or public hearings.

The committee believes that formal general notice and general public hearings are not needed at this time for all administrative rule changes, as many rules and regulations affect only limited interest groups, and many rule changes are very minor. However, the committee believes that some prior notice procedure should be adopted by each agency so interested persons may provide input. Therefore, the committee recommends the amendment of Section 28-32-02 to require each agency to adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, prior to the adoption, amendment, or repeal of any rule. The committee recommends that opportunity for an oral hearing should be required if requested by 25 persons, by a governmental subdivision or agency, by the Legislative Council or an interim committee of the Legislative Council, or by an association having not less than 25 members. The agency would then be required to consider fully all written and oral submissions respecting the proposed change.

This procedure would avoid the expense of notifying persons who would not have an interest in the proposed rules and regulations, but would allow affected persons the opportunity for input.

Section 28-32-02.1

A number of agencies, departments, and commissions are organized to handle a variety of different subject matters, some of which are subject to the Administrative Agencies Practice Act and some of which are not. Also, licensing boards exist which are composed of two or three persons who are practitioners of a regulated profession and who have their home residences in various areas of the state. Such a board is often not a full-time board and does not have a full-time executive secretary. In such

instances, it is difficult to know whom to contact and what to do in order to get information.

The committee therefore recommends adoption of proposed Section 28-32-02.1 which would require each agency to include in its rules a description of that portion of its organization and functions subject to Chapter 28-32, stating the general course and method of its operation and the methods whereby the public may obtain information or make submissions or requests.

LEGISLATIVE REVIEW OF ADMINISTRATIVE RULES

Senate Bill No. 2175, passed by the 1975 Legislature and vetoed by the Governor, would have provided for a legislative committee on administrative rules appointed by the Legislative Council. The committee would have studied and reviewed administrative rules to assure that administrative agencies were properly carrying out the intent of legislation, and to provide the Legislative Assembly with information and recommendations regarding the regulations, policies, and practices of state agencies. In addition, the committee would have been authorized to review published opinions of state and federal courts to determine whether or not there were court or agency expressions of dissatisfaction with state statutes or with rules and regulations. The committee could have then recommended to the Legislative Assembly the repeal or amendment of the enabling legislation for promulgating rules and regulations.

During the 1970's, 24 state legislatures have either adopted or revised procedures to bring administrative rules and regulations under direct legislative review. Other review proposals have been introduced in additional states and the United States Congress. State enactments vary in the amount of review authority over rules given to the legislature or delegated to a review committee. In some states a committee may review rules and recommend action to the legislature which may then annul or modify the regulations. Still other states provide for an advisory review process. Proposed regulations are referred to some type of committee for legislative comments or observations, but neither the committee nor the legislature has the authority to suspend any administrative rule.

A few states have vested the authority to suspend rules temporarily in a legislative committee, with any such suspension to be sustained by the full

legislature within a specified period of time during the next regular legislative session.

After reviewing the legislative review provisions of other states, the committee considered three alternative bill drafts on legislative review of administrative rules. One alternative provided for a legislative committee which could suspend a rule or regulation during the interim, with final decision on a rule to be made by the legislature as a whole. The second alternative provided for an interim committee with authority only to recommend rule changes to an agency and to make recommendations concerning enabling legislation to the legislature as a whole. The legislature could then accept or reject such recommendations. The third alternative provided no interim review, but allowed the legislature to repeal a rule, to direct a rule change, or to adopt an additional rule.

The committee believes some form of legislative review of administrative rules is needed to ensure that executive agencies are following the legislative intent of the statutes under which rules and regulations are promulgated. The committee therefore recommends a bill draft which provides that the Chairman of the Legislative Council would be allowed to assign proposed and existing rules and regulations and written complaints received concerning such rules to an appropriate interim subject matter committee. That committee would study and review the rules and complaints to determine whether or not administrative agencies are properly implementing legislative purpose and intent, whether there are expressions of dissatisfaction with the statutes or with the rules and regulations promulgated under the statutes, and whether court opinions or rules indicate ambiguous statutes. The committee would then be allowed to make rule change recommendations to the adopting agency and recommendations to the Legislative Council and the legislature for the amendment or repeal of enabling legislation serving as authority for the rules and regulations. The recommendations or opinions of an interim committee would in no way affect the legality of any rule as determined by the Attorney General.

FILING AND CODIFICATION OF ADMINISTRATIVE RULES

Section 28-32-03 requires that a copy of each rule promulgated and adopted by an agency shall be filed with the Attorney General. Upon filing, the rule has the force and effect of law until amended or repealed

by the agency or until declared invalid by a final court decision. The section provides for supplemental filing with the district court clerk of each county who shall retain the rules for public inspection. A copy of each rule and regulation shall be mailed by the agency to the secretary of the State Bar Association.

To study the effectiveness of the present procedures, the committee requested rules from each administrative agency and surveyed the district court clerks and the State Bar Association as to rules filed with their offices. The committee determined that administrative agencies presently publish rules and regulations in many different sizes and shapes. It was also determined that obtaining such rules is cumbersome in that it is not always easy to determine where to get rules and regulations, particularly when dealing with part-time licensing boards which have no full-time staffs. It is also difficult to determine whether rules are current.

The responses from the district court clerks showed that there is not universal agency filing of rules with all district court clerks and the secretary of the State Bar Association. The survey of district court clerks also showed they do not have a uniform filing system for rules received from agencies and that many district court clerks do not keep rules up to date for public inspection.

Among the comments from district court clerks were that the rules and regulations are seldom requested, that much of the material is in booklet and book form which requires much filing space they do not have to spare, that something should be done to allow them to clear out older material, that they do not have the necessary staff to keep rules sorted properly and in current form, and that in some instances rules are simply placed in a large box in no particular order so it would be extremely difficult to determine whether the rules were up to date or when they were received. The district court clerk survey showed that while some district court clerks retain only the most recent rules and regulations, others have rules on file dating back to December 1938, with many district court clerks retaining rules from the 1940's, the 1950's, and the 1960's.

The committee therefore recommends a bill draft providing that the Legislative Council office compile, index, and publish all rules and regulations filed pursuant to Chapter 28-32 in a looseleaf administrative code. The Legislative Council office would in addition publish a code supplement each

month that rules and regulations are submitted for publication. The code supplement would be in the same style as the code and would be set up to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code. The code would be arranged, indexed, and printed in a manner which would permit separate publication of portions relating to individual agencies. An agency could make arrangements with the Legislative Council office for the printing of as many copies of such portions of the code as it may require.

The Secretary of State would be charged with distributing the code and code supplement. Free copies of the code and code supplement would be distributed to the Attorney General, each Supreme Court and district court judge, the Supreme Court Library, the State Library, the University of North Dakota Law Library, the Secretary of State, and the Legislative Council. In addition, every county auditor would receive a copy of the code and code supplement for use by county officials and the public. The Legislative Council office, each county auditor, and the librarians for the Supreme Court Library, the State Library, and the University of North Dakota Law Library would be charged with maintaining a complete, current set of the code.

The Secretary of State would be charged with making copies and subscriptions to the code and code supplement available to any person at prices fixed to cover publication and distribution costs. All fees collected by the Secretary of State would be deposited in the general fund.

Initially, rules and regulations would be published in the code and code supplement as rules are extensively amended or revised by each agency. The determination of an extensive revision or amendment would be made by the Legislative Council office. Rules would be submitted to the Legislative Council office in the proper form, style, and arrangement prescribed by the Legislative Council office, which would have authority to refuse any rule not in substantial compliance. The Legislative Council office would also have authority to make such corrections in spelling, grammatical construction, and punctuation of the rules and regulations as it deems proper.

Rules would become effective 10 days after publication in the code or code supplement, but provision would be made for emergency rules which would become effective immediately upon approval

by the Attorney General or a date less than 10 days following publication in the code or code supplement. Rules and regulations not published in the administrative code after July 1, 1978, would become invalid. The bill draft contains an appropriation of \$70,050 for the initial biennium.

OTHER ADMINISTRATIVE AGENCIES PRACTICE ACT CHANGES

Other changes recommended in Chapter 28-32 include amending Section 28-32-01 containing the definitions for the chapter. The definition for "person" is amended, and new definitions are included for "contested case," "party," and "complainant."

Section 28-32-05 would provide that an agency must serve a copy of the complaint and notice for hearing on a respondent at least 45 days prior to a hearing. A respondent then would have to answer a complaint within 20 days after receipt. Presently, a complaint is required to be issued to a respondent only 20 days prior to a hearing, and a respondent needs only to answer a complaint within three days prior to a hearing.

An additional change allows informal disposition to be made of any contested case, or any issue by stipulation, agreed settlement, consent order, or default, subject to agency approval, unless otherwise precluded by law.

If the action does not involve a complaint or specific named respondent, the section does not apply and public notice of the hearing would be given at least 14 days prior to the hearing by publication in the official newspaper of the county or counties in which the subject matter involved is located.

Section 28-32-09 allows interrogatories in the same manner and on the same notice as in an action pending in district court in addition to the present deposition provisions of the section.

Section 28-32-12 presently requires stenographic notes to be taken of all testimony presented at any hearing before an administrative agency. Questions have arisen in the past as to what is meant by stenographic notes. The amended section therefore provides that testimony could be taken by a court reporter, by a stenographer, or by use of an electronic recording device.

Section 28-32-21 presently states that the

judgment of the district court in an appeal from a decision of an administrative agency may be reviewed in the Supreme Court on appeal in the same manner as any case tried to the court without a jury may be reviewed. The Supreme Court has said its review is the same as in district court where the evidence considered is confined to the record filed with the court after which the decision of the agency is affirmed unless the court finds that: (1) the decision is not in accordance with law, (2) the decision is in violation of constitutional rights, (3) any of the provisions of Chapter 28-32 have not been complied with, (4) the rules of procedure have not afforded the appellant a fair hearing, (5) the findings of fact are not supported by the evidence, or (6) the conclusions and decision of the agency are not supported by its findings of fact. Section 28-32-21 would provide that Supreme Court review be coextensive with that done in district court.

Section 28-32-19 provides that findings of fact made by an agency must be supported by a "preponderance" of the evidence. Currently, a court will be bound by the findings of fact if there is "any evidence" to support the agency decision.

INDEPENDENT HEARING EXAMINERS

The committee believes a respondent to an action should have the right upon request to a hearing examiner who is independent of the agency bringing the complaint against a respondent. The committee considered a bill draft establishing a division of hearing examiners under the Attorney General's office and another bill draft establishing an independent office of hearing examiners. The committee concluded, however, that a full-fledged hearing examiner system is not necessary at this time. The committee therefore recommends a bill draft requiring an administrative agency to inform a respondent in its notice for hearing of the right to an independent hearing examiner assigned by the Attorney General. A respondent would be required to make such a request in writing to the agency and the Attorney General at the time of answering an agency's complaint. The complainant or an administrative agency would also be allowed to request an independent hearing examiner.

The Attorney General would then be charged with assigning a staff attorney to act as a hearing examiner upon request. If a staff attorney is not available, the Attorney General could contract with qualified attorneys not employed by the state or any

of its administrative agencies to serve as temporary hearing examiners at a rate not to exceed \$50 per hour. Such temporary examiners would be required to have demonstrated knowledge of administrative procedures and be free of any political or economic association which would impair their ability to function officially in a fair and objective manner.

The Attorney General's office is charged with promulgating rules to govern the procedural conduct of all hearings held under the bill, which rules would supersede any conflicting agency procedural rules. The powers of the hearing examiners under the bill are set out, and a cash fund from the Attorney General's appropriation is created in a sum not to exceed \$50,000, which would be used to pay the costs incurred pursuant to the bill. The Attorney General is charged with assessing administrative agencies not funded by the general fund for the costs incurred in conducting hearings under the bill. All moneys received would be deposited in the general fund.

APPELLATE REVIEW OF CRIMINAL SENTENCES

The 1973-75 interim Committee on Judiciary "A", as part of Senate Concurrent Resolution No. 4004, recommended a study relating to appellate review of sentences consisting of a review of the sentence length and its justification in addition to the question of whether the sentence was legally permissible.

The concept of appellate review was considered by the committee which drafted the revised criminal code and a motion favoring the concept passed in committee, but no action was taken pursuant to that motion.

Presently, either the defendant or the state may appeal a criminal conviction to the North Dakota Supreme Court as a matter of right. As North Dakota law now stands, a sentencing court may reduce a sentence within 120 days after a sentence is imposed or upon revocation of probation. Also, the Parole Board is to consider the possibility of parole for each prisoner within one year after his admission to the Penitentiary or within six months after his admission to the State Farm. However, the North Dakota Supreme Court presently claims no authority to review a sentence if the sentence imposed is within statutory limits.

The committee believes inequitable sentences do occur within the statutory limits allowed by law, and

that a defendant should have the opportunity to seek review of his sentence by the Supreme Court. The committee also recognizes the possibility of a greatly expanded Supreme Court workload and that some appeals could be frivolous. Therefore, the committee recommends a bill draft which allows a sentence appeal with merit to be heard by the Supreme Court, but provides safeguards against unwarranted appeals. A person convicted of a felony in district court would be allowed to seek permission of the Supreme Court to appeal the sentence imposed. The felony sentence could be appealed alone or in combination with the conviction, but the defendant could not seek consecutive separate appeals of the sentence and conviction. The procedures to be employed in considering whether to hear a sentence appeal would be as provided by Supreme Court rule.

The Supreme Court, in granting or denying permission to appeal a sentence, would consider the nature of the offense, the character of the offender, the public interest, and the manner in which the sentence was imposed, including the sufficiency and accuracy of the information upon which the sentence was based.

The Supreme Court would have the power to deny permission to appeal the sentence, or upon granting permission to appeal, would have the power to substitute for the sentence under review any penalty open to the sentencing court other than probation or conditional release. This would include the possibility of an increased sentence upon appeal. The Supreme Court could also remand the case for any further proceedings that could have been conducted by the trial court prior to imposition of sentence, and for resentencing on the basis of those proceedings.

If the Supreme Court hears an appeal and imposes a sentence in excess of the one initially imposed by the sentencing court, it shall specifically identify the additional aggravating facts considered by it in imposing the increased sentence. The defendant waives any right to plead double jeopardy for the same offense as a result of any revision of the sentence by the Supreme Court. Time served on the sentence under review would be deemed to have been served on the substituted sentence.

LOSS OF CIVIL RIGHTS AND DISQUALIFICATION RESULTING FROM CRIMINAL CONVICTION

Section 12.1-33-02 of the new criminal code provides that: "Except as otherwise provided by

law, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of his rights, political, personal, civil, and otherwise, including the right to hold public office or employment; to vote, to hold, receive, and transfer property; to enter into contracts; to sue and be sued; and to hold offices of private trust in accordance with law."

Senate Concurrent Resolution No. 4004 states that the new criminal code contains provisions dealing with loss of civil rights and other disqualifications resulting from conviction of a felony, and that the provisions are or may be in conflict with numerous other statutory disqualifications throughout the Century Code. The resolution states that all statutory statements of disqualification resulting from criminal conviction should be reviewed and harmonized. The resolution directed the committee to study and revise the substance and form of all statutory statements of loss of civil rights or other disqualifications resulting from conviction of a crime.

Prior to the new criminal code, a sentence of imprisonment in the Penitentiary suspended "all public offices and all private trusts, authority, or power during the term of such imprisonment." A person sentenced to imprisonment for life was deemed "civilly dead."

A study entitled "Prisoners Civil Rights in North Dakota" conducted under a North Dakota Law Enforcement Council grant, and a North Dakota Law Review article based on the study entitled "Reducing Civil Disabilities for Convicted Felons in North Dakota: A Step in the Right Direction" pointed out the statutory inconsistencies as a result of increased rights for prisoners under the new criminal code, thus giving the committee a beginning point for its study.

OCCUPATIONAL LICENSING

Many instances occur under the Century Code where ex-inmates are denied employment opportunities because they are unable to obtain the necessary license from a state licensing agency. Refusal may be exercised through a statute which directly states that a license will not be granted to an individual who has been convicted of a felony or other violation, or refusal may be exercised indirectly by requiring that an applicant be of "good moral character."

The committee believes there should be no blanket disqualification of ex-inmates and, therefore, recommends a bill which provides that a person shall not be disqualified to engage in any occupation, trade, or profession for which a license, permit, or certificate of registration is required from any state agency or board solely because of prior conviction of an offense. However, the bill draft would provide that a person may be denied a license because of prior conviction of an offense if such person has not been sufficiently rehabilitated, or the offense has a direct bearing upon a person's ability to serve the public in a specific occupation, trade, or profession.

In making a determination of sufficient rehabilitation, the state agency or board shall consider: (1) the nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release. Completion of probation or parole, or a period of five years after final discharge or release from any term of imprisonment without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.

If conviction of an offense is used in whole or in part as a basis for disqualification, such disqualification shall be in writing and shall specifically state the evidence presented and the reasons for disqualification. A copy of such disqualification shall be sent to the applicant by certified mail.

A person desiring to appeal from a final decision by a state agency or board shall follow the procedure provided by the chapter regulating the specific occupation, trade, or profession. If no appeal or review procedure is provided by such chapter, an appeal may be taken in accordance with Chapter 28-32.

Professions and occupations affected by the bill are alcoholic beverage retailers; beer and liquor wholesalers; investment dealers, salesmen, and counsels; owners and operators of treatment or care centers for the mentally retarded; insurance agents, brokers, representatives, and consultants; attorneys and counselors at law; weighmasters; abstracters; certified and licensed public accountants; architects; barbers; podiatrists; chiropractors; contractors; electricians; embalmers; hairdressers and cosmetologists; nurses; optometrists; pharmacists;

practitioners of medicine and surgery; plumbers; water conditioning contractors; engineers and land surveyors; dental hygienists; licensed practical nurses; oil, gas, and mineral brokers; real estate brokers and salesmen; real estate subdividers; masseurs and masseuses; physical therapists; watchmakers; dentists; veterinarians; private detectives; detection of deception examiners; psychologists; hearing aid dealers; nursing home administrators; water well contractors; professional soil classifiers; speech pathologists and audiologists; owners and proprietors of foster family care homes or institutions for children and adults; owners and proprietors of day care centers, family day care homes, and child care attendants; owners and proprietors of child placing agencies; owners and operators of maternity homes for unmarried mothers; auctioneers; and operators of poolhalls, billiard rooms, bowling alleys, dance halls, theaters, moving picture shows, and halls owned privately and used for public purposes.

Section 12-48-15

Section 12-48-15 presently requires the warden of the Penitentiary to keep an account for each inmate with 50 percent of an inmate's Penitentiary earnings to be deposited to his account until he has accumulated \$100. All moneys in the inmate's account are to be paid to him at the time of his release, and all monies from any other source received by the inmate are to be kept in his account during his term of imprisonment. The remainder of the inmate's prison earnings over \$100 is to be available to the inmate under the supervision and control of the warden and his designees.

The Penitentiary presently follows a program which allows "long-timers" who have a substantial balance in their accounts to deposit their money in interest-bearing accounts or notes in Bismarck. The committee believes the opportunity for an inmate to deposit his savings in an interest-bearing account should be authorized by statute, and therefore recommends a bill draft prepared by the Director of Institutions' office amending Section 12-48-15.

The bill draft provides that the inmate could authorize the warden or his designee, in writing, to deposit any of his accumulated prison earnings in excess of \$100 in an interest-bearing account in the Bank of North Dakota. The deposits would be under a two signature account requiring the inmate's signature and that of an authorized officer or employee of the State Penitentiary for purposes of

withdrawal. Other income or funds from sources outside the Penitentiary could be directly deposited or invested by the inmate in any bank or other organization unless sentencing stipulations, court orders, the inmate's competency, or other interests of the inmate would require the warden to deposit such income or funds in the Bank of North Dakota account for the inmate's benefit and protection. However, before such a deposit of funds from outside sources is made for an inmate's benefit and protection, the warden must receive the approval of the Director of Institutions and provide a written letter of explanation to the inmate. Funds directly invested or deposited by an inmate, even when assisted by an employee of the Penitentiary, shall in no way make the Penitentiary or its employees responsible for such investments and deposits.

GOOD CONDUCT AND MERIT SENTENCE REDUCTIONS

The Director of Institutions' office requested and provided the basic language for a bill draft providing for good conduct and merit sentence reductions to assist in the control of Penitentiary inmates. The new criminal code repealed the prior good time provisions for Penitentiary inmates, but the enactment of new provisions is believed by the warden to be necessary. The warden cited a problem at present at the State Farm and gave an example of two inmates being sentenced at the same time to the State Farm for six months each. One refuses to work at all and the other works diligently the entire time. Under present circumstances, he said both inmates would still be released on the same day. The warden said, under the former good conduct provisions, the Penitentiary could withhold days of good conduct after repeated refusals to work as punishment until the inmate returned to his duties and began to earn it back. The warden said all inmates sentenced since July 1, 1975, have been sentenced without good conduct time, and the problems at the State Farm have become almost unmanageable as a result.

The bill draft provides for a good conduct sentence reduction of five days per month on a sentence of three months to a year; six days per month on a sentence of one to three years; seven days per month on a sentence of three to five years; eight days per month on a sentence of five to 10 years; and 10 days per month on a sentence of 10 years or more. Obedience to institutional rules and regulations and willing work on assigned jobs would be the basis for a good conduct sentence reduction in any given month. Rules violations or refusal to work would

result in good conduct forfeiture for the month in which the infraction occurred. Serious rules infractions, as defined by rule and regulation, would result in forfeiture of all sentence reductions earned from the date of sentence to and including the month in which the infraction occurs. Forfeiture of good conduct sentence reductions for more than one month would have to be approved by the Director of Institutions. Good conduct sentence reductions would not be withheld for any month subsequent to the month in which an infraction occurs.

Lump sum meritorious conduct sentence reductions for outstanding performance or heroic acts would be available at a rate not to exceed two days per month for those months already served. Such reductions would be made only after written recommendation by the prison staff member who witnessed or has knowledge of the performance or act followed by review and recommendations by the classification committee, recommendations by the warden, and approval by the Director of Institutions. Meritorious conduct sentence reductions would be awarded only for: (1) exceptional quantity and quality of work far beyond normal expectations for the job assignment; (2) beneficial suggestions resulting in substantial savings for the state; (3) acts of outstanding heroism; and (4) acts which protect the lives of employees or other inmates or the property of the institution. Such reductions would not be awarded on a continuing days per month basis beyond the month in which the reduction award is made and would not be granted for any month in which a good conduct sentence reduction was withheld or forfeited.

LOSS OF PENSION RIGHTS

Although other public employees do not lose vested pension rights as a result of a criminal conviction, police officers under Section 40-45-15 and city employees under Section 40-46-16 presently lose their retirement benefits, after having become entitled to retirement, upon conviction of a felony. The committee believes this inconsistency is without any apparent justification and should be removed. Therefore, the committee recommends a bill draft which provides that after any member of a police department or any employee of a city shall have become entitled to be retired, such rights shall not be lost or forfeited by discharge or for any other reason. The amendment is supported by the North Dakota Peace Officers Association and the North Dakota League of Cities.

LABOR UNION OFFICE

Section 34-01-16 provides that no person who has been convicted of any crime involving moral turpitude or a felony, excepting traffic violations, shall serve in any official capacity or as an officer in any labor union or labor organization in this state. No such person, nor any labor union or labor organization in which he is an officer, shall be qualified to act as the bargaining agent or representative for employees in the state. The section now provides that the disqualification terminates whenever the officer is removed or resigns as an officer in such labor union or labor organization. The committee believes the section is too broad in excluding everyone convicted of a felony, even with the exception for traffic accidents, and therefore recommends the repeal of Section 34-01-16. The repeal was supported by the president of the North Dakota AFL-CIO who stated in a letter that: "Section 34-01-16 was passed into law at a time when there was national recrimination against organized labor. Unfortunately, it was class legislation and serves no useful purpose. Federal legislation adequately covers reporting and disclosure of union administration. . . ."

MARRIAGE PROHIBITION

Section 14-03-07 presently provides that marriage by a woman under 45 or by a man of any age, unless he marries a woman over 45, is prohibited if such a man or woman is a chronic alcoholic, an habitual criminal, a mentally deficient person, an insane person, a person who has been afflicted with hereditary insanity or with any contagious venereal disease.

The committee began a study of this section under its study of the loss of civil rights resulting from a criminal conviction and the disqualification under this section of an habitual criminal.

After testimony and discussion concerning the various groups affected by the section, a majority of the committee recommends the repeal of Section 14-03-07. The committee believes, however, the prohibition against marriage by a person with contagious venereal disease should be retained. The committee therefore recommends the amendment of Section 14-03-12 to provide that no marriage license shall be granted if either party is infected with syphilis or other venereal disease in communicable form, and no person who is afflicted shall be entitled to marry.

A majority of the committee believes that the terms "chronic alcoholic," "habitual criminal," "mentally deficient person," "insane person," and a "person afflicted with hereditary insanity," are vague. The terms are not defined and the committee believes the clerk issuing a license is not qualified to make the necessary determinations.

Representatives of the North Dakota Association for Retarded Citizens and the North Dakota Mental Health Association supported the repeal of Section 14-03-07, and asserted there is very little scientific data supporting the contention that retarded parents will produce retarded children. The clinical director of the Heartview Foundation, Mandan, and the director of Catholic Charities, Fargo, also expressed support for the repeal of Section 14-03-07.

LEGISLATIVE PROCEDURE & ARRANGEMENTS

The Legislative Council is directed by Section 54-35-11 of the Century Code to make all necessary arrangements, except for the hiring of legislative employees to work during the regular session, to facilitate the proper convening and operation of the Legislative Assembly. This responsibility, along with the responsibility to study and recommend any necessary changes in legislative procedures, was assigned to the Committee on Legislative Procedure and Arrangements.

The committee members were Representatives Richard Backes, Chairman, Jack Olin, Robert Reimers, Earl Strinden, and Ralph Winge; and Senators Francis Barth, S. F. Hoffner, David Nething, and Ernest Pyle. The committee met three times during the interim.

The report of the Committee on Legislative Procedure and Arrangements was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

INTRODUCTION

The committee's recommendations to the 1977 Legislative Assembly, and the committee's activities, cover almost the entire spectrum of legislative affairs. The committee recommends several amendments to the legislative rules of both houses and to the joint legislative rules, including amendments to require all bills and resolutions to be put on the calendar for second reading and final passage regardless of the nature of the committee report.

The committee also gave serious consideration to the legislative space situation and is taking certain steps to alleviate the crowded conditions at legislators' desks. The committee also reaffirmed its support of the Legislative Internship Program, prepared an agenda for the December Organizational Session to be held December 7-9, 1976, and made plans for appropriate procedures to be used during the 1977 Session, and thereafter, in accordance with the constitutional amendment allowing an 80-day legislative session approved by the voters in September 1976.

LEGISLATIVE INTERNSHIP PROGRAM

The committee reviewed the Legislative Internship Program in effect during the last four legislative sessions. The committee believes the program is a valuable asset to the legislative process, as well as a worthwhile academic experience for the student-interns involved.

Additionally, the committee believes there should be a "caucus intern" for each of the four political caucuses. Therefore, the committee directed the selection of two additional interns to serve as caucus interns. The committee also believes it would be of value to the legislature to have two interns who are not assigned to a particular committee or caucus. Therefore, the committee directed the selection of two interns to act as "floating interns" during the 1977 Session.

The committee also recognized that the interns' 1975 compensation was barely adequate. Therefore, the committee recommends the salaries of legislative interns during the 1977 Legislature be increased from \$600 to \$700 per month.

The committee was cognizant that a director of interns, Mr. Boyd Wright, had been hired during the 1975 Session to oversee the intern program. He was hired as a member of the Legislative Council staff. The committee recommends this procedure again, and authorized the Legislative Council Director to hire a director of interns during the 1977 Legislature.

Under the program as proposed by the committee, there would be 18 interns, including two bill status reporters. These interns would be allocated to the two universities as follows: five from North Dakota State University; six, including the two bill status reporters, from the Political Science Department at the University of North Dakota; and seven from the Law School at the University of North Dakota. Two of the interns will be "floating" interns, two will serve as bill status reporters, four will serve as "caucus" interns, and the remaining 10 will be assigned to specific standing committees.

CONSTITUTIONAL AMENDMENTS TO LEGISLATIVE ARTICLE

At the primary election held on September 7, 1976, North Dakotans approved two constitutional

amendments affecting the Legislative Article of the Constitution. The most important change amended Section 56 to increase the allowable length of a legislative session from 60 "legislative" days to 80 "natural" days. In addition, the amendment provides that days spent in regular session need not be consecutive, and that legislative committees may meet at any time during the biennium. Finally, the section is amended to define a "natural" day as being any period of 24 consecutive hours.

The committee discussed the procedural variants open to the legislature as a result of these amendments. They discussed four major variants as follows:

1. Have the legislature meet for 80 natural days, or some lesser number of days, and then adjourn sine die.
2. Utilize the 80 natural days on a relatively fixed annual basis (e.g., 40 days in each year of the biennium). This variant could involve the introduction of bills which would carry over from the first session to the second session, or in the alternative, could result in legislative rule changes setting up absolute deadlines for the use of time during each "annual" session so that all of that session's business would be completed in the 40-day period.
3. Have the legislature meet for a few "natural" days in the early part of the odd-numbered year (15 to 20 days), during which time bills would be introduced and budgets could be "continued" for one more year. The introduced bills would be referred to standing committees which would hold hearings on them during the interim and the legislature would then meet in the even-numbered year to use the remainder of its natural days.
4. Have the legislature meet for approximately 60 days, using its current deadlines. The remainder of the 80 natural days not utilized would be "saved" by the adoption of a procedure for calling the legislature back into session.

The committee discussed at length the ramifications of each of these major variants, and recommends the fourth variant. Specifically, the committee recommends the 1977 Legislature be governed by the same deadlines which governed the

1975 Legislature, and that it meet for approximately 60 natural days during the months of January, February, and March 1977. During that time, the committee recommends that the legislature adopt a procedure for calling itself back into session to utilize all or some portion of the days which would remain following a recess of the session at the end of the approximately 60-day meeting time. The committee considered several alternate procedures to allow the legislature to call itself back into session, but it did not choose one particular method. The committee believes this choice should be made by the legislature from all available options.

Finally, the committee believes it extremely important that the whole question of the appropriate use of the 80 natural days during each biennium be the subject of intensive study. Additionally, the committee recognizes that the structure of the legislative interim will potentially be subject to change and therefore must be thoroughly studied. Therefore, the committee is recommending a concurrent resolution to authorize a Legislative Council study of the interim structure, and the best possible use of the 80 natural days. This study resolution authorizes the appointment of citizen members to the interim committee.

In addition to its recommendations concerning the interim study and the procedures to be used during the 1977 Session, the committee also recommends that the question of utilization of the 80-day session be referred to the House and Senate Rules Committees at the opening of the next session. The committee thus hopes to give the Rules Committees an opportunity to exercise the flexibility provided by the 80-day session during the 1977 Session if they so desire.

The other change approved by the voters lowered the age qualification of state representatives from 21 to 18 and of state senators from 25 to 18. It also lowered the state residency requirement for legislators from two years to one year.

SURVEY OF LEGISLATORS

At its first meeting, the committee authorized the Legislative Council staff to prepare and circulate a questionnaire to all legislators. The questionnaire was to solicit members' viewpoints on legislative procedures, legislative physical space, the Organizational Session, the Legislative Council staff, the Legislative Internship Program, and legislative employees.

Forty-five percent of the legislators (69 legislators) returned the questionnaire. (A complete summarization of the results of that questionnaire is on file in the Legislative Council office.) Most of the legislators answering the questionnaire believe legislative procedures utilized during the last session were adequate, that the bill introduction deadline should not be changed, and that the date for crossover of bills between houses should not be changed.

The legislative chambers were believed adequate by most legislators responding, and a majority believed the "personal space" allotted them was adequate. However, a very large minority was unhappy with the personal space allotted them. A majority felt that committee room space (for the committees on which they served) was not adequate.

A great majority of the respondents believed the three-day Organizational Session was just the right length. However, they felt more emphasis should be placed on legislative procedural education and issues orientation during the next Organizational Session, and that that education and backgrounding should be provided by the Legislative Council staff. A majority of respondents believed the Legislative Council's professional and clerical staff provided adequate services. A majority also believed the professional staff should not spend more time in standing committees during the session. Most respondents believed the Legislative Internship Program provided a valuable service. A smaller majority felt more interns should be hired.

Most respondents said the selection procedure for legislative employees should stay the same, and that grievances and other personnel problems should be handled by the two Employment Committees. The Majority also thought the number of legislative employees hired during the 1975 Session was just right.

LEGISLATIVE CONTROL OF PENSION PROGRAMS

The committee received written testimony concerning the problems legislative committees and subcommittees had during the 1975 Session in making informed judgments concerning proposed changes to public employees' retirement programs. The committee recognized the legislature's difficulty in responding on an informed basis when proposed changes in retirement programs are suggested during, or immediately prior to, a legislative session.

The proposed changes need to be intensely scrutinized with respect to the drafting of the changes and actuarial impacts.

Therefore, the committee recommends a bill to create a continuing Legislative Council interim committee to study and report on measures and proposals affecting public employees' retirement programs such as the Public Employees Retirement System, the Teachers' Fund for Retirement, and the Highway Patrolmen's Retirement System.

The committee would consist of four House members and three Senators, and would operate the same as other Council committees. The Legislative Council would receive an appropriation of \$20,000 to use in contracting with actuaries to review proposals received by the committee.

The committee is to consider all legislative measures and proposals affecting public employee retirement programs and report its findings to the next Legislative Assembly. A legislative measure affecting a public employees retirement program is not to be introduced in either house unless accompanied by a report from the committee.

The bill carries an emergency clause to allow the committee to become operational, and contract with an actuary if necessary, immediately after the 1977 Session.

LEGISLATIVE RULES AMENDMENTS

During the course of its deliberations, the committee discussed the desirability of carrying out a complete revision of the legislative rules. However, it was decided not to undertake that project during this interim because of the possible constitutional amendments, and the need to respond to those amendments. During the course of its discussion on desirable rules changes, however, the committee did decide to submit several proposed amendments, one of which is submitted without recommendation.

Several of these recommended amendments had their genesis in a survey of the House Rules Committee taken by Representative Myron Atkinson (the Chairman of that committee) towards the end of the 1975 Session. Others are the result of suggestions from individual legislators contained in the general survey of legislators mentioned earlier in this report.

The first recommended rules change is a proposed amendment to Senate Rule No. 39 and House Rule

No. 40 to reflect the membership changes of the House (100 members rather than 102 members) and Senate (50 members rather than 51 members).

The Senate Committees on Education and Social Welfare and Veterans' Affairs are reduced from eight members to seven members. The House Committees on Industry, Business & Labor; State and Federal Government; Social Welfare; and Transportation are reduced from 16 members to 15 members each.

In addition to these changes, House Rule No. 40 is amended to provide that the Appropriations Committee is to be divided into three standing subcommittees in the fields of general government; health and welfare; and education. The committee chairman is to appoint those subcommittees and their chairmen. The House members of the Committee on Legislative Procedure and Arrangements believed this change was desirable to prevent major institutional budgetary decisions from being made by very small subcommittees often containing only members from the district containing the particular institution. A member of the 1975 House Appropriation Committee, Representative Enoch Thorsgard, supported the recommendation.

The next recommendation is that Joint Rule No. 23 be created. That rule would authorize the appointment of a Joint Constitutional Revision Committee consisting of eight members. Four members would be named from each house, and the first-named member from each House would act as co-chairperson.

The rule would require all resolutions proposing amendments, additions, or repeals to the Constitution of North Dakota to be referred to the committee. The committee would report on those resolutions by the same procedures utilized by other standing committees. However, a resolution would be first reported back to its house of origin.

The committee believes that this proposal is desirable in order to ensure that constitutional revision measures recommended by each legislature are coordinated and do not conflict with each other. The recommendation is also in line with the philosophy espoused by the interim Committee on Constitutional Revision.

The next committee recommendation is that Joint Rule No. 14.1 be created. This rule would call for the preparation of fiscal notes on all bills having a fiscal impact (exceeding \$5,000) on counties or cities. The

rule would require a notation of fiscal impact even though specific dollar amounts could not be determined.

The committee heard testimony favoring this proposal from Mr. Arne Boyum, Executive Director of the North Dakota League of Cities. It was noted that a bill to accomplish the same thing failed to pass during the 1975 Session. Mr. Boyum agreed that the preparation of fiscal notes under this proposed rule would not require a concrete statement of dollar amounts. Instead, if the information was not available on a timely basis to complete the fiscal note with specific dollar amounts, the agency would only be required to note that the bill had a fiscal impact, or, in the alternative, to make a **rough** estimate of that fiscal impact. The committee recognized that it would be very expensive to provide a system which would allow fiscal notes on all bills impacting counties and cities to be completed on the basis of specific dollar amounts.

The committee recommends an amendment to Joint Legislative Rule No. 6 to require the chairman of a conference committee representing the house of origin of the bill or resolution under consideration to ensure that conference committee minutes are kept. The committee received testimony supporting this rule from Representative William Gackle. The committee believes the rule is desirable, as it is often necessary following the session to determine why a conference chose a particular course of action. The committee recognizes that conference committee minutes could be as important a tool in determining legislative intent as are standing committee minutes.

The final grouping of proposed amendments is submitted by the committee without recommendation. This proposal would amend Senate Rule Nos. 4, 46, 47, and 54; and House Rule Nos. 4, 47, 48, and 55.

The basic intent of these amendments is to provide that the reports of standing committees need not be adopted by the House or Senate when they are received. Instead, the reports would be read by the Secretary of the Senate or the Chief Clerk of the House at the time the bill comes up on the calendar for second reading and final passage.

If a standing committee report is for amendment, the amendment would be placed on the Sixth Order of Business as is currently the case. Whether the amendment passed or failed, the bill would then be

placed on the calendar and the Clerk or Secretary would announce that the committee report was for "do pass with amendment" and that the amendment passed (or failed) on Sixth Order. During the Fifth Order of Business, the Secretary or Chief Clerk would simply announce that committee reports have been received on certain bills or resolutions, and then announce what the recommendation of the committee was, or announce that the bill was reported out with no recommendation.

The amendments also provide procedures for receiving divided committee reports, including divided committee reports recommending two or more separate sets of amendments to the same bill. Basically, the Speaker or President is directed to place those amendments on the calendar (Sixth Order of Business) in an order based on the number of committee members signing each report. Provision is also made by these proposed amendments for the case in which divided committee reports are signed by the same number of members.

These proposals were drafted at the suggestion of a member of the Committee on Legislative Procedure and Arrangements. They are designed to ensure that every introduced bill is placed on the calendar for second reading and final passage, and that a "yes" vote with respect to each bill or resolution would result in that bill passing, while a "no" vote would result in the bill failing.

ORGANIZATIONAL SESSION

The committee approved the agenda for the Organizational Session to be held on December 7-9, 1976. As has been the case in the past, the afternoons of the first two days will be devoted, to a great extent, to orientation sessions for freshmen legislators. Formal party caucuses are scheduled for Tuesday, December 7, 1976, at 10:15 a.m. Adoption of temporary legislative rules is scheduled for Tuesday afternoon, with adoption of the permanent legislative rules scheduled for Thursday afternoon.

Announcement of standing and procedural committee assignments is scheduled for early Thursday afternoon. Committee preference questionnaires will be distributed by mail to all legislators prior to the Organizational Session to speed the appointment process.

LEGISLATIVE EMPLOYEES

The committee took several steps to strengthen

the procedures followed in the hiring and retention of legislative employees. Most of the recommendations adopted by the committee were suggested by Senator I.E. Solberg, Chairman of the Senate Employment Committee during the 1975 Session.

The committee directed the Legislative Council staff to hire a legislative employment secretary prior to the Organizational Session. This person will be responsible for receiving all employment applications, interviewing prospective employees (prior to the time of appointment of two Employment Committees), staffing the Employment Committees, and reporting on pre-Organizational Session efforts to the Employment Committees. This person was hired by the Legislative Council staff effective November 12, 1976.

The committee also approved the format for a uniform application blank to be used by prospective legislative employees. Copies of this application blank have been mailed to all members of the 1977 Legislature for the use of persons who want to be legislative employees.

Finally, the committee directed the Legislative Council staff to establish a recommended pay level for presentation to the Employment Committees, and directed that legislative employees be paid on a daily basis during the 1977 Session.

This latter change is required primarily to allow usage of the master payroll system used by the Department of Accounts and Purchases. That system must be used if employees are to have federal income tax and Social Security withheld.

LEGISLATIVE PHYSICAL FACILITIES AND EQUIPMENT

The committee made an extensive tour of the legislative wing and considered the possibility of numerous physical changes, including the question of dividing the Large Hearing Room with a folding divider so it could be used as two committee rooms. That suggestion was rejected.

However, the committee did authorize the staff to have another room constructed at the rear of the Large Hearing Room (raised area) similar to the one constructed prior to the 1975 Session because that room will be used for Legislative Council staff purposes during the 1977 Session.

The committee also considered requests for improved press facilities. The committee recom-

mends that the press use the room immediately adjacent and to the west of the Associated Press rooms; and in addition that Room 204 remain a press room. Further, the committee directed the Legislative Council staff to arrange for the carpeting and temporary dividing of Room 204 into several press offices.

The committee also directed the staff to notify all agencies occupying space used by the 1975 Legislature to move prior to the 1976 Organizational Session, and to remain out of that space until the recess or adjournment of the 1977 Legislature.

The committee recognizes that physical space in the chambers for each legislator (his or her desk area) is extremely crowded. Therefore, the committee directed the staff to arrange for construction of personal storage shelves (for all House and Senate members) in the room immediately to the south of the Senate Chambers which is accessible from the east entrance to the Senate Chambers.

The committee, in response to a request from the broadcast media, authorized the staff to contract for installation of an audio outlet system at the back of each chamber. In addition, the committee authorized wiring to be done to allow the floor leaders and presiding officers to hear the audio from the floor of each house while they are in their offices.

The audio outlets at the back of each chamber will be utilized by the broadcast media, but could also be utilized by individual members to record portions of the floor sessions concerning which they might have a particular interest.

The committee, noting that it was unsightly and created a personnel traffic hazard, has directed that no beverage dispensing machines be located in Memorial Hallway. Instead, the beverage dispensing machines usually located in Memorial Hallway will be located on the ground floor of the legislative wing.

Upon recommendation of the Legislative Council staff, the committee authorized the staff to contract with IBM Corp. for certain data processing programs to allow the staff to use computer-assisted bill typing during the 1977 Session. The staff is prepared to do computer-assisted bill typing during the 1977 Session, but will not, in accordance with committee authorization, take full responsibility for enrolling and engrossing until the 1979 Session.

MISCELLANEOUS MATTERS

The committee considered a request from the Bureau of Governmental Affairs-University of North Dakota for authorization to put on a freshman orientation program prior to the 1977 Session. Since the respondents to the legislator survey had indicated that orientation should be stressed more during the Organizational Session, the committee authorized the bureau to create a program to be held on December 5-6, 1976. The program, entitled Freshman Legislators' Workshop, will be held in the Auditorium of the Highway Building. It will begin at 7:00 p.m. on Sunday evening, December 5, 1976, with registration from 4:00 to 7:00 p.m. that day. The workshop will be "issues" oriented and will discuss fiscal affairs, local government, education, and the recent constitutional amendments.

The committee considered the use of volunteer help during legislative sessions. It was decided that volunteer help could cause problems, and should not be authorized except on a case-by-case basis. The committee also considered a request by the Girl Scouts of America in Bismarck that four Girl Scouts be used during the session to help them fulfill requirements under a certain scouting program. The committee specifically directed that those four Girl Scouts be placed under the direct supervision of the Director of Interns who will see to their appropriate utilization during a portion of the legislative session.

The committee was concerned that high school classes and other persons visiting the legislature during the session were not being accorded an appropriate view of the process. Therefore, they often left the Capitol without a clear understanding of what was going on. To help remedy this situation, the committee directed the staff to employ a person on a part-time basis to act as a tour guide and give daily briefings prior to the start of tours for high school classes and other interested persons. If the class schedule will allow, the person would also do a "debriefing" following the morning tour.

Other miscellaneous items approved by the committee included an authorization to update the legislative brochure published by the Legislative Council staff, and also to update the legislative display on the ground floor of the legislative wing. The committee authorized the staff to include the biennial membership fee for the National Conference of State Legislatures in the Legislative Branch Budget. The committee heard testimony on the use of "scannable" forms in the production of the daily journals, and authorized a test usage of such forms during the Organizational Session.

Finally, the committee heard testimony that witnesses before standing legislative committees should be allowed to sit down if they so chose. The

committee recommends that all standing committee chairman offer the opportunity to witnesses to sit down to testify.

NATURAL RESOURCES

Senate Concurrent Resolution No. 4006 directed the Legislative Council to study the law of water rights and appropriation. The resolution directed special emphasis on the effect of large-scale industrial appropriations of water on the state's water resources; conflicts between agricultural appropriation, industrial appropriation, and recreational appropriation; water permit procedures; and conflicts in the water law.

Senate Concurrent Resolution No. 4042 directed the Legislative Council to study the development of alternative energy sources to advise the 1977 Legislature on energy development.

Senate Concurrent Resolution No. 4055 directed all state agencies, institutions, or departments utilizing or managing land to report current and projected land use under their management to the Legislative Council so it could study the validity of the state holding land in expanding urban areas; the setting of priorities for the use of state land; the development of a plan for disposal and relocation of state land and facilities; and the sale of state land by negotiation or bid.

These studies were assigned to the Legislative Council's Committee on Natural Resources, whose members were Representatives A. G. Bunker, Chairman, Garry Bye, Lawrence Dick, Eliot Glassheim, Brynhild Haugland, Dean Hildebrand, Clarence Jaeger, Marjorie Kermott, Clarence Martin, Edward Metzger, Albert Rivinius, Richard Rocheleau, and Earl Rundle; and Senators Frank Conlin, Stella Fritzell, J. Garvin Jacobson, Shirley Lee, Kenneth Morgan, George Rait, and Rolland Redlin.

The report of the Committee on Natural Resources was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

WATER APPROPRIATION STUDY

The committee received substantial testimony from the state engineer and other interested parties. The testimony indicated that North Dakota's water

law, while it could stand some revision, is pretty good compared to other states.

The committee invited the state engineer and the State Water Commission to submit recommendations for water law changes. After reviewing several draft proposals, the committee decided to concentrate on water appropriation and the granting of water permits.

The committee's discussion culminated in a bill which amends Chapter 61-04, relating to appropriation of water. The committee recommends:

1. Section 61-04-01 be amended to require all petitions, reports, surveys, and other documents be filed in the Water Commission office instead of the state engineer's office. This change is in keeping with the desire to remove confusion between the authority of the Water Commission and the state engineer. The office will be known as the State Water Commission, with the state engineer the office's managing director.
2. A new section to define, among other things, the various types of beneficial uses to which water may be put. "Beneficial use," "domestic use," "fish, wildlife, and recreational use," "industrial use," "irrigation use," "livestock use," and "municipal use" are among the terms defined.
3. A new section to clarify that water may be appropriated only for a beneficial use — which is the basis, the measure, and the limit of the right to use water. A similar provision is found in current Section 61-01-02, which the committee recommends be repealed. The committee believes the material is better placed in Chapter 61-04 on water appropriation.
4. Section 61-04-02 be amended to clarify that a water permit is required, with certain exceptions, before appropriating any waters of the state. This change is primarily a clarification in terminology.

The section would also be amended to provide that water appropriators for domestic,

livestock, or fish, wildlife, and other recreational uses, need not secure a water permit prior to appropriation. However, such appropriators may apply for a water permit to clearly establish a priority date. This change would settle conflicts in determining the actual priority date for water users who are not required to secure a water permit.

The section would also be amended to provide that an applicant for a water permit to irrigate land need not be the land's owner. To make a farm lease worthwhile, the tenant may be required to irrigate the land. There is now uncertainty whether such a applicant must be the landowner.

5. Section 61-04-03 be amended to make the requirements of a water permit application subject to the rules and regulations established by the state engineer. Some of the specifics of the section have been removed, and replaced with a general requirement of compliance with the state engineer's rules and regulations.

The section would also be amended to allow the state engineer to require additional information on any water permit applications, not just those over a certain size. The bill deletes provisions allowing an applicant to apply for more water than can be beneficially used.

The changes to this section allow the state engineer more flexibility in administration and in demanding information for all types of water permit applications.

6. Section 61-04-04 be amended to correlate with the amendments to Section 61-04-03 by giving the state engineer flexibility in determining the form and completeness of water permit applications. The section requires the state engineer to return unsatisfactory permit applications within 30 days of receipt, and to give the applicant 60 days to refile the application and maintain the original priority date.

The section would also be amended to allow an applicant to amend the permit application any time prior to the commencement of an administrative action by the state engineer.

These amendments are designed to increase

flexibility in the permit application process for both the state engineer and the applicant. These changes coincide with the committee's desire to make the water appropriation process subject to the management of the state engineer and the State Water Commission. The committee believes the management of the state's water supply by regulations of the state engineer and the State Water Commission is preferable to stringent statutory criteria.

7. Section 61-04-05 be amended to make the service of notice and publication of notice of the filing of an application for a water permit subject to the state engineer's regulation. This makes it easier for the applicant to learn the precise requirements of the notice provisions. Now, the law only refers to notice being given in the manner prescribed by the state engineer.

The section would also be amended to require the publication of notice of the filing of a permit application in a newspaper of general circulation in the area of the proposed appropriation site. This change is designed to reduce the amount and cost of publishing notice, by limiting the publication to the area of the proposed appropriation site rather than the stream system, which is difficult to define.

8. Section 61-04-06 be amended to require the state engineer to conduct a hearing on an application for a water permit. The section would also direct the state engineer to issue a water permit if he finds all of the following:

- a. The rights of a prior appropriator will not be unduly affected.
- b. The proposed means of diversion or construction are adequate.
- c. The proposed use of water is beneficial.
- d. The proposed appropriation is in the public interest. In determining the public interest, the state engineer must consider all of the following:
 - (1) The benefit to the applicant resulting from the proposed appropriation.
 - (2) The effect of the economic activity

resulting from the proposed appropriation.

- (3) The effect on fish and game resources and public recreational opportunities.
- (4) The effect of loss of alternate uses of water which might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
- (5) The harm to others resulting from the proposed appropriation.
- (6) The intent and ability of the applicant to complete the appropriation.

The above criteria are designed to clarify the considerations of the state engineer in ruling on a water permit application. They provide issues for the applicant and the state engineer to discuss at the hearing, as well as a basis for appeal of the state engineer's decision denying a water permit.

The section also provides that the Water Commission, by its rules and regulations, may reserve to itself (rather than to the state engineer) final approval authority over any, or certain categories of, water permit applications. This amendment recognizes the current procedure where decisions on applications for major industrial water permits which have a far-reaching impact on state development are based on Water Commission recommendations. The reasoning is that the commission is an appointed body representing diverse areas of the state, as well as diverse opinions on the advisability of granting a particular water permit.

9. Section 61-04-06.1 be created to establish the order of priority in granting permits where there are competing applications for water from the same source and when the source is insufficient to supply all applicants. The order of priority is:
 - a. Domestic use.
 - b. Municipal use.
 - c. Livestock use.
 - d. Irrigation use.
 - e. Industrial use.

f. Fish, wildlife, and other outdoor recreational uses.

This section was moved, with some changes, from another section of the Code because the committee believes the priority order belongs in the appropriations chapter. The priority order has been changed by adding the term "municipal use," which is the use of water by a municipality for domestic purposes. In addition, the uses of water for irrigation and industry have been separated, with irrigation holding the higher priority. One of the principal conflicts in granting water permits is that the current priority list includes irrigation and industrial uses at the same priority level. The committee believes irrigation should be at a higher priority than industrial use of water.

10. Section 61-04-06.2 be created to provide that the state engineer may issue a conditional permit with certain limitations or conditions attached. The state engineer may issue a permit for less than the amount of water requested, but may not issue a permit for more water than can be beneficially used for the purposes stated in the application. He may require modification of the plans for the appropriation, and may issue a permit subject to the terms, conditions, restrictions, limitations, and termination dates considered necessary to protect the rights of others and the public interest. The conditions or limitations attached must be related to matters within the jurisdiction of the state engineer. However, all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

This section allows the state engineer to effectively manage the state's water resources. The ability of the state engineer to issue water permits with termination dates is quite important because permits are currently issued in perpetuity. The committee believes terminable water permits are necessary in some circumstances to protect the public interest and safeguard the state's water resources.

11. Section 61-04-06.3 be created to provide that priority in time shall give the superior water right. The priority of a water right acquired under the chapter dates from the filing of an application with the state engineer, except for

those applications for domestic, livestock, or fish, wildlife, and other recreational uses, which do not require a permit. The latter types of water uses acquire priority from the date the quantity of water in question was first appropriated to beneficial use.

The appropriation priority does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of stream flow, the lowering of a water table, artesian pressure, or water level, by later appropriators if the prior appropriator can reasonably acquire his water under the changed conditions.

Most of this section was moved to Chapter 61-04 from another chapter. The committee believes the above provision on prior appropriators is necessary for the state engineer to effectively manage the state's water supply. Without such a provision, a prior appropriator with a highly inefficient means of capturing water could tie up and waste an entire water source which could be effectively used by other appropriators in the public interest.

The section recognizes that the state's water resources are limited, and that they should be used to the greatest extent possible consistent with the public interest. The section would reverse the effect of a North Dakota Supreme Court ruling that a prior inefficient appropriator must be compensated by a later more efficient appropriator whose appropriation resulted in diminishing the prior appropriator's water supply.

12. Section 61-04-07 be amended to require the state engineer to reject applications which do not meet the criteria specified in section eight of this report (Section 61-04-06). The existing language on appeals to the district court contained in this section, is moved to new Section 61-04-07.1.
13. Section 61-04-07.1 be created to allow the Water Commission to promulgate rules and regulations authorizing an appeal to the commission concerning either conditions placed on a conditional water permit or the partial or total rejection of an application by the state engineer. In the absence of such promulgation, any permittee or applicant may appeal a state engineer's decision direct-

ly to the district court. If such rules are promulgated any aggrieved permittee or applicant may appeal a Water Commission decision to the district court. If there is no appeal, the decision of the state engineer or of the Water Commission is final.

This section allows an administrative appeal to the Water Commission from a decision of the state engineer. This change is in accord with the prior change allowing the commission to make the decisions on certain categories of water permit applications. It also recognizes that the Water Commission is the actual governing body with the power to overrule a decision of the state engineer.

14. Section 61-04-09 be amended to prohibit the state engineer from issuing a perfected water permit until the water works have been inspected and shown to be properly and safely constructed. Following the inspection the state engineer is directed to issue a perfected water permit setting forth the actual capacity of the works and the limitations or conditions stated in the conditional water permit.

In addition, the section deletes the provision allowing the state engineer to accept the inspection report of an hydraulic engineer if the water works are below a certain size. The state engineer must arrange to have all works inspected. This section recognizes that the state engineer cannot personally inspect all water works constructed in the state.

15. An amendment to Section 61-04-14 providing that a conditional water permit would be deemed abandoned and void if no request for a renewal is received by the state engineer within 30 days after the date the permittee informed the period for applying water to a beneficial use has expired. This change recognizes that management of the state's waters requires water users to proceed diligently to apply their water to beneficial use. Otherwise, the state engineer may grant a permit to other interested applicants.
16. Section 61-04-15 be amended to allow any conditional or perfected water permit to be assigned only upon approval of the state engineer. Any conditional or perfected water permit could be transferred to any parcel of land owned by the holder of the permit when the transfer is approved by the state

engineer. The amendment deletes a provision allowing water permits held by state agencies to be temporarily assigned or transferred for any use under conditions approved by the Water Commission.

Current law allows irrigation water permits to be assigned with the approval of the state engineer. The amendment allows any water permit to be assigned with the approval of the state engineer, which correlates with the state engineer's management responsibility over water resources. The amendment would also cause water permits held by state agencies to be categorized as any other water permit in the management process. The section maintains the provision that transfer of title to land carries with it all appurtenant rights to use water for irrigation purposes.

17. Only the phraseology of Section 61-04-17 be changed. The section now requires that the owner of any works for water storage or diversion which contain water in excess of needs for beneficial use must deliver the surplus water, at reasonable rates for storage or carriage, to the parties entitled to the water's use. If an owner refuses to deliver the water as required by the state engineer, he may be compelled to do so by the district court of the county in which the surplus water is to be used.
18. Section 61-04-22 be amended to update its terminology. It now provides for the abandonment and forfeiture of prescriptive water rights where they were not claimed within two years after July 1, 1963. This date would be changed to July 1, 1965. Appeal provisions are deleted.
19. Section 61-04-23's phraseology be amended. It now provides for the forfeiture of any permitted water appropriation which is not applied to the beneficial use cited in the water permit for three successive years, unless that failure is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause. Any water permit held by a state agency may only be forfeited by the Legislative Assembly.
20. The phraseology of Section 61-04-24 be changed. It now provides that the state engineer must notify the permit holder when he intends, after a hearing, to declare a for-

feiture of water rights for appropriations which are not applied to their beneficial use for three successive years without good cause.

21. Section 61-04-25 be amended to allow the Water Commission to promulgate rules and regulations authorizing an appeal to the commission from a decision of the state engineer forfeiting a water permit. Any permittee would be allowed to appeal a decision of the Water Commission, or of the state engineer if no appeal to the commission is authorized, to the district court of the county in which the appropriation site is located. A signed statement by a permit holder declaring an intent to abandon a water right will be sufficient for the state engineer to declare the water right forfeited without further proceedings.

The section clarifies the appeal procedures from a decision forfeiting a water right, and relieves the state engineer from proceeding with a formal hearing when the permit holder has no intention of contesting the forfeiture.

22. Section 61-04-29 be created giving the state engineer full power and authority to institute, maintain, and prosecute, in any court of this state or in federal court, all court actions necessary to enjoin the unauthorized use of water, to enforce his or Water Commission orders, or to otherwise administer Chapter 61-04.

The section specifies the state engineer's authority to proceed with court action necessary for the management and protection of the state's water resources. Similar authority could be implied from current law making the state engineer the administrator of the water permit procedure, but this section removes any doubt.

23. Section 61-04-30 be created to provide penalties for violations of the chapter. Using water without a permit, violating an order of the state engineer, or knowingly making false statements in a declaration of existing rights is denominated a Class A misdemeanor.

The only other penalty in the chapter is for using works declared by the state engineer to be unsafe, which is classified as a Class A

misdemeanor. The committee believes the additional penalties in this section are required as deterrents to interfering with the duty of the state engineer to manage the state's water resources.

The proposed bill repeals the following sections:

1. Section 61-04-16 — use of referees in water lawsuits. This is unnecessary because court rules provide for the use of referees.
2. Section 61-14-05 — use of water for a purpose other than that for which it was appropriated or the change of place of diversion, storage, or use. This is unnecessary because Section 16 of the bill provides for the transfer and assignment of water rights with the approval of the state engineer.
3. Section 61-01-01.1 — priority of water rights and definitions. This is included in the bill draft and renumbered.
4. Section 61-01-02 — right to use water and priority in time. This is included in the bill draft and renumbered.

The committee heard testimony about the diminishing water supply in Nebraska caused by poor management. The committee's amendments to the water appropriation law are designed to provide for the effective management of the state's water resources by the state engineer, and to prevent severe water shortage due to lack of management or unduly restrictive statutes.

The committee discussed amending the water appropriation chapter to require the state engineer, or the Water Commission, to approve or disapprove all water permits within one year of receipt of the application. Testimony indicated that the state engineer was not concerned over a time limit for action, but, if it became impossible for the engineer to meet a one-year deadline, the applicant would be denied a permit and would lose the early priority of his original application date. The committee believes it is preferable not to require the state engineer or the Water Commission to act within a certain prescribed time, because that requirement could result in the loss of priority to early applicants.

ALTERNATIVE ENERGY STUDY

The committee's review of alternative energy

sources for heating and cooling buildings included testimony on nuclear, solar, and wind energy. There was testimony from governmental employees on the feasibility and development of nuclear energy, from individuals who have constructed solar or wind energy devices for their personal use, and from representatives of industry who favored the manufacture of alternative energy devices in North Dakota.

The committee heard a great deal of testimony on this study and reviewed bills on the subject at most of its meetings. The bills encouraged the research, development, and utilization of alternative energy devices. They included income tax credits, the ability to amortize the cost of alternative energy devices, property tax deductions, cash refunds from the general fund, the creation of the office of energy coordinator within the Governor's office, providing low interest loans from the Bank of North Dakota for the installation of alternative energy devices, providing grants on the recommendation of the North Dakota Academy of Science for research and development of alternative energy systems and devices, solar easements, and requiring an alternative energy feasibility study for all state building construction projects.

The committee rejected the bills relating to an income tax credit and amortizing the cost of alternative energy devices because federal legislation is pending on the subject. In addition, the refund provisions of the bills were at least prospectively unconstitutional as a donation from the state to an individual. Some committee members do not favor granting business landlords a double benefit of normal depreciation of buildings and the amortization of alternative energy devices.

The committee rejected the bill on a property tax deduction because there is a similar law which could be amended to include forms of alternative energy in addition to solar energy, and because the existing law has had almost no use by taxpayers since its enactment. In addition, the committee believes the property tax reduction might result in a revenue loss to political subdivisions and a resulting increase in mill levies.

The committee rejected the bill on a cash refund from the general fund for the installation of alternative energy devices because it believes it to be an unconstitutional donation by the state to an individual.

The committee rejected the bill relating to low interest loans from the Bank of North Dakota, because of testimony from the Bank indicating that security on such loans would be difficult to acquire, the rate of interest on the loan would be lower than the five percent provided in the bill because of insurance premiums on securing such loans, and solar or wind energy are untried and unproven in North Dakota.

The committee rejected the bill on grants to individuals for research and development of alternative energy devices because it believes the grants would be an unconstitutional donation by the state to an individual. In addition, written comments from the North Dakota Academy of Science did not definitely favor the bill, even though the academy was equipped to perform the functions required of it by the bill.

The committee rejected the bill on alternative energy feasibility studies in state buildings. Testimony by the state construction superintendent indicated the bill was unnecessary because all project bids are presently based on saving energy and reducing costs over the life of the building.

Even though the committee did not approve bills providing governmental encouragement for alternative energy devices, it did approve a bill specifying solar easement requirements. The committee recognizes that individuals or companies who desire to use solar energy should be able to secure the right to receive the sun's rays. It was noted that a solar easement could probably be acquired under existing easement law. However, the committee believes such easements should be specifically provided for.

The solar easement bill provides that all solar easements must be in writing and are subject to the same conveyancing and instrument recording requirements as other easements. The bill provides that the contents of a solar easement shall include, but not be limited to, the following:

1. The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.
2. Any terms or conditions under which the solar easement is granted or will be terminated.
3. Any provisions for compensation of the owner

of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation of the owner of the property subject to solar easement for maintaining the easement.

The bill defines a solar energy device as a device, mechanism, or apparatus designed to receive the direct rays of the sun and convert those rays into heat, electrical, or other forms of energy for the purpose of providing heating, cooling, or electric power.

The committee's approval and recommendation of the bill creating the office of energy coordinator recognizes that energy resources, whether from familiar fossil sources or alternative sources, and energy conservation, are important to the citizenry of North Dakota, and require a governmental agency to coordinate their orderly development, including the procurement of any available federal funds to further that effort.

The recommended bill provides that the energy coordinator: be appointed and serve at the pleasure of the Governor, be educated in engineering or one of the physical sciences, and have administrative experience. The energy coordinator may employ other persons needed to carry out the requirements of the bill and may fix their compensation within the limits of legislative appropriations.

The recommended bill provides that the duties and responsibilities of the energy coordinator are to:

1. Act as a clearinghouse for North Dakota citizens, private businesses, and government agencies by gathering, maintaining, and disseminating general and technical information on alternative energy sources and energy conservation techniques and their utilization.
2. Coordinate programs for alternative energy source data gathering in North Dakota.
3. Coordinate efforts and programs on energy conservation and alternative energy sources with other state agencies and institutions, other states, and federal agencies.
4. Promote cooperation among and between North Dakota business, industry, agriculture, and the public related to energy

conservation and the use of alternative energy sources.

5. Develop, in cooperation with the Department of Public Instruction, educational programs on energy conservation and alternative energy sources for use in schools and by the public.
6. Serve as advisor to the Governor and all state agencies, commissions, departments, and divisions on energy conservation and development matters.
7. Coordinate and appraise energy conservation and development programs and policies in the state as they affect all branches of government.
8. Provide liaison in energy matters with:
 - a. The federal government and its agencies.
 - b. Other states and their agencies.
 - c. Canada or any of its provinces and their agencies.
9. Cooperate with the federal government or any of its agencies to conserve energy and develop natural resources for energy production; apply for and receive federal funds for the conservation and development of energy; and approve the allocation of those funds after determining that sufficient state matching funds will be available to meet the state's share of project costs.

The committee recommends an appropriation of \$150,000 to administer the office of energy coordinator during the next biennium.

STATE LAND DISPOSITION STUDY

All state agencies owning land reported to the committee on their respective holdings. The reports indicate that the state, through its agencies, owns 809,187.29 acres of land in North Dakota, with 50,055.93 acres within two miles of cities with a population of 2,500 or more. Ninety percent of both those acreages are under the control of the Board of University and School Lands, which has specific statutory authority for disposition of lands under its control, and does not require legislative action for the sale or leasing of those lands. The reports indicate that current and projected land use of the land

owned by state agencies is in accordance with the statutory authority of the respective agencies.

The committee does not believe separate policies are needed for land use priorities, or for plans of disposition and relocation of state-owned land and facilities. The committee believes, however, that an orderly procedure for the sale of state lands, when that sale requires legislative action, is necessary.

The committee recommends a bill which provides such a procedure, and places the principal responsibility for determining the appropriateness of a sale, including the price, on the Commissioner of University and School Lands. The bill amends Chapter 15-02 by adding a new section on additional duties of the Commissioner of University and School Lands. The new section provides that in all cases where the Attorney General is required to review legislative bills dealing with the sale, lease, or exchange of state land, the commissioner shall provide the Attorney General with an opinion on whether the sale, lease, or exchange in question is consistent with the highest and best use of the land involved, and with an appraisal of the market value of the land.

The commissioner is also directed to make a determination of the highest and best use of all lands owned by the state and its instrumentalities. This determination is to be amended from time to time. The term "highest and best use" is defined as the use of a parcel of land which will most likely produce the greatest benefit to the state and its inhabitants, and which will best meet the needs of the people. In making the determination of highest and best use, the commissioner is directed to include soils capability, vegetation, wildlife use, mineral characteristics, public use, recreational use, commercial or industrial use, aesthetic values, cultural values, surrounding land use, nearness to expanding urban areas, and any other resource, zoning, or planning information relevant to the determination.

The bill also amends Section 54-01-05.3 to require the Attorney General to include in his report to the legislature on a bill for the sale of state land, the commissioner's opinion on the highest and best use and market value of the land. The bill would prohibit the sale, lease, or exchange of any state-owned land for a use other than that determined by the Commissioner of University and School Lands as the highest and best use, or at a price other than the appraised value determined by the commissioner.

The committee believes this bill will resolve the

conflicts and uncertainty involved with the sale of state land by legislative action. The bill provides procedures and criteria for such sales which have not been present in the past.

The committee also believes that land under the control of the Board of University and School Lands should not necessarily be sold. The lease of such lands could be more beneficial to the state. The problem with current procedure for the lease of university and school lands is that Section 161 of the North Dakota Constitution limits the leasing of such lands to five years and for the purposes of pasturage and meadow use only. The commissioner said that if the Board of University and School Lands is allowed to lease the land under its control for any purpose, the land can be leased for uses which produce far more revenue than do pasturage and meadowing. Also, the land can be leased for multiple purposes at the same time, if those purposes are compatible.

The committee recommends a concurrent resolution to amend Section 161 of the Constitution to provide that lands under the control of the Board of University and School Lands may be leased for such purposes, periods, and upon such terms and conditions as the legislature may provide. If the

lease for such lands is for grazing or agricultural purposes, the lease may be for a maximum period of 10 years, as provided in the Enabling Act.

WEATHER MODIFICATION

The committee heard testimony on the financial difficulties involved in establishing weather modification authorities within the limited mill levy authority provided for that purpose. The testimony indicated that there would be no need for an increase in that mill levy authority if the boards of commissioners of water management districts are allowed to participate in weather modification activities, and therefore use water management district funds for weather modification.

The committee believes that weather modification is not an exact science, but that North Dakota, being a semiarid land, is in need of all available moisture. As a result, the committee recommends a bill which allows the boards of commissioners of water management districts to participate in weather modification activities in conjunction with county weather modification authorities, the North Dakota Weather Modification Board, or other governmental authorities.

POLITICAL SUBDIVISIONS

The Committee on Political Subdivisions was assigned two study resolutions, and was requested to study the feasibility of establishing a state housing authority by the Chairman of the Legislative Council. House Concurrent Resolution No. 3893 directed a study of the effects of the elimination of the doctrine of governmental immunity. Special emphasis was to be given to establishing monetary limitations on liability and the financing of alternative methods of limiting governmental immunity, including the feasibility and desirability of state financing of liability protection plans. House Concurrent Resolution No. 3071 directs a study of the feasibility of alternative methods of assessment and taxation to ensure equitable taxation and fiscally sound political subdivisions, including examination of taxation of only real estate transfers, state and local revenue sharing, and local sales or income taxes. In addition, the committee was requested by the chairman to study the need for a statewide housing authority and to study ways of ensuring the best administration and funding of housing programs on both the state and local levels.

In the course of the committee's studies, the committee authorized two computer surveys regarding the effect of various revenue sharing proposals. The committee also authorized a computer analysis of responses to a questionnaire sent to a select sample of all types of political subdivisions across the state. These computer studies allowed the committee to examine the effects of elimination of governmental immunity and to project the probable effects of revenue sharing.

Committee members were Senators Chuck Goodman, Chairman, Herschel Lashkowitz, Ernest Sands, and Frank Shablow; and Representatives Ralph Dotzenrod, Leonard Fagerholt, Stephen Farrington, William Kretschmar, Reuben Metz, Alvin Royse, and Janet Wentz.

The report of the Committee on Political Subdivisions was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

STATEWIDE HOUSING AUTHORITY

Once the interim had commenced, Senator Robert Melland, Chairman of the Legislative Council, assigned the Committee on Political Subdivisions a study to determine whether there is any need for a statewide public housing authority. The purpose of this study was to ensure the best administration in funding of housing programs on both the state and local levels.

The committee first examined problems regarding federal housing programs within the state. Since there is presently no state housing authority, there was some question regarding which state agency should administer Section 8 Existing Housing Programs through the Department of Housing and Urban Development (HUD). The committee invited representatives of HUD, the Governor's office, the State Planning Division, the Social Service Board, and local housing authorities to clarify the housing situation in North Dakota. As a result, the committee adopted a resolution:

1. Narrowing the scope of study to a state finance housing authority;
2. Recognizing the administration of Section 8 Existing Housing Program through the Social Service Board; and
3. Requesting further testimony from the South Dakota Housing Development Agency.

The committee invited Mr. Robert T. Hiatt, Executive Director of the South Dakota Housing Development Authority, to testify before the committee regarding the effectiveness of that agency in South Dakota and the desirability of establishing a statewide housing authority. Mr. Hiatt outlined South Dakota's authorizing legislation, the problems involved in setting up an administrative agency such as this, and suggestions to aid the committee. The committee also received testimony from various representatives of the banking industry, savings and loan associations, and other representatives of financing interests. The staff, together with Bank of North Dakota personnel and bonding counsel, drafted a proposal which the committee examined.

Although the committee voted not to recommend a bill draft to establish a statewide housing finance authority, the committee takes no position regarding such a proposal. The committee did not have an adequate time within which to study and examine the proposed bill drafts and the committee had several questions which went unanswered, such as the effect of such an authority on real estate values, financing interest rates, and other considerations. The proposed bill draft had far-reaching effects which could not be easily altered without risking the marketability of the tax exempt bonds such an authority would be authorized to issue. Moreover, there is presently a state planning office, a state housing officer, approximately 60 local housing authorities, eight regional housing councils, a state housing association, the federal HUD programs, and other federal programs. In light of the number of governmental agencies handling this problem, the committee thought it was questionable whether there is a need for establishing another state agency for this purpose. There are also unresolved legal problems regarding establishing a statewide housing authority within an existing state agency. Since establishing a state finance housing authority would require the state to make a moral commitment regarding the issuance of these tax exempt bonds, the committee questioned pledging the credit of the state for such a purpose even though the pledge is only a moral, not a legal, commitment. Although the committee is not opposed to programs to meet the housing needs of low and moderate income persons, the committee feels this is not the method by which these persons can be helped, and on this basis, the committee makes no recommendation regarding a state housing authority.

GOVERNMENTAL IMMUNITY

The doctrine of governmental immunity developed in England during the era when the King became the leader of the English church and the feudal immunity he enjoyed became merged with the philosophical idea of the divine right of kings. This produced the initial idea of governmental immunity where "The King can do no wrong."

The concept of governmental immunity was brought to the United States through the English common law, and when the states gained their independence, the doctrine of governmental immunity was retained, except that immunity was given not only to the sovereign — the federal and state governments — but also to the different agencies within the governmental structures — political subdivisions.

The doctrine of governmental immunity in North Dakota is of judicial origin. The courts originally held that political subdivisions were not liable for torts because governmental corporations were in the process of settlement. Because a substantial judgment against a sparsely populated town or township could cause financial distress and retard further development in settlement, it was thought appropriate that each individual should suffer rather than the public.

At first the Supreme Court based governmental immunity for political subdivisions upon common law, but later it relied upon an interpretation of the State Constitution to support this position. In effect, the court extended the immunity of the state to political subdivisions on the theory that since political subdivisions are creations of the state, the state's immunity is also extended to political subdivisions because the political subdivision is governing in lieu of the state's governance.

However, the State Constitution does not specifically provide for governmental immunity for either the state or its political subdivisions:

"All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right injustice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the Legislative Assembly may, by law, direct." (N.D. Constitution Section 22.) (Emphasis Added)

In *Kitto v. Minot Park District*, 224 N.W.2d 795 (N.D. 1974), the court reversed its earlier position and held that the judicial doctrine of governmental immunity as it applied to political subdivisions was abolished and that political subdivisions may be liable for injuries to individuals caused by the negligence, wrongful acts, or omissions of their agents and employees.

The court retained no distinction between the traditional concepts of governmental and proprietary functions, but it did hold that certain acts which go to the essence of government should not be subject of judicial second-guessing by the constant threat of litigation. These are acts which are discretionary in nature, i.e., an act which an officer of a political subdivision may do pursuant to

his authority, and include acts traditionally legislative or judicial in nature.

Thus, under most circumstances a county would not be liable for a decision by its state's attorney to prosecute a particular case, even if that decision is erroneous; after all, the exercise of discretion carries with it the right to be wrong. But if, in the construction of a bridge, the county's truck, hauling gravel to the construction site, is negligently involved in a collision with a private vehicle, the county may be liable. A political subdivision is liable only for torts committed in the execution of an activity, but not for decisions themselves.

The court drew a distinction between governmental immunity—the immunity of political subdivisions—and sovereign immunity—the immunity of the state—and held that the state retains its immunity from liability for torts. It noted that the state and political subdivisions are treated differently by both the State Constitution and by statutes and that there is evidence of a legislative intent to restrict rather than to sustain the doctrine of governmental immunity.

The primary reason which the court cited for abolishing the doctrine of governmental immunity was that the doctrine had outlived its usefulness. The entire burden of damages resulting from the wrongful acts of the government are imposed upon the single individual who suffers the injury rather than being distributed among the entire community, constituting the government, where it could be borne without imposing undue hardship upon any single individual.

The 1975 Legislative Assembly responded to this judicial turnaround and enacted House Bill No. 1541 (1975), which provided for liability of political subdivisions for injuries proximately caused by the negligence, wrongful act, or omission of an officer, employee, or servant of a political subdivision. However, a political subdivision is not liable for punitive or exemplary damages, and liability is limited to \$20,000 per person and \$100,000 per occurrence. The judicial distinction between discretionary and ministerial acts is retained, thereby relieving political subdivisions from liability for discretionary acts.

A state fund administered by the Attorney General is to pay all claims against political subdivisions reduced to judgment under this Act, except claims or judgments for injuries arising out of

use or operation of motor vehicles or aircraft. If an action is brought under House Bill No. 1541, the political subdivision involved is required to defend the suit and to retain an attorney if necessary. However, in instances involving a county or city, the state's attorney or city attorney will defend the case.

The Attorney General must authorize all compromise agreements and claims against the fund. If a claimant obtains a final judgment against a political subdivision, the claimant must file an application for payment from the fund. The Attorney General may appear and contest the judgment, and he may compromise (by agreed upon partial payment) the judgment at any time before payment is made from the fund.

Except for motor vehicles and aircraft, the fund is liable for all final judgments against political subdivisions of the state under the provisions of the Act and the political subdivisions are not directly liable except for torts involving motor vehicles or aircraft. Political subdivisions are authorized, but not required, to purchase liability insurance, but in any event, political subdivisions are liable to the \$20,000 and \$100,000 limitations for torts committed as a result of operating a motor vehicle or aircraft. Furthermore, in the event that a political subdivision determines that the coverage provided by the fund may be insufficient and inadequate, the political subdivision may purchase insurance coverage in excess of the statutory limitations, and the political subdivision thereby waives its immunity above the statutory limitations, but only to the extent of coverage purchased and to the limits of the policy.

When a political subdivision purchases additional coverage, the fund is to operate as a deductible insurer, in much the same manner as deductible insurance operates for private persons. The fund must pay the first \$20,000 or \$100,000, and the insurance will pay the remainder. Under no circumstances will political subdivisions be liable for tortious acts in an amount greater than the insurance coverage purchased. The temporary Act encourages political subdivisions to maintain present liability insurance coverage but does not require them to obtain such insurance.

An appropriation of \$500,000 was made to cover compromise claims and final judgments during the biennium. The Act (House Bill No. 1541) is temporary in nature and was intended to be a stopgap measure pending this interim study and further

legislative action. The provisions of the Act will expire after June 30, 1977.

The committee authorized a study of responses to a questionnaire the committee sent to almost 600 selected political subdivisions and found that most political subdivisions could afford to purchase liability insurance coverage from general revenues. Presently, most political subdivisions carry some form of liability insurance coverage. Regardless of the type of political subdivision, only the extremely small political subdivisions, as measured in terms of population, have difficulties in obtaining or affording liability insurance coverage. However, it should be noted that premiums for this type of insurance coverage have been increasing rapidly, and, although political subdivisions with a population of more than 200 did not now appear to have difficulties in obtaining liability insurance coverage, the cost of this coverage may become prohibitive even to large political subdivisions in the future.

This study also indicated several problems with the temporary law. First, because the law is temporary in nature, the insurance industry involved in writing insurance coverage for political subdivisions have been hesitant to recognize the state fund's deductible portion through lower rates to political subdivisions. However, this situation is expected to change once the state adopts a permanent law regarding governmental immunity. Second, because the limits on liability of \$20,000 and \$100,000 do not follow the usual breakpoint for excess liability umbrella insurance coverage—\$100,000 per person and \$300,000 per occurrence, the industry could not recognize the deductible portion without altering their actuarial and procedural policies to address a situation unique to North Dakota. As a result, political subdivisions, to ensure coverage in excess of the limitations imposed by the Act, must duplicate coverage. Testimony also indicated these limits may be constitutionally suspect because they may be found by a court to be unreasonably low. Therefore, the committee recommends in both alternative bills that the limits on liability be raised from \$20,000 per person to \$100,000 and from \$100,000 per occurrence to \$300,000. This will allow political subdivisions to purchase excess coverage more easily by recognizing existing insurance practices and will make the limits on political subdivision liability more realistic. Moreover, the committee recommends that in Alternative 1 the state be recognized as the prime insurer to ensure that political subdivisions are credited with the deductible amount guaranteed by the political subdivisions liability fund.

In examining the temporary law, the committee thought the notice time requirement, to be given by the plaintiff to the political subdivision involved and the Attorney General, within 90 days after the occurrence of the alleged accident, is too short. The notice requirement eliminates many legitimate claims, and the effect of failing to file notice within the proper time is to bar a claim even though an action is brought within the three-year statute of limitations. However, the committee had to balance the right of claimants to bring a suit and the need for political subdivision officers and employees to preserve evidence because the officers and employees of a political subdivision usually change within a relatively short period. Therefore, the committee recommends the notice period be extended from 90 days to six months.

The committee also expressed an interest in the liability of public employees. Although this topic will be discussed more fully later in this report, the committee expressed a concern that employees of the state and political subdivisions may be personally liable for torts committed within the scope of their employment. Although the committee believed that public employees should not be held liable for these torts for reasons which will be discussed later, the committee did feel that employees of the state and political subdivisions should be held liable for punitive or exemplary damages to make them responsible for their intentional or malicious acts. Punitive or exemplary damages are damages in excess of general damages where the tort was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct. Punitive or exemplary damages are intended to compensate the injured party for mental anguish or are to punish the aggressor for his evil behavior or to make an example of him. The committee intends that public employees not be held personally liable for their torts committed within their scope of employment, but the committee intends that public employees be held liable for their intentional or malicious acts to make them accountable to the public they serve. Therefore, the committee recommends that those political subdivisions and public employees be held personally liable for punitive or exemplary damages without regard to limitations upon liability. The state fund is not to be liable for these damages.

The committee consulted with officers and representatives of political subdivisions, the insurance industry, the Attorney General, the legal profession, and other interested parties. The major

thrust of differences revolved around whether political subdivisions should be required to provide fully for their own liability insurance coverage from their own revenues, or whether political subdivisions should be afforded minimal protection through a continuation of a state-financed liability fund. On the one hand, there was concern about whether the state government should become involved in the insurance business. On the other hand, the temporary law had, with a minimal investment, provided protection for all political subdivisions during the interim. Because these philosophical differences could not be resolved, the committee recommends two bills regarding the financing of liability insurance coverage for political subdivisions. Both alternative bills are virtually identical except for the method of financing liability insurance coverage for political subdivisions. Although there are differences between the bills necessary to accommodate the alternative methods of financing, both bills incorporate the general recommendations of the committee.

Alternative 1

Since at the time the temporary law was enacted the legislature was acting under severe time pressures and was concerned about the ability of the small political subdivisions with a limited tax base to pay for insurance coverage in the private sector, the committee authorized a computer study of questionnaires sent to selected political subdivisions. The survey indicated the temporary law was working well, although it needed adjustments to make it more practical. Moreover, the study indicated a reluctance on the part of the insurance industry to provide adequate coverage to political subdivisions through reduced rates based upon the deductible portion of a compromised claim or final judgment from the state fund.

Essentially, Alternative 1 is a continuation of the temporary law, financing basic liability insurance coverage through a state fund. This alternative spreads the risk to all citizens of the state rather than to only the citizens of individual subdivisions, provides political subdivisions with adequate levels of insurance coverage and allows them to purchase additional coverage, and sets up the machinery for a fund to provide similar coverage for the state if the state ever loses its sovereign immunity through either legislative or judicial action. Moreover, this alternative provides a form of revenue sharing to political subdivisions because state revenues will be used to finance this fund. From the taxpayers'

viewpoint, this alternative is more advantageous than Alternative 2 because the cost of providing this coverage through a state fund is substantially lower than the cost of each political subdivision buying its own insurance policy.

There are some disadvantages to Alternative 1. There is no assurance that this bill will lower political subdivisions premiums because the insurance industry is not required to recognize the deductible portion that this coverage provides. The fund is not actuarially sound, and a series of large settlements or judgments could wipe out the fund, leaving injured parties with no assurance of compensation and potentially exposing the state to unlimited liability even though there is no legal obligation.

To make political subdivisions more accountable for their actions under this alternative, the bill requires political subdivisions to retain an attorney to represent or defend the political subdivision. The committee intended that the state should not assume the entire cost of providing basic insurance to political subdivisions, and requiring political subdivisions to assume the cost of their own defense makes political subdivisions more accountable to their citizens. To protect the fund, the committee recommends that if a political subdivision fails to obtain an attorney, the Attorney General may secure an attorney to defend against the claim. In such a situation, the Attorney General is to charge the cost of defense to the political subdivision.

To allow political subdivisions more discretion in compromising claims under this alternative, the committee recommends that political subdivisions be allowed to compromise any claim under \$1,000 and pay the compromised claim from its general fund. Claims which exceed \$1,000 must be processed in the manner otherwise prescribed by law.

One major difference in the bill from the temporary law is the provision allowing political subdivisions to defend any employee being sued where the political subdivision could otherwise be held liable. Claims against these political subdivision employees are to be brought in the same manner as claims against political subdivisions are subject to the same limitations. A political subdivision may indemnify an employee for claims which do not exceed \$1,000, for the cost of defending a claim, or for punitive or exemplary damages, and the fund may indemnify an employee for any claim where the fund could otherwise be held liable. However, the fund must indemnify an employee after payment of a

claim exceeding \$1,000 resulting from his negligent acts or omissions occurring within the scope of his office or employment, where the political subdivision would otherwise be liable.

The bill appropriates \$1.4 million to the political subdivision liability fund to pay compromised claims and final judgments during the next biennium. This amount is the approximate revenue which would be generated by a one mill statewide levy on real property. The committee at first examined the possibility of using a statewide mill levy to finance the fund because this would spread the risk of liability insurance coverage to property owners who otherwise finance the operations of political subdivisions. The committee felt this approach would tax property more fairly than if each political subdivision is permitted to increase its mill levy limitations since this approach does not conserve public resources because many political subdivisions overlap jurisdictions. However, testimony indicated this approach could possibly contravene the State Constitution. Rather than unnecessarily complicate legal issues in this bill, the committee recommends the fund be given a flat appropriation of the amount which could be generated from a one mill statewide levy during a biennium to finance the fund. However, the committee intends that this amount be considered the equivalent of a statewide property tax to distribute the burden for supporting the political subdivision liability fund among those taxpayers who support political subdivisions through local property taxes. The committee also intends that this appropriation be reviewed biennially to maintain accountability to the legislature.

Alternative 2

Alternative 2 contains the same general provisions regarding the scope of liability of political subdivisions, the limits on liability, and other general concepts discussed in Alternative 1, but the bill requires political subdivisions either to purchase insurance coverage in the private sector or to self-insure against tort liability up to \$100,000 per person and \$300,000 per occurrence. This bill creates additional powers and optional, alternative methods for the specific purpose of enabling political subdivisions to pay claims and judgments, to issue bonds to fund and satisfy the same, to levy taxes in amounts necessary for such purposes without respect to limitations otherwise existing, and to compromise judgments and to make periodic payments on the compromised account. Insurance coverage may be purchased from the political subdivisions general fund, or the governing body

may include in the annual tax levy the amounts necessary to establish an insurance reserve fund. The tax levy is to be over and above all other mill levy limitations provided by law.

The bill is based upon a 1971 bill which resulted from a Legislative Council study of governmental immunity and the original House Bill No. 1541 (1975), which was substantially amended before enactment. Both those bills allowed all political subdivisions to finance liability insurance coverage premiums through a permissive tax levy not to exceed ten mills. Because ten mills generates less income for political subdivisions with a low tax base than for those with a large tax base, ten mills was believed to be the lowest levy which could be recommended to allow small political subdivisions adequate revenues to purchase liability insurance coverage. However, a permissive ten-mill levy could be a substantial amount for large political subdivisions, and allowing all political subdivisions to make an additional ten-mill levy for insurance purposes may place an unfair burden upon taxpayers who live within the several types of political subdivisions which usually overlap—counties, cities, school districts, townships, and lesser political subdivisions levying taxes for specific purposes.

To address the problems of multiplicity of taxing districts and inadequacy of mill levy limitations, the committee recommends in this alternative that political subdivisions be allowed only to levy so much as is necessary to purchase adequate liability insurance coverage or to self-insure. Once a final judgment is rendered against a political subdivision, this alternative allows the political subdivision to levy up to five additional mills to pay the judgment.

Liability of Public Employees

Generally, state or political subdivision officers and employees who exercise discretionary functions are immune from liability for their unintentional fault. In *Kitto* the court limited its decision and retained immunity for political subdivisions for certain acts which go to the essence of government, "the essential acts of governmental decision making". However, the immunity of "governmental units for acts which may be discretionary in character" apparently does not extend to the officers and employees who must exercise these functions. Presently, an employee of the state or a political subdivision is liable for his own negligence even when acting within the scope of his employment. In *Spielman v. State*, 91 N.W. 2d 627, 630-31 (N.D. 1958), the court held:

“The mantle of governmental immunity does not protect an employee of the government from liability for negligent acts of commission by the employee . . . While the complaint . . . states a cause of action against Weber (a state employee) . . . it fails to state a cause of action against the other defendants because of governmental immunity.”

State law authorizes any department, agency, or bureau of the state to carry insurance for the department's, agency's, or bureau's protection and “for the protection of any employees from claims for loss arising out of the use or operation of motor vehicles or aircraft.” The immunity of the state is waived only to the extent of the policy limits of the insurance and only to the types of coverage provided by the policy. In addition, the temporary law (House Bill No. 1541) authorizes state departments, agencies, or bureaus to carry other types of insurance coverage to protect the state and its employees and both alternatives contain provisions to continue this authorization.

Although public employees have never enjoyed the same immunity as the government for which they worked, this lack of immunity offered the public a measure of protection against negligent or wanton acts by public employees. Because political subdivisions no longer enjoy the mantle of governmental immunity, because this type of protection is regularly afforded as a benefit in private sector employment and extending this coverage to public employees will attract more citizens to public employment, and because this policy of holding public employees personally liable for torts committed within their scope of employment has the tendency of discouraging the most qualified citizens of the state from serving the public in a governmental capacity, the committee recommends a bill to extend the immunity of the state to officers and employees thereof. The bill requires that any court action against state officers or employees for alleged acts within the scope of their office or employment proceed in the same manner and subject to the same limitations as an action against the state. Since state law authorizes state agencies and departments to purchase liability insurance and waives the state's immunity to the extent of the coverage purchased and since state agencies and departments are tending to purchase liability insurance coverage to protect citizens from torts committed by those agencies, the committee believed it unnecessary to address the feasibility of removing state immunity at this time. However, state employees should be

afforded a measure of protection, and this bill will both afford protection to state employees and to the public to the extent of liability insurance coverage purchased by the state.

Since the two alternatives regarding the liability of political subdivisions for torts contained provisions protecting their employees from personal liability except for willful, wanton, or malicious acts, the committee felt it was appropriate to recommend a bill extending the same protections to state employees.

ALTERNATIVE REVENUE SOURCES

Since another committee was also assigned a study of assessment procedures, the committee, to avoid duplication, narrowed the scope of its study to alternative revenue sources for political subdivisions. The committee first examined various alternatives regarding the financing of political subdivisions, including increasing property taxes, local option taxation, and revenue sharing. Although adequate information to determine the financial condition of political subdivisions was not available because of time and staff limitations, the committee received testimony from political subdivision representatives regarding the financial conditions of individual subdivisions and recommendations to provide alternative sources of revenue for political subdivisions. Although some political subdivisions are in good condition financially, others find it financially difficult to maintain even basic services. However, the reasons for their financial difficulties are varied. Some political subdivisions have specific difficulties, such as a low tax base, low tax revenues, and sparse population; some political subdivisions have officers unfamiliar with governmental accounting and taxing procedures which tends to minimize the efficiency of that governmental unit; and some political subdivisions must face emergency situations which drain their resources. All political subdivisions must face the mounting cost of inflation in the form of increased labor costs, administrative costs, and energy costs. Federal laws, especially those dealing with the environment, have also increased the administrative burdens on local governments without providing increased revenues to defray the additional costs.

The tax base of all political subdivisions has been significantly reduced in the last decade. The level of assessment has steadily declined statewide, causing a reduced tax base for all political subdivisions and further limiting the borrowing limitations of political subdivisions. The tax base of political subdivisions

was also further reduced in 1969 when the personal property tax was repealed for most purposes. Although the personal property payback from the state was to take the place of this revenue, the payback formula does not reflect present property values.

Based upon these considerations, the committee recommends several bills and a resolution which would: increase the mill levy limitations for certain political subdivisions; establish a state revenue sharing program; and increase the bonding capacity of political subdivisions. The committee felt that imposing a tax only when real property is sold would be unworkable because political subdivisions would not have a reliable annual source of revenue and since all political subdivisions rely upon real property taxes as their prime revenue source, the committee makes no recommendation regarding this study area.

Increased Mill Levies

The committee recommends a bill to increase the mill levy limitation to the counties, cities, and townships by three, five, and three mills respectively. Testimony indicated a need for increasing the mill levy limitations for these types of political subdivisions. The committee examined the number of mills levied by these political subdivisions and found most of them levied at or near the maximum allowed by law, especially counties and cities. Since mill levy limitations for counties were increased three mills in 1975, the committee recommends that county mill limitations not be increased more than an additional three mills at this time. Because townships provide taxpayers fewer services than either counties or cities, the committee recommends a mill levy increase of three mills for townships. The committee recommends a five-mill increase in levy limitations because of the financial condition of many cities.

State Revenue Sharing [Replacement Tax Transfer]

The committee received testimony regarding revenue sharing alternatives, considered the reasons for failure of previous revenue sharing proposals, and reviewed the federal revenue sharing program and its distribution formula based upon population, tax effort, and personal income. Since the state is an efficient collector of the sales and income taxes, since the state has preempted this type of taxation for itself, and since political subdivisions rely heavily

upon a single source of revenue — the property tax — the committee recommends the state adopt a revenue sharing program to distribute a portion of the state's tax revenues to certain political subdivisions, utilizing the administrative machinery of the state to administer and distribute the revenue. Since this type of revenue sharing makes the state the administrator, collector, and enforcer of taxes to be dedicated to political subdivisions, in effect replacing the political subdivisions' administrative machinery for these limited purposes, the committee termed its revenue sharing recommendations "replacement tax transfers" (RTT). However, it is the intent of the committee that revenues distributed to political subdivisions under any of these alternatives be considered part of the political subdivision's local tax effort. Because each distribution formula the committee examined to distribute revenue sharing moneys to political subdivisions had a built-in prejudice favoring different political subdivisions economically, the committee recommends three alternative RTT bills, each utilizing different distribution formulas. RTT 1 is derived from Senate Bill No. 2391 (1975) and incorporates a distribution formula for state appropriations based solely on population. RTT 2 is derived from a Model Act drawn by the Advisory Commission on Intergovernmental Relations and incorporates a distribution formula based upon population and tax efforts, where tax effort is measured by comparing local taxes to personal income. RTT 3 is based upon a proposal from the committee.

Generally each plan has its advantages and disadvantages. For example, the most notable advantage of RTT 1 is its simplicity; whereas, RTT 2 is extremely complex and requires professional expertise to establish allocations to political subdivisions. RTT 3 is simpler than the RTT 2 proposal, but provides for a wide variance of allocations to countywide areas. RTT 1 allocates funds to political subdivisions without regard to local tax effort, RTT 2 recognizes local tax effort and measures it against personal income, and RTT 3 measures local tax effort by tax revenues only.

RTT 1 [Population]

Under this alternative, allocations are determined solely on the basis of population. Allocations are made to each countywide area in the proportion that the population of that county bears to the population of all counties within the state. Each city within the countywide area shares in that county's allocation in the proportion that the population that each city

bears to the population of the entire county. This allocation to cities is made from the countywide allocation, and the remainder is reallocated to the county. Each city's allocations are then split between the city government and the park district in proportion to their respective mill levies unless the city has no park district.

RTT 2 [Tax Effort]

This alternative allocates to countywide areas in a manner similar to RTT 1, except the allocation to each countywide area is based upon the population and tax effort of that countywide area compared to all countywide areas in the state. Funds allocated to countywide areas are first reallocated to the county government according to a distribution formula based upon population and tax effort as compared to the population and tax effort of all counties rather than reallocated to cities within the countywide area first. The remainder of the amount initially allocated to the countywide area is then reallocated to cities within the countywide area proportionate to the population and tax efforts of all cities within the countywide area.

RTT 3 [Tax Revenues]

This alternative distributes \$20 million to all political subdivisions in the state once during the biennium rather than the four percent of the sales and use tax and four percent of the income tax required by the other two RTT alternatives. Although accurate estimates of revenues during the next biennium are unavailable, four percent of the sales and use tax and four percent of the income tax amounted to approximately \$11.2 million during the current biennium.

The allocation under RTT 3 is made to all political subdivisions in the state on a formula based upon a ratio of property tax revenues of a political subdivision to the property tax revenues of all political subdivisions in the state. School districts are exempted from RTT 3 because their financing is unlike that of other political subdivisions.

Comparison Between RTT 1, RTT 2, and RTT 3

Generally, it may be said that RTT 1 favors urban areas, RTT 2 favors small towns and rural areas, and RTT 3 favors industrialized or developed areas. It should be pointed out that the correlation between the first two alternatives and RTT 3 is not very high, indicating that population and tax effort, i.e., the ratio of tax assessment to personal income, are not important considerations involved in property tax revenues. However, the correlation between RTT 1 and RTT 2 is high, indicating the population plays a major role in both distribution formulas. Each of the three RTT alternatives is temporary in nature to allow the legislature the opportunity to review a revenue sharing program during the next biennium. Although the pot is different between the three alternatives because the RTT 1 and RTT 2 are based on a percentage of the sales and income tax revenues and RTT 3 is based upon a flat \$20 million general fund appropriation, enough comparisons can be made between the three alternatives to allow the legislature to make a policy decision regarding the alternative distribution formulas.

Increasing Bonding Limitations

The committee considered the effects of inflation upon the borrowing power of political subdivisions. Section 183 of the State Constitution provides that political subdivisions may not borrow more than five percent of the assessed value of the taxable property therein. Since assessment levels have been dropping and part of the tax base was eroded through the repeal of the personal property tax, political subdivisions have been faced with a reduced borrowing base which was not contemplated by the drafters of the Constitution. Indeed, the drafters of the Constitution envisioned that the "assessed value" of taxable property would be the same as its fair market value. Therefore, the committee recommends a resolution to amend Section 183 of the Constitution to increase these bonding limitations from five percent of the assessed value of the taxable property within a political subdivision to eight percent. However, this committee referred the matter to the Committee on Constitutional Revision for coordination, and that committee will introduce this resolution.

RESOURCES RESEARCH COMMITTEE

The Resources Research Committee was assigned one study resolution and the responsibility to develop the North Dakota Regional Environmental Assessment Program (REAP). Senate Concurrent Resolution No. 4021 called for a study of the trends and potential of various types of possible economic development in North Dakota. Section 4 of House Bill No. 1004 passed by the 1975 Legislature (Chapter 4, 1975 Session Laws) called for the appointment of a Resources Research Committee to carry on research in regard to North Dakota's resources and develop the necessary information and analytical system.

The members of the 1975-77 Resources Research Committee were Senators David Nething, Chairman, L. D. Christensen, and Robert Stroup and Representatives Art Bunker and Byron Langley. Executive branch members approved by the Governor were Natural Resources Coordinator Richard Ellison, State Engineer Vernon Fahy, Public Service Commissioner Bruce Hagen, State Geologist Edwin Noble, and State Health Department Executive Officer Willis Van Heuvelen. Institutional members were Dr. William Koenker of the University of North Dakota and Dr. James Sugihara of North Dakota State University. Mr. Bryce Streibel was appointed as a citizen member. Mr. Ellison and Dr. Koenker left the state in 1976 and were replaced by Mr. Dwight Connor and Dr. Alan Fletcher, respectively, through appointment by the Chairman of the Legislative Council.

The report of the Committee on Resources Research was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

REGIONAL ENVIRONMENTAL ASSESSMENT PROGRAM [REAP]

House Bill No. 1004 provided two mandates for REAP — "to carry on research in regard to North Dakota's resources" and "to develop the necessary data and information systems." The purposes for this effort included "assisting in the development of new laws, policies and governmental actions," "providing facts and information to citizens of the state," knowing "the alternatives available to the state in any use and development of resources," and knowing "the results and impacts of any such use or development."

The development of REAP commenced on June 1, 1975, when Dr. A. William Johnson began his duties as the Director of REAP upon appointment by the Legislative Council. The next two months were utilized to acquire a small support staff (Drs. F. Larry Leistriz and John R. Reid as Associate Directors for social sciences and natural sciences, respectively), to establish the REAP office in the legislative wing of the Capitol, to design a management and functional organization with assigned responsibilities, and to establish relationships with state agencies, federal agencies, and universities. The purposes of the latter task were to identify technical personnel and their qualifications, to identify possible agency data input to REAP, to identify current studies underway, and to solicit advice regarding the development of REAP. The organizational meeting of the Resources Research Committee (RRC) was held on July 28, 1975. The RRC approved an organizational structure (see Figure 1) for REAP and defined responsibilities for the director and associate directors. The creation of a six-member Technical Advisory Council to serve in an overview advisory capacity to the REAP Director also was approved.

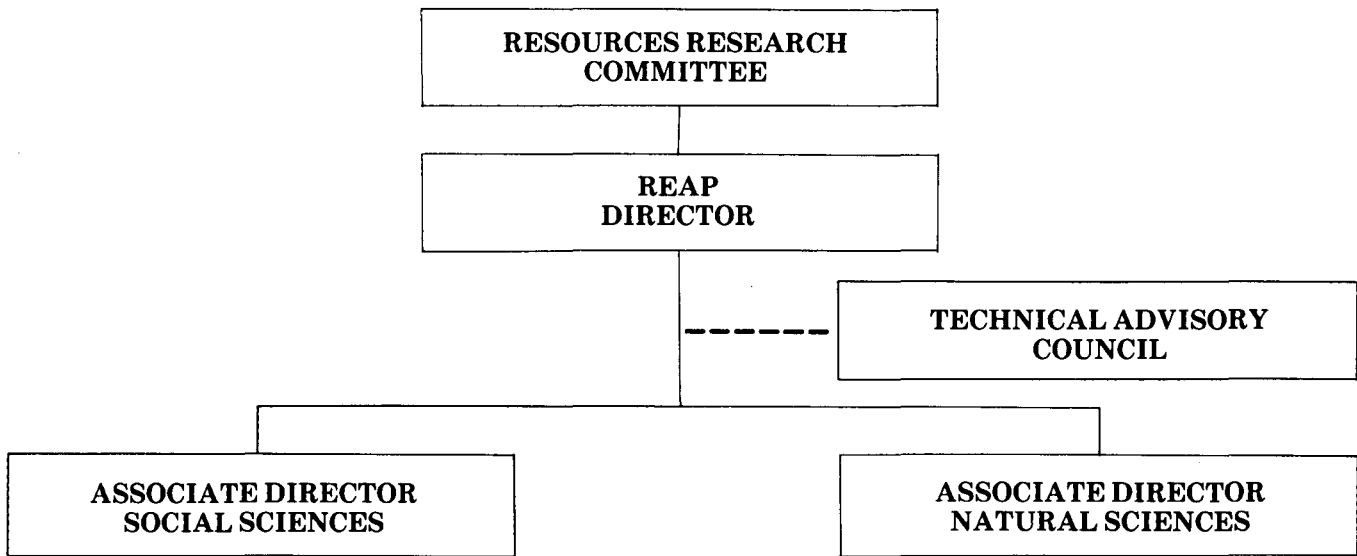


Figure 1. REAP Organization

The director of REAP identified four major tasks to be undertaken by REAP:

1. To develop an adequate data base on environmental, economic, and sociologic characteristics of North Dakota. This baseline data should be obtained from existent sources (agencies, universities, industry) and data gaps should be filled through REAP efforts.
2. To design and then implement a computer-based information system capable of storing, retrieving, and processing the data to produce output (data, analyses, projections) capable of being used by decision makers.
3. To design and implement an assessment/modelling system capable of forecasting the implication of alternative development scenarios on environmental and socioeconomic characteristics.
4. To design and implement a mechanism for monitoring changes in the baseline characteristics of North Dakota.

The director said that the staff would undertake a significant planning effort immediately, part of which would involve the formation of a series of Technical Task Forces. The RRC approved the REAP development focusing initially on the Missouri Slope area generally lying south and west

of the Missouri River. The RRC also encouraged early prototype modelling efforts to illustrate the effectiveness of such an approach, even though the data base for such efforts may be less than complete. The staff was also directed to explore the availability and adequacy of computer centers to support the REAP system.

The succeeding four and one-half months were devoted to planning activities in support of all four REAP tasks. Considerable time was devoted to becoming familiar with the "state of the art" in information systems and environmental and socioeconomic analysis. Contact was established with a number of federal agencies, state governments, regional organizations, and private industry.

Discussions were held with relevant state agencies, industrial representatives, local government representatives, and public interest groups to catalog the user needs to which the REAP system should be able to respond. With assistance provided through a contract with the Federal Systems Division of the International Business Machines Corporation (IBM/FSD), a conceptual design and requirements analysis for the REAP system was undertaken. This study resulted in a formal report issued December 12, 1975, and entitled "REAP System Requirements and Conceptual Design" which, in view of user needs, state of the art, and REAP staff requirements, identified what such a system could do by way of information handling and analysis. It suggested a modular system serving five specific applications (inventory, monitoring, impact

assessment, development potential, and reference), with six data categories (environmental, economic, sociologic, development, modelling coefficients, reference) and containing a geoprocessing capability. Such a system, although complex, was judged feasible and would represent ground-breaking technology.

A series of 11 Technical Task Forces (TTF) were appointed in the following subject areas: air quality-meteorology, animals, geology, historic-archaeologic-paleontologic sites, land use, social impact-quality of life, socioeconomic impact, soils, vegetation, water, noise-radiation-solid waste. A total of 92 technical experts from state universities (49), state agencies (21), federal agencies (18), local government (1), and industry (3) were involved and worked under the direction of the associate directors for three months. Each TTF was asked to identify existing data, identify data not available but needed, recommend a methodology for collecting new data, recommend the format and the system by which data should be stored and retrieved, identify organizations and persons qualified to participate in a data acquisition effort, recommend what future monitoring is needed, and recommend appropriate models to be used for projecting change. The TTF report was completed December 5, 1975, and contained recommendations for priority baseline data acquisition studies and modelling projects, identified study projects currently underway, and identified existent data sources.

With major assistance from the IBM/FSD team, a comparison and evaluation of the capabilities of the three in-state computer centers (Central Data Processing in Bismarck, University of North Dakota in Grand Forks, and North Dakota State University in Fargo) to support a REAP computer-based system was undertaken. The REAP staff previously had determined that it would be unwise to attempt to rely on an out-of-state computer center for such support. A recommendation was prepared for the RRC.

The IBM/FSD team and the REAP staff undertook to identify two operational capabilities which could be designed, developed, and made operational much earlier than the entire REAP system, but yet would become a part of the ultimate REAP system. A broad initial design was developed for an economic-demographic (E-D) model capable of forecasting population and economic changes resulting from coal development. An initial design

also was developed for an information reference system (REAP Resource Reference System — R³S).

The RRC's second meeting was held December 18-19, 1975, and considered a number of staff recommendations based upon studies completed since the initial meeting. The RRC took the following actions:

1. Designated Central Data Processing (CDP) as the REAP computer site. CDP was not capable of supporting the full REAP system but could support interim efforts.
2. Approved the development of an economic-demographic (E-D) model and the REAP Resource Reference System (R³S) on an accelerated basis, such capabilities to be functional prior to the 1977 Legislative Session.
3. Approved the Requirements Analysis and Conceptual Design study and authorized the activation of Phase II of the REAP system design study by IBM/FSD and the REAP staff.
4. Approved the staff recommendation identifying 20 priority baseline data study projects to be undertaken and instructed the staff to negotiate for such studies.

REAP Resource Reference System [R³S]

In January 1976 REAP solicited proposals for design, development, and implementation of the REAP Resource Reference System (R³S). All proposals were evaluated and subsequently rejected as being too expensive, and R³S development was undertaken by the REAP staff. Software was identified and installed at CDP, computer terminals were obtained, manuals were prepared, and testing was completed by June 1. Thereafter data collection began in Bismarck, Fargo, and Grand Forks, and entry of data to the computer system at CDP began in July. As of November 1976, over 6,000 documents have been entered and the system is operational. R³S is a catalog of North Dakota-related technical experts, study projects, data sources, and publications. Each entry contains a descriptive abstract and the on-line computer terminal conducts textual searches of all entries. The system can be used to identify all projects covering a specific topic or geography, to identify potential duplication, to identify experts on a certain topic, and to locate data and analyses of interest. The development cost for

R3S was approximately \$50,000 and the operational cost is approximately \$3,200 per month.

REAP Economic-Demographic [E-D] Model

In January 1976 REAP solicited proposals for design, development, and implementation of a computerized economic-demographic (E-D) model. All proposals were subject to external and internal evaluation and two contracts subsequently were awarded. A combined team of economists and demographers from UND and NDSU, with Dr. Thor Hertzgaard of NDSU as principal investigator, was awarded a \$33,200 contract to develop the E-D model on the basis of economic studies previously conducted at NDSU. Arthur D. Little, Inc., of Cambridge, Massachusetts, was awarded a \$82,845 contract to computerize the model and install it at CDP. A fiscal impact sub-model development was added to these contracts at a later date through a \$28,170 contract amendment.

A user advisory team, comprised of various state and local officials expected to be users of the E-D model, met with the development and computer teams regularly to advise on model features and capabilities. The model has been fully developed and

installed at CDP; has been demonstrated to legislators, state agencies, local officials, federal officials, and industry representatives; and is operable from a computer terminal at the REAP office and through telephone-linked terminals elsewhere.

The model projects business volumes, population, employment, settlement patterns, population migration, and public sector (state, regional, county, local) revenues and expenditures. The model provides the user the opportunity to select development scenarios (number, type, location, and timing of projects), counties and municipalities of interest, taxation rates, birthrates, employment parameters, and settlement factors. The model presently operates through the year 1999, covers a 15-county area in southwestern North Dakota, and handles development and no-development scenarios. It is a prototype model (i.e., first generation) capable of expansion to the entire state and the addition of other features. It is seen as a unique development in economic modelling. Total development cost was approximately \$150,000, with operational costs of approximately \$1,600 per month, depending on usage.

Table 1
REAP Baseline Data Projects

Subject	Number	Contractor	Start	Finish	Amount	Topic
Campus Analyst	1-03-1	UND (Dietz)	7-1-76	6-30-77	\$ 16,560	Computer analyst support for campus-based data collection
	1-03-2	NDSU (Peterson)	7-1-76	6-30-77	16,360	
Water	4-01-1	State Water Commission (Lindvig)	11-1-76	10-31-77	47,000	Water resources of the Knife River Basin (hydrologic model conceptualization)
	4-01-2	NDSU (Koob)	7-9-76	11-30-77	21,600	Water analyses to support geologic and animal studies
Geology	5-01-1	N.D. Geological Survey (Arndt)	5-5-76	11-30-77	132,000	Geology and hydrogeology of Knife River Basin
Animals	6-01-1	UND (Owen)	4-19-76	11-30-77	29,000	Distribution of fish in Little Missouri, Knife, Heart, and Cannonball River basins
	6-01-2	UND (Seabloom)	4-19-76	12-31-77	85,000	Vertebrates of southwestern N.D.: amphibians, birds, reptiles, mammals
	6-02-1	Misc (Bickel)	5-1-76	7-31-77	5,500	Land mollusks of southwestern N.D.
	6-02-2	UND (Cvancara)	7-1-76	6-30-77	7,400	Aquatic mollusks of southwestern N.D.
	6-02-3	NDSU (Mulkern)	5-1-76	12-15-77	40,000	Arthropods of southwestern N.D.
	6-02-4	UND (Kannowski)	4-19-76	10-31-77	35,000	Soil fauna and parasites of southwestern N.D.
Vegetation	7-01-1	UND (Wali)	5-1-76	11-15-77	79,700	Woodlands, shrubs, and algae of southwestern N.D.
	7-01-2	NDSU (Whitman)	5-1-76	11-30-77	77,000	Grasslands and wetlands of southwestern N.D.
Air Quality and Meteorology	8-01-1	NDSU (Ramirez)	4-19-76	12-15-76	57,000	Evaluation of meteorological sites in southwestern N.D.
	8-02-1	State Department of Health (Van Heuvelen)	5-1-76	6-30-77	180,000	Air quality stations in southwestern N.D.
Sites	9-01-1	UND (Holland)	5-1-76	12-31-76	7,100	Paleontologic sites in N.D.
	9-01-2	UND (Schneider)	5-1-76	1-31-77	7,900	Archaeologic sites in N.D.
	9-01-3	UND (Tweton)	4-15-76	1-31-77	16,200	Historic sites in western N.D.
Socioeconomic	10-01-1	UND/NDSU (Henry)	5-1-76	6-30-77	199,800	Longitudinal socioeconomic data in western N.D.
Land Cover	11-01-1	Bendix Corporation (Rogers)	5-10-76	10-25-76	137,638	Land cover analysis of N.D.

REAP Baseline Data Projects

On the basis of RRC approval of 20 priority baseline data study topics, REAP issued 11 requests for proposals (RFP) for the most urgent topics. A total of 44 proposals were received with a total value of \$4.7 million. An extensive external and internal review of all proposals was conducted to select the best proposal for each study topic. Subsequently, an extensive negotiation process with each selected proposer was conducted by the REAP Director and individual contracts for baseline data studies were executed by the RRC chairman and the Chairman of the Legislative Council.

A total of 20 separate contracts totaling \$1,197,758 were executed. Table 1 provides a complete listing of all baseline data contracts. These projects will supply essential data on environmental and socioeconomic characteristics of southwestern North Dakota for input to the REAP data base. Each contract calls for the acquisition of new data and the incorporation of existent relevant data, all in a form appropriate for entry to the REAP data base. Each project will also make recommendations on mechanisms for monitoring change in the data included in the data base.

REAP System Design

On the basis of the conceptual design and requirements analysis study for the REAP system approved by the RRC, REAP negotiated a Phase II design study with IBM/FSD to commence March 22 and be completed October 18, 1976. Phase II was to result in a Systems Analysis and Plan, containing a computer software and hardware architecture, specific system processing capabilities, and finally recommending a specific implementation schedule and hardware/software acquisition program. Phase II was divided into two tasks, with Task I to describe in detail the capabilities desired for the REAP system and Task 2 to describe a system architecture which would provide those capabilities and identify costs and an implementation schedule.

The major responsibility for Task 1 rested with the REAP staff with IBM/FSD support. The approach taken was to form a series of 10 REAP User Specification Teams (RUSTEAMS) comprised of 53 technical experts drawn from expected users of REAP (31 from state agencies, 6 from federal agencies, 12 from universities, 1 from industry, and 3 from local government). The RUSTEAMS were organized by discipline (air quality-meteorology, animals, geology, historic-archaeologic-

paleontologic sites, land use, social impact, socioeconomic impact, soils, vegetation, water) and worked under the direction of the associate directors, with support from the IBM/FSD team. Each met for two 2-day working sessions and completed additional homework assignments. They suggested REAP output report titles and from that point elaborated input data requirements, output report contents, processing and analysis requirements, and modelling requirements for support of such reports. The results of the RUSTEAM efforts were evaluated, summarized, and placed in priority order by the REAP staff. The conclusions of the entire effort were published in the Systems Analysis Details Report (dated June 25, 1976). Volume I describes the capabilities to be provided by the REAP system and the 1,500 page Volume II contains the details of the RUSTEAM reports. This high level of detail was required to serve as a basis for REAP system design efforts to follow.

On the basis of the System Analysis Details Report completed in Task 1, IBM/FSD assumed major responsibility for Task 2, the design of a system architecture to provide the desired capabilities and the formulation of a plan which included a time schedule and costs for implementation of a specific combination of hardware and software. The results of this design effort and the specific recommendations of IBM/FSD are contained in the Systems Analysis and Plan Report issued October 18, 1976.

After IBM/FSD was well along with a system architecture and as they translated the requirements into a specific combination of hardware and software, the REAP staff considered alternative means for providing the specified capabilities. The instructions to IBM/FSD required the system to be designed for a single state computer, which meant an upgrading of the CDP IBM 370/145 computer to an IBM 370/158 computer. The REAP staff explored another alternative, that of a stand-alone computer to operate in parallel with, and with a strong communications link to, the existent IBM 370/145 at CDP. The resulting REAP staff report entitled "Alternative System Architecture" and dated October 18, 1976, contained a viable alternative proposal for implementation of a computer system to support REAP.

The RRC met on March 16 and June 22, 1976, in short progress review sessions. The REAP staff reported on the progress of R³S and E-D development, system design studies, and baseline data project contracting. Discussions were held on the

issue of REAP user fees and mechanisms by which REAP might contract with state agencies for cooperative services and studies. The REAP staff reported on attempts to secure federal funding in support of the REAP effort.

The RRC's final meeting of the 1975-77 interim was held October 25, 1976. The RRC considered the results of the previous 10 months of REAP development and a number of staff recommendations for subsequent development. The RRC took the following actions:

1. The results of the total Phase II REAP system design efforts were presented in terms of capabilities for the system. One alternative for implementation was the upgrading of the present IBM 370/145 computer at CDP to an IBM 370/158 to serve REAP and meet existing agency needs. The second alternative for implementation was the acquisition of a stand-alone computer to serve REAP. The RRC voted to acquire a stand-alone computer system during the 1977-79 biennium and directed the staff to develop a memorandum of understanding between CDP and REAP regarding the nature, location, staffing, and administration of such a system. The advantages of the stand-alone system include lower initial costs, lower recurring costs, lower relative complexity, lower staffing needs, less impact on current CDP and state agency computing activities, simpler security and control, better communications ability, more effective and efficient support of timesharing computing, and earlier availability of an operational system for REAP.

2. The RRC considered a number of alternatives for a policy to govern the charges REAP makes to users of REAP capabilities. The following policy was adopted:

- a. Operating costs for the REAP system and the costs of providing services to state agencies, political subdivisions, and institutions of higher education will be fully covered by legislative appropriations.

- b. All users, other than state agencies, political subdivisions, and institutions of higher education, will be charged for the use of the REAP system on the basis of the actual costs of providing the service plus

an additional charge assessed to amortize the costs of developing that portion of the REAP system.

- c. Except for data and analyses provided to REAP and normally provided to third parties directly, state agencies and institutions of higher education may not obtain data and analyses through REAP for the purpose of supplying such to third party users to whom special benefits accrue above and beyond those accruing to the North Dakota public at large or who otherwise would be expected to contract for such data or analyses, as determined by the RRC or its designee.

- d. All requests from out-of-state organizations, both governmental and private, for copies of REAP software or computer code will be referred to the RRC for disposition. Similar requests for in-state governmental bodies and educational institutions may be acted upon by the RRC chairman in consultation with the Legislative Council Director and the REAP Director.

3. The RRC adopted, and recommends to the Legislative Council, a REAP budget request of \$3,720,000 for the 1977-79 biennium. The estimated 1975-77 expenditures and the 1977-79 budget request are summarized in Table 2.

Table 2
REAP Budgets*

Functional Category	1975-77 Expenditures	1977-79 Request
Non-system		
Personnel	\$ 230,000	\$ 390,000
Office Expenses	90,000	150,000
R ³ S Operations	80,000	80,000
Modelling	150,000	650,000
Baseline Data	1,200,000	1,030,000
System Design	280,000	---
System		
Implementation	25,000	1,390,000
Contingency	---	30,000
	\$2,055,000	\$3,720,000

*Rounded to nearest tens of thousands of dollars.

4. The RRC adopted, and recommends to the Legislative Council, provisions to be incorporated in the legislative appropriation bill. The proposed legislation provides an appropriation of \$3,720,000 from the general fund, plus such other public and private funds as may be available, for REAP's continued development and operation. The proposed legislation also provides for appropriate security of data obtained from state agencies, provides for REAP recovering charges for materials (e.g., maps), and provides for Emergency Commission authority to approve transfers of funds between REAP and state agencies.

Federal Funds

House Bill No. 1004 (1975 Legislature) provided for the utilization by REAP of such federal funds as may be available. During the 1973-75 interim it was implied that large-scale federal funding should be available to support REAP.

Through November 1, 1976, a total of \$98,925 in grants have been obtained from federal sources (Environmental Protection Agency—\$15,000, Economic Development Administration—\$60,785, Comprehensive Employment and Training Act—\$23,140). Negotiations still are underway with the Energy Research and Development Administration with a hope of obtaining up to \$100,000.

The federal government is providing considerable indirect support to REAP through ongoing data collection efforts, such as those conducted by the U.S. Geological Survey, the U.S. Bureau of Land Management, etc. The data from these agencies is and will be available to REAP and state agencies as it has in the past. In return, REAP expects to make data collected under its auspices available to the federal agencies.

REAP has approached a number of federal agencies (National Aeronautics and Space Administration, Department of the Interior-Secretary's Office, Bureau of Land Management-District office and headquarters, Fish and Wildlife Service, National Science Foundation, Environmental Protection Agency, Economic Development Administration, Energy Research and Development Administration, U.S. Geological Survey, Water Resources Council) for direct support of the establishment of REAP on the basis that it is a pilot development, is potentially applicable to other regions, and will be in a position to support federal

decision making. All agencies have expressed great interest in REAP and wish to be kept informed and even involved in its progress. However, with the exceptions mentioned above, they have been unwilling to allocate funds from current budgets to assist in the REAP development.

The Old West Regional Commission also was approached for support. A formal request for commission sharing with REAP in the support of the design effort was rejected, on the basis that it "failed to fulfill one of the commission's basic requirements for approvable projects, a regional approach to a regional problem."

Current Status of REAP

As of November 15, 1976, the status of the REAP development is as follows:

1. The REAP Resource Reference System (R³S), a computer-based on-line information reference system, is operational with data acquisition and data entry continuing.
2. The REAP Economic-Demographic (E-D) model, a computerized projection model covering 15 southwestern North Dakota counties, is operational.
3. The land cover analysis of the entire state, using satellite imagery, has been completed.
4. Nineteen additional baseline data acquisition projects have been underway since mid-1976 and will be completed from late 1976 through the end of 1977.
5. The E-D model, the R³S system, and the land cover analysis project will have been demonstrated around the state. A number of users (state, local, federal, private) already have requested access to these capabilities.
6. Two REAP newsletters, INFOCOM for public officials and agencies and TECHNOGRAM for technical personnel in or related to North Dakota, have been established and circulated.
7. The design for the REAP computer system for data storage, processing, retrieval, and analysis has been completed and approved by the RRC.

The accomplishments enumerated above are but early examples of the real potential of the REAP system when fully developed. Even these early capabilities will provide assistance in decision making on the state and local level. The next major steps in the development of REAP will be the acquisition of the REAP computer system (software and hardware), entry of baseline data into the system, additional baseline data studies in southwestern North Dakota, the development of additional projection models, and operational applications of R³S, the E-D model, and the land cover analysis project.

SENATE CONCURRENT RESOLUTION 4021

Senate Concurrent Resolution No. 4021 (1975 Legislature) directed the Legislative Council to study and review the trends and potential of various types of economic development in North Dakota, and suggested that this task could be part of the study carried out by the RRC. The resolution suggested attention be given to the probable impact

of economic development upon the state and its citizens as well as upon the traditional way of life in the state. After discussing the objectives sought by the resolution, the socioeconomic data acquisition and E-D modelling activities to be undertaken by REAP, and the likelihood of these projects addressing part of the resolution objectives, the RRC deferred the study.

CONCLUSION

The Resources Research Committee urges approval by the Legislative Council of the proposed sections of the legislative branch appropriation bill it is recommending providing an appropriation of \$3,720,000 for the operation and continued development of the North Dakota Regional Environmental Assessment Program (REAP). The proposed sections also provide for data security, amplify the REAP user fees policy, and provide for Emergency Commission approval of transfer of funds between REAP and state agencies for cooperative data acquisition and analysis efforts.

STATE AND FEDERAL GOVERNMENT

The Committee on State and Federal Government was assigned three Legislative Council study resolutions and bills. Senate Bill No. 2495 directed a study of the Teachers' Fund for Retirement (TFFR), including the methods of funding and administering the fund, and provided an appropriation of \$10,000 to the Council for actuarial and other direct costs of conducting the study. It directed that the study include an investigation of the impact of recent legislation upon the fund, a study of the feasibility of turning the fund's administration over to the private sector, and an investigation of the feasibility of having the state fund the entire system.

House Concurrent Resolution No. 3002 directed a study of North Dakota's mental health commitment procedures.

Senate Concurrent Resolution No. 4025 directed a study of the feasibility of adopting a benefit formula retirement plan for the Public Employees Retirement System (PERS). It was to be conducted with the assistance of the PERS Board.

Committee members were Representatives Oscar Solberg, Chairman, Ben Gustafson, Ralph Hickle, Peter Hilleboe, Marjorie Kermott, Robert Martinson, Alice Olson, and Anna Powers; and Senators H. Kent Jones, James Smykowski, and Kent Vosper.

The report of the Committee on State and Federal Government was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

TEACHERS' FUND FOR RETIREMENT

Need for Study of the TFFR

The TFFR was created in 1913 as the Teachers' Insurance and Retirement Fund (TIRF). Since 1913 the system has changed greatly and its cost has risen steadily due to both increasing numbers of teachers and increases in benefit levels.

In 1971 TIRF was repealed and replaced by TFFR. The 1971 law did not cancel prior benefit rights, and allowed teachers to retire under an earlier

law if that law gave higher benefits to the teacher than the 1971 law.

When TIRF was repealed and replaced by TFFR, the moneys from the old fund were transferred to TFFR and that fund also assumed the old fund's obligations as they existed on July 1, 1971.

No actuarial valuations of TIRF were conducted between 1965 and 1969, even though there were substantial changes in benefits in these years. Since contribution levels were not increased during this time, and benefits to annuitants were increased, the fund by 1969 had an accrued liability of \$43,512,891.

Legislation passed by the 1973 and 1975 Legislatures, and higher benefits provided under the 1971 law, continued to increase the fund's accrued liability. For a discussion of this legislation and of provisions under earlier TFFR laws, please refer to the final report on TFFR prepared by the Martin E. Segal Co. and on file with the Legislative Council.

To determine the fund's status, the committee agreed an actuary should be hired to conduct an actuarial study of the fund and to propose a uniform benefit formula plan for the fund.

The committee chairman appointed a subcommittee to select an actuary to be employed by the Legislative Council to study TFFR. Subcommittee members were Representatives Oscar Solberg, Ben Gustafson, and Robert Martinson, and Senator Kent Jones. The committee approved subcommittee recommendations: that a contract not exceeding \$9,000 be entered into with the Martin E. Segal Co. to perform an actuarial study and evaluation of TFFR; that proposals from interested persons and organizations to change TFFR benefits be presented by the committee to the Martin E. Segal Co. for evaluation; and that such evaluation be included in the report to the committee.

Current Law

Under the 1971 law, teachers and governmental bodies employing teachers are required to contribute four percent of the teacher's salary to the fund. The employer contribution is limited to \$500 per year. Under this law, any teacher who has at least 10 years or more of teaching credit in the fund,

or retires at age 65, has a vested right to receive a monthly annuity from the fund until death.

Monthly benefits under the 1971 law are calculated on the basis of a formula using two distinct calculation periods, before and after the 1970-1971 school year. Generally, monthly annuities are payable in an amount equal to one percent of a teacher's average monthly salary during the 1970-71 school year, multiplied by the teacher's years of service up to and including the 1970-71 school year. Added to this benefit is one and one-half percent of the teacher's average monthly salary for each year of service after the 1970-71 school year. Two additional options are also available providing for reduced benefits during the life of the teacher and, after his or her death, during the life of the teacher's beneficiary.

Proposed Plan

The committee accepted the final "Report on the Teachers' Fund for Retirement" prepared by the Martin E. Segal Co. and submitted to the committee at its October 1976 meeting. The committee recommends a bill implementing the plan as proposed in this report.

Under the proposed plan, the new uniform benefit formula is the benefit as calculated under the 1971 law. The minimum guarantee under the plan is \$6.00 monthly per year up to 25 years, and \$7.50 monthly per year after 25 years. This minimum compares with the \$5.00-\$6.25 minimum under the 1971 law.

The proposed minimum guarantee of \$6.00-\$7.50 will benefit many of the 531 teachers affected by the 1975 TFFR amendments. House Bill No. 1290, approved by the 1973 Legislature, provided higher benefits for teachers who retired prior to 1971. An interpretation of this bill allowed teachers who retired after 1971 to also elect to receive the higher benefits provided by the 1973 law, although legislative history showed the intent of House Bill No. 1290 was to cover only those teachers who actually retired prior to 1971. The 1975 amendments required the recomputation of annuities to make them coincide with the legislative intent behind House Bill No. 1290. The effect of the 1975 amendments has been to reduce by \$30 to \$40 the current annuities of 531 teachers who retired after July 1, 1971, and were thus ineligible for the 1973 benefits. The total cost to the fund as of July 1, 1975, for payments and loss of interest to these teachers who chose to come under the 1973 law is \$340,965.

The bill also provides for a one percent increase in

the teacher and employer contribution rates from four percent to five percent. The employer contribution limit of \$500 is removed under the new plan. The committee recommended this increase in the teacher and employer contribution rate after hearing the Segal Report on TFFR's status.

The fund's unfunded liability as of July 1, 1975, was \$68,296,000. Its total liability was \$161,902,000 of which \$112,034,000 represents the accrued liability. Assets as of July 1, 1975, were valued at \$43,738,000.

The accrued liability represents the excess of the present value of the projected future benefit costs and plan administration expenses for all plan participants and beneficiaries over the assets in the fund as of the pension plan valuation date, plus the present value of future contributions for the normal cost of all plan participants and beneficiaries. In other words, if the plan would be terminated as of the pension plan valuation date, the accrued liability is the total necessary to pay the administration expenses and the present and future benefits of the plan participants and beneficiaries.

The **unfunded liability** is the cost over the assets of the fund that would be necessary to pay present and future benefits of the plan's participants and beneficiaries as of the pension plan valuation date. Therefore, the fund's assets and its unfunded liability are equal to the accrued liability. There are 2,924 retirees and beneficiaries of the fund and 14,195 nonretired employees. Of these 14,195 employees, 9,369 are considered active employees and the remaining are assumed to have terminated employment prior to the valuation date.

In addition to the increase of the teacher and employer contribution rate to five percent under this bill the committee recommends another bill for an appropriation of \$14,500,000 to TFFR to reduce the fund's unfunded liability. The actuary has indicated that a \$14,500,000 contribution, in addition to the increase in the employee and employer contribution rate to five percent, will be sufficient to make the fund actuarially sound within 40 years. As an alternative to bring the fund to actuarial soundness, the committee could have recommended a payment of \$2,783,000 per year over 40 years or a 3.1 percent increase in payroll.

In response to a desire to provide the fund with the necessary flexibility and authority to bring it to actuarial soundness, the committee is also recommending a bill amending the law to grant the TFFR

Board the authority and responsibility to set benefit levels within funding limits as established by law. This bill allows the board, rather than the legislature, to change benefit levels when such action is necessary. This bill also sets the teacher and employer contribution rate at five percent and removes the \$500 employer contribution limit.

The committee's intent with this bill is that the board follow the method of calculating benefits provided under the proposed uniform benefit formula plan outlined in the Segal Report. Therefore, the method for calculating benefits is the same under both bills.

The committee recommends both TFFR bills for introduction to the 1977 Legislative Assembly. It also recommends that before new legislation affecting benefit levels is passed in the future, an actuarial study be performed to determine the effect of the proposed legislation on the actuarial soundness of TFFR.

Feasibility of the State Funding the Entire TFFR

The committee considered the feasibility of the state funding the entire TFFR plan. The committee did not support this proposal because it would be an undue burden on the state.

Feasibility of Turning the Administration of TFFR Over to the Private Sector

In response to the directive to determine the feasibility of turning the administration of the fund over to the private sector, the committee heard from Mr. Robert G. West and Mr. N. Peter Johnson of the AETNA Life Insurance Company, on services available from the private sector. Mr. West indicated AETNA could provide the following services to TFFR: actuarial, accounting, and investment services; periodic statements of account to all the TFFR retirees; and retirement advice to TFFR members.

Mr. West also described the 403 (b) Plan (Section 403 (b), Internal Revenue Code of 1954) under which the teachers' contribution is tax deductible. Under this plan interest is paid monthly on quality corporate bonds at the rate of 8.8 percent.

Mr. Samuel Jenkins, Vice President of the Martin E. Segal Co., cautioned the committee on the need to maintain control of the administration of TFFR if it

were administered by a private company, but advised the committee to consider private sector administration of the fund since it would represent other avenues for investment of funds. He said the major advantage of a 403 (b) Plan is that the contributions and earnings are not taxed until withdrawn from the fund. Since annuitants' income earnings are usually less after retirement, his or her benefits received under the 403 (b) Plan are then taxed at a lower rate.

The committee did not take action to turn the fund's administration over to the private sector.

PUBLIC EMPLOYEE RETIREMENT SYSTEM Comparison of Money Purchase and Benefit Formula Type Plan

The present PERS plan, passed by the 1965 Legislature, is a money purchase type plan. It became effective July 1, 1966, and then applied only to state employees. In 1969 it was amended to allow employees of counties, cities, and noncertified employees of school districts to come under the plan.

There are several significant differences between a money purchase type plan and a benefit formula type retirement plan.

Under a money purchase plan, the employers' and employees' cost is fixed, while benefits vary. Under a final average salary plan, the benefits are fixed by formula, the employees cost is fixed by statute, and the employer becomes responsible to see that sufficient funds are made available to provide the benefits.

Under the money purchase type plan, upon buying an annuity, the employee's monthly life time benefit payments are determined by the value of the fund at the time, and only at the time, when that employee leaves state or political subdivision employment.

Since retirement benefits available to employees are subject to change because of fluctuations in the stock and corporate bond markets, employees are uncertain of their retirement benefits. Under a benefit formula type plan, benefits are not directly affected by the fluctuation in the stock and corporate bond markets. Under a final average salary benefit formula plan, the benefit produced is the product of a percentage factor applied to the member's years of service and the salary basis specified in the benefit formula. Percentage factors generally range from one to two percent. A final average salary plan

recognizes salary increases over the working life of the employee and thus relates benefits to economic conditions at the time of retirement. In addition, final average salary benefit formulas reward employees who realize steep progression in salary and may thereby encourage long-term service and provide incentive for improved performance.

Current Law

Under current law, a participating full-time employee contributes four percent of his or her total salary. The employer must then contribute four percent of such salary up to a maximum of \$600. These moneys are then distributed into three funds: the employee's contribution goes into the "employee fund"; \$3 of every \$4 the employer contributes goes into the "vesting fund"; and the remaining \$1 goes to the "administrative expense and benefit fund." When an employee leaves state employment, for any reason, he is entitled to receive 100 percent of the amount contributed from his salary, plus earnings on that amount. In addition, an employee may receive 100 percent of the employer's contribution in the vesting fund plus any earnings thereon, if the employee:

1. Retires at age 65 after any length of service;
2. Becomes permanently and totally disabled at any age;
3. Dies at any age; or
4. Is employed by the state for 15 years and retires at any age.

If the employee leaves state employment, voluntarily or involuntarily, before he has served for 15 years (and does not otherwise fall under categories 1, 2, or 3 above), the employee is entitled to his money accumulated in the employee fund and a certain portion of his account in the vesting fund, plus the accumulated earnings thereon. The employee gains a vested interest in the vesting fund (employer contribution) according to a schedule based upon the number of years of his or her employment.

Proposed Final Average Salary Plan

Before changing to a new and different type of retirement plan, the committee believed actuarial services were necessary to develop the plan. Pursuant to a recommendation from the committee, the

PERS Board and the Legislative Council contracted with the Martin Segal Co. for actuarial information and to provide information on the cost to fund a benefit formula type plan in North Dakota at various percentage levels. The contractual amount of \$10,000 was to be paid from PERS funds.

The committee recommends a bill for a benefit formula plan for PERS. This bill incorporates the provisions for a final average salary plan as presented in the final Segal Report on PERS. (For a detailed analysis of the plan, see the report on file in the Legislative Council office).

The effective date of the proposed benefit formula plan is July 1, 1977. All present members of the plan are covered under the new plan, and will be entitled to the employee fund and the vesting fund plus accumulated earnings as of June 30, 1977.

Under the proposed plan, members will receive credit for years of service prior to July 1, 1966, the effective date of the current plan. The proposed plan uses 1.04 percent as the benefit formula crediting factor for both past and future service. A member is vested after 10 years of service or upon reaching age 65.

Monthly benefits under the proposed plan are calculated by multiplying 1.04 percent times the average monthly salary times years of service up to 30 years. Therefore, a person working 10 years would receive as a monthly benefit approximately 10 percent of his or her final average monthly salary. An employee working 30 years would receive approximately 30 percent of his or her final average monthly salary, the highest benefit possible under the proposed plan. The last highest 60 consecutive monthly salaries within the last 120 months of employment are used to calculate the final average monthly salary.

Other major provisions included in the proposed plan are:

1. If a member dies after completing 10 years of employment, but prior to retiring, the surviving spouse of the member will receive monthly retirement benefits equal to 50 percent of the deceased member's accrued normal retirement benefits until the spouse dies or remarries, whichever first occurs.
2. If a member terminates employment because of death, permanent and total disability, or

any voluntary or involuntary reason prior to becoming eligible to receive any retirement benefits, he will be entitled to the balances of his employee account fund and the vested portion of the vesting fund, both as of June 30, 1977, with five percent annual interest after June 30, 1977. In addition, the member will be entitled to his contribution made after June 30, 1977, with five percent annual interest thereon to the date of termination. If the termination results from death or permanent and total disability, the member will be deemed 100 percent vested in the vesting fund on June 30, 1977.

3. Upon termination of employment after the completion of 10 years of service, an employee will be eligible for a deferred benefit payable commencing at his normal retirement date or on a reduced basis as early as age 55.
4. No political subdivision of the state not participating in the retirement system on June 30, 1977, can become a participant in the system until after an actuarial study is performed indicating that the benefits to be paid to the employees of such political subdivision can be expected to be paid from the estimated future contributions and earnings that will be received from such political subdivisions and earned by the fund. The political subdivision will not be allowed to participate in the retirement system unless there is a payment in addition to the regular employer's and employee's contribution for the employees of the political subdivisions which is estimated to be sufficient to pay the benefits.
5. Employees of a governmental unit who chose not to participate in the retirement plan from July 1, 1966, to June 30, 1977, may buy-in to receive credit for such years. Such employees must, in addition to paying the amount they would have paid had they participated in the former plan, pay the amount the governmental unit would have paid plus interest during that period of time.

Under the current plan, an employee becomes vested in the employer's account according to a vesting schedule based on years of employee service. The employee is vested fully after 15 years of service. If the employee terminates employment before retiring, he is entitled to receive the total employee

contribution, the vested portion of the employer account, and earnings thereon.

Under the proposed benefit formula plan an employee has no vesting interest in the fund until after 10 years of service or upon reaching age 65. Upon termination of employment, if the employee chooses to withdraw his account in a lump sum, such employee is entitled to only his contributions to the fund plus five percent interest regardless of years of service. However the proposed plan does include a provision that employees in the present system would be entitled to any benefits guaranteed them under the present plan through June 30, 1977.

COMMITMENT PROCEDURE STUDY

Background

North Dakota's basic laws concerning the voluntary, involuntary, and emergency commitment of individuals to the State Hospital were enacted in 1957 and have not been substantially changed since. However, in the last two decades, there have been a number of changes not only in the methods and theories regarding the treatment of various mental illnesses, but also in the types of available treatment facilities. In addition, there has been a string of recent court decisions expanding and elucidating patients' rights in general and specifically the rights of individuals committed involuntarily.

Perhaps the major changes over the last two decades have involved the development of patients' rights and the expansion of treatments and treatment facilities. Courts have generally held that individuals facing commitment have the same full range of due process rights as persons facing criminal charges. More emphasis in the care of mental illness is being placed on out-patient treatment at various types of community-based treatment facilities such as area mental health and retardation centers, community hospitals, and specialized treatment centers such as halfway houses and the Heartview Clinic (alcoholism and drug abuse) in Mandan. Most of these types of facilities did not exist 20 years ago.

The Legislative Council's 1973-75 interim Judiciary "A" Committee, in its study of the state's criminal code, was concerned about the efficacy, workability, and constitutionality of the state's mental health commitment procedures. It was unable, because of its workload, to pursue the subject directly. However, it did recommend the

study resolution, subsequently passed by the 1975 Legislature, directing this study by the 1975-77 State and Federal Government Committee.

The 1975 Legislature did consider a measure proposing a major overhaul of the state's mental health commitment procedures (House Bill No. 1605). Because it was introduced just at the deadline for bill introduction, and because of its size and complexity, there was not enough time for its full consideration, and it was defeated.

Current Procedure

The state's current procedure is found basically in Chapters 25-02 and 25-03 of the North Dakota Century Code.

Chapter 25-02 contains general laws establishing the county mental health boards and specifying their powers and duties. The county mental health board is probably the most important feature of North Dakota commitment laws. It is this body, sitting as a quasi-judicial tribunal, that determines many of the questions of fact concerning a person's mental health and commitment proceedings.

County mental health boards are composed of the county judge, who serves as chairman, a practicing attorney, and a practicing physician. The board can administer oaths, issue subpoenas, and compel the attendance of persons at its meetings.

Chapter 25-03 provides for two basic types of commitment to the State Hospital: voluntary and involuntary commitment. Persons 16 years old and older may apply for admission on their own. Those younger than 16 may be admitted only upon the application of their parent or guardian. The State Hospital Superintendent must release a voluntarily committed patient within five days of such patient's application for release, subject to a number of exceptions.

Two types of involuntary commitment are provided for under North Dakota law: "emergency procedure," and "hospitalization upon the order of a mental health board."

Any health or police officer or licensed physician may apply to a county judge for emergency commitment of a person if the applicant has reason to believe the individual is mentally ill and is likely to injure himself or others on account of the illness. If the State Hospital Superintendent or head of the private hospital to which the patient is taken admits

the patient, a medical examination must be administered and the patient released if hospitalization is not warranted. Any patient who requests to be released, after being committed under emergency procedure, must be released within five days unless the superintendent or the county judge who approved emergency commitment applies to the county mental health board for formal commitment by the board.

Formal proceedings for involuntary hospitalization are commenced by filing a written application, accompanied by a physician's statement, with the county mental health board. Upon receipt of the application, the board must give written notice to the proposed patient or his guardian, spouse, or friend. The board then appoints a physician to examine the proposed patient. A report of the examination is made to the board.

Following this report, the board conducts a hearing on the question of the mental condition of the proposed patient. If the board finds that the proposed patient meets the statutory criteria for commitment, it orders the hospitalization of the patient.

Committee Testimony

The committee received considerable testimony throughout its study from individuals working with and in the state's mental health system. Each witness highlighted different aspects and shortcomings of the present laws, so that overall the witnesses depicted a system which needed major overhaul rather than a few changes here and there.

Dr. John Noll, a clinical psychologist and Director of the University of North Dakota's Clinical Psychology Program, and Professor Tom Lockney, University of North Dakota Law School, pointed out numerous professional treatment and legal deficiencies under present procedures. Dr. Hubert Carbone, State Hospital Superintendent, said there are many shortcomings in the present laws that need changing. He singled out the convalescent leave statute, which allows the superintendent to release a patient on convalescent leave and then, at any time, and without additional hearings, to order his recommitment. He believes this law to be unconstitutional.

The North Dakota Criminal Justice Commission and Mr. Ed Zuern, Legal Counsel for the Director of Institutions, both said provisions allowing the transfer of inmates from the State Penitentiary to

the State Hospital at the warden's request is probably unconstitutional. Dr. Carbone and Warden Joseph Havener, while saying there are no present problems in this regard, agreed with that assessment.

Several county judges and other members of county mental health boards from large and small counties testified on the procedures followed by the boards and their view of the commitment procedures.

The general tenor of the testimony was that the present laws are not being followed by the boards and that the laws should be changed.

County Court of Increased Jurisdiction Judges Gerald Glaser, Bismarck, and Kirk Smith, Grand Forks, submitted specific proposals amending, respectively, the basic commitment procedure and the convalescent leave statute. Judge Glaser suggested a magistrate commitment system that eliminated county mental health boards. Judge Smith recommended inserting hearing provisions into the convalescent leave statute.

The committee heard from a representative of the Veterans' Administration that VA hospitals follow state laws regarding the commitment of patients for mental health reasons, but follow federal law and VA rules and regulations regarding the transfer, treatment, and discharge of patients. He urged the committee to consider changing the state's mental health commitment procedures as many other states were doing.

RECOMMENDATIONS

The State and Federal Government Committee is recommending two bills regarding mental health commitment procedures. The two are mutually exclusive since one creates a whole new commitment procedure and, in the process, abolishes county mental health boards, while the other allows the formation of multicounty mental health boards.

Multicounty Mental Health Boards

The committee believes one of the reasons current mental health procedures are not followed is the difficulty, often expressed in committee testimony, small counties have even convening a mental health board, much less following all the statutory procedures.

For example, in some areas of the state, there are

only one or two doctors or lawyers in the entire county. In these instances, it is difficult to get a lawyer or doctor to serve on the board and, it is even more difficult, once they are on the board, to get them all together for a meeting. Thus, many shortcuts in the commitment procedure are practically forced upon small counties.

While the committee firmly believes its bill recommending an entirely new commitment procedure should be adopted, it also believes this alternative should be available if the new procedures bill fails.

The suggested legislation allows any counties, with the written consent of their respective boards of county commissioners, to form multicounty mental health boards under the authority of the state's joint exercise of governmental powers laws (Chapter 54-40). A multicounty board, no matter how many counties it serves, would have five members: a county judge who would be chairman, a practicing attorney, a practicing physician, and two citizens.

The multicounty boards would function much as the current boards operate, but they would have the advantage of allowing smaller counties to make use of lawyers and doctors in other counties to serve on the boards. Costs would be split among the participating counties by agreement of the boards of county commissioners.

New Commitment Procedure

Testimony over the entire interim showed almost unanimous opinion that the state's mental commitment laws should be completely overhauled. However, throughout most of the interim, there was disagreement among persons working in the mental health field on exactly what changes are needed.

Late in the interim, an Ad Hoc Citizens' Committee, spearheaded by Mrs. Vi LaGrave, Mandan, and Mrs. Myrt Armstrong, Director of the North Dakota Mental Health Association, gathered most of those varying viewpoints on commitment procedures under one committee roof.

The State and Federal Government Committee encouraged the Ad Hoc Citizens' Committee in its efforts to put together a bill creating an entirely new mental health commitment system that would satisfy all the various viewpoints. Committee counsel was authorized by motion to work with the Ad Hoc Committee in preparing a bill.

That committee, in addition to Mrs. LaGrave, Mrs. Armstrong, and committee counsel, included Dr. Carbone; Dr. Richard Stadter, Director of the Southeast Mental Health Center, Fargo; Professor Lockney; Judge Glaser; Mr. Samih Ismir, Director of the State Health Department's Community Mental Health Program; and Mr. Larry Spears, Supreme Court planning office.

The proposed bill is a joint effort of the two committees. The Ad Hoc Citizens' Committee continued to meet following the State and Federal Government Committee's adoption of its recommended bill on commitment procedures. The citizens' group plans to further refine the recommended legislation and submit proposed amendments during the 1977 Legislature.

Since the landmark federal decision of *Lessard v. Schmidt* (1972) requiring a finding of dangerousness as a constitutional prerequisite to commitment of the mentally ill, numerous state and federal courts have invalidated state commitment laws parallel to North Dakota's. The State and Federal Government Committee and the Ad Hoc Citizens' Committee, cognizant of these court decisions, reviewed new state commitment laws of Alaska, Iowa, Michigan, Oregon and Washington that were drafted to meet the court-imposed requirements.

Synopsis of the Mental Health Bill

The major changes in the proposed bill are threefold. First, a magistrate system using the county justice has been substituted for the use of county mental health boards. The basis of this change is the recognition of the practical difficulties of convening the boards and testimony that generally the boards have delegated their authority to the chairmen who are the county judges. Second, due process requirements have been provided specifically in the areas of notice, objective standards for commitment, the right to a hearing, and the assistance of counsel and an independent expert examiner. Third, the bill allows the magistrate to order treatment other than hospitalization and promotes the utilization of community mental health resources.

Procedurally, the major change is in the involuntary admission process. Commitment may be ordered either through a judicial proceeding or under emergency measures. Under the judicial route, a petition for commitment is made by any person over 18 and is presented to the state's attorney. Sup-

porting affidavits of other persons who know of the overt acts which seem to indicate that the respondent is mentally ill, an alcoholic or drug addict, and a statement by an examining physician may accompany the petition.

The required petition contents are clearly detailed to provide concrete guidelines for the magistrate. Notice that a petition has been filed shall be given to the respondent, his next of kin, if any, or to a friend, if known. In addition, the notice informs the respondent not only of his right to a preliminary hearing and a treatment hearing, and the assistance of counsel and an independent expert examiner, but also of the possible consequences of the proceedings.

Whenever a petition for involuntary treatment is filed, the magistrate must order an investigation of the facts contained in the petition by a mental health outreach worker. The investigation is to clarify any ambiguities or conflicts contained in the petition and to assist the magistrate in making a determination as to the appropriate treatment for the respondent. The magistrate shall also order an examination of the respondent if a statement of an examining physician has not accompanied the petition. He shall inform the respondent that if he wishes, another physician may examine him and submit a report.

The two committees believe a two-tier hearing system (preliminary and treatment hearings) best fits the practical realities of North Dakota. Given the limitations in the diagnosis of alcoholism and mental illnesses, and the scarcity of mental health professionals, the committees believe a magistrate would not be able to commit a person without the benefit of a full evaluation. Thus it was decided that at the preliminary hearing, if the magistrate finds probable cause to believe that the respondent is a person requiring treatment, he may order evaluation and treatment either on an out-patient or in-patient basis, depending upon the circumstances and the respondent's condition.

Within 14 days of the beginning of the commitment proceedings a treatment hearing will be held unless (1) the respondent has been released by the hospital or evaluation and treatment facility because he does not require treatment; (2) the respondent has voluntarily admitted himself; or (3) the respondent waives his right to the hearing.

At the conclusion of the treatment hearing, if the magistrate finds the respondent is a person requiring treatment, he shall review possible alternatives to

hospitalization and enter an appropriate order for 90 days. If treatment is to be continued beyond the 90 days, another hearing will be held to determine the necessity of further treatment and another 90 day order may be entered. If a third order is necessary, it will be a continuing treatment order for an indefinite period of time.

The emergency commitment procedure is structurally much the same as the above procedure, including the two-tiers of hearings. However, the procedure is begun by the emergency hospitalization by a peace officer or physician, or upon a court order rather than by the filing of a petition.

The remainder of the bill deals with release, discharge, periodic review, and appeal procedures, plus a section on patients' rights. The bill provides

hospitals with the right to treat a patient when, in the opinion of a licensed physician or a mental health professional, treatments are necessary to prevent bodily harm to the respondent or others, or to prevent deterioration of the respondent's mental condition such that subsequent treatment might not enable him to recover.

The proposed measure also deals with the commitment of minors, and provides them with the same protections and rights, including hearings, as adults.

The bill repeals or amends existing laws dealing with mental health commitments, and creates an entirely new chapter dealing with all aspects of commitment.

TRANSPORTATION

The Committee on Transportation was assigned oversight responsibility for House Bill No. 1506, relating to a basic needs assessment study for commuter airline service in North Dakota, and Senate Bill No. 2070, now codified as Chapter 39-21.1 of the North Dakota Century Code, relating to the random motor vehicle maintenance program.

Committee members were Representatives Ralph Winge, Chairman, Odell Berg, Leroy Erickson, William Gackle, Ray Metzger, Duane Rau, Warren Schuett, Charles Scofield, and Jens Tennefos; and Senators Arthur Gronhovd and Duane Mutch.

The report of the Committee on Transportation was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-fifth Legislative Assembly by the Legislative Council in November 1976.

COMMUTER AIRLINE NEEDS ASSESSMENT

After reviewing a study outline presented by the University of North Dakota, the Legislative Council entered into a \$50,000 contract with the University of North Dakota to conduct a basic needs assessment for commuter airline service in North Dakota. The university was authorized to conduct a survey of statistically reliable samples of the adult population of the state to implement House Bill No. 1506.

If the study indicated a sufficient demand for the service, then the Transportation Committee could recommend proceeding with the study's second phase to determine service areas, arrival and departure times, and rates.

The principal investigation for the study was conducted by UND's Bureau of Business and Economic Research. Questionnaires were sent to 3,614 persons in North Dakota 18 years of age or older, and to 1,881 business firms in North Dakota. The response rate for both questionnaires was 59 percent. The general population sample was derived by a random computer sampling of the list of licensed drivers on record at the Highway Department. The business sample was derived from a computer sampling of North Dakota business firms

from the records of the Employment Security Bureau. The questionnaires were sent with a cover letter signed by the Governor and the Chairman of the Legislative Council.

The survey results indicate that most state residents do not believe they would benefit very much from improved air service, and believe it is more important to improve highways and train and bus service. The business sample indicates a belief that it is important that airline services be improved. The responses to the general questionnaire indicate a widespread opposition to governmental subsidies for airline services.

Only 13 percent of the general respondents (or eight percent of the total sample of 3,614 persons) would make use of a commuter airline linking the state's larger cities. Almost half of the business respondents (or 27 percent of the total business sample) would make use of commuter air service. The survey report says the business responses indicate potential demand for business travel is at least three-and-one-half times larger than present usage. The report indicated greater confidence in the business sample because a comparison between projected use of intrastate air service and actual use of the service by businesses in the past verified the survey findings.

The report also indicates Bismarck, Fargo, Minot, Grand Forks, Devils Lake, Dickinson, Jamestown, and Williston can sustain commuter air service. This conclusion is based on a comparison between the surveyed demand in those cities and federal statistics on the use of commuter air services.

The report indicates that the main reason for the lack of use of present intrastate air service is the expense; only 25 percent of the respondents to the general questionnaire would pay present prices for intrastate air travel.

The committee accepted the report on the basic needs assessment and, based on that report, determined not to approve the study's second phase and recommended that no further funds be provided for the second phase. The committee believes that the survey and report were excellently done, and that fixed base operators of private air services in North Dakota should be made aware of the survey results so they may determine if the demand justifies

providing such services. The report and documentation is on file with the Legislative Council and is readily available to be used in the future if events indicate that commuter air service in North Dakota is demanded.

At least in partial response to the basic needs assessment report, a Grand Forks firm began a commuter air service between Bismarck and Grand Forks on a trial basis.

MOTOR VEHICLE INSPECTION

Senate Bill No. 2070, enacted by the 1975 Legislative Assembly and codified as Chapter 39-21.1 of the North Dakota Century Code, provides for a random motor vehicle inspection program administered by the North Dakota Highway Patrol. The law authorizes the Highway Patrol superintendent to promulgate rules and regulations for the motor vehicle inspection program, subject to the approval of an appropriate interim legislative committee designated by the Legislative Council. The Transportation Committee was so designated. The promulgated rules, based extensively on federal requirements, comprise seven chapters, and were reviewed in their entirety by the committee. The rules cover qualifications for inspectors and inspection stations, inspection procedures and criteria, administrative hearings, selection of participants, and evaluation of program results.

The committee approved the regulations, with amendments, at its September 9, 1975, meeting, which allowed the Highway Patrol to proceed with the random inspection program. One of the principal changes made by the committee to the rules was to require the Highway Patrol pay the \$5 inspection fee for all vehicles ordered to be inspected during the program's first year. A vehicle owner is required to pay the fee if he voluntarily submits his vehicle for inspection.

The committee also limited the requirement that a wheel hub be removed for brake inspection by excluding all vehicles less than one year old and which have less than 20,000 miles from that requirement. The committee deleted the stopping distance test for brake inspection, and required that all administrative hearings be conducted in the same manner as hearings before the district court, including use of the rules of evidence.

Chapter 1 of the inspection rules provides, among other things, that inspectors must be certified by the

State Highway Patrol, must be 18 years old, and must attend a course of instruction and satisfactorily pass an examination exhibiting knowledge of inspection regulations and procedure. Certified inspectors must also attend an annual refresher course on inspection regulations and procedure.

Each inspection must be a complete one. However, reinspections of rejected vehicles cover only the defective part or parts. All rejected vehicles must be repaired and submitted for a reinspection within 15 days of the initial inspection. The 15-day limit may be extended by a Highway Patrol officer if repair parts are not available or if weather conditions do not permit a reinspection within the time provided.

Chapter 2 provides for three classes of inspection stations: those that may inspect all vehicles, those that may inspect vehicles and trucks under 10,000 pounds, and those that inspect only fleet vehicles. The chapter provides for the size of testing areas and of doors into the testing area, and the test equipment required for the testing of lights, brakes, steering, suspension, and tires.

Chapter 3 covers inspection procedure, and requires that all inspected vehicles carry a certificate of maintenance. A valid inspection certificate from another state is honored until that certificate expires. The certificate of maintenance must be mounted on the inside lower left corner of the windshield of an inspected vehicle. The chapter also provides for the distribution of supplies to inspection stations, for a monthly report from each station to the Highway Patrol on all inspections made during the month, and for suspension of a vehicle's registration if it is not brought into compliance with the law and the regulations.

Chapter 4 covers inspection criteria and the technical requirements of the inspection program for various vehicle parts.

Chapter 5 provides for administrative hearings for persons aggrieved by a decision of the Highway Patrol concerning the inspection of a motor vehicle. The hearing must be demanded within 30 days of receipt of notice of the decision on which the hearing is sought. Following service of the complaint and answer, the hearing is held, and a record is made of all testimony. The hearing examiner may subpoena persons and documents, and may petition a district court for an order requiring attendance of persons who do not respond to the subpoena. The hearing

examiner must make his decision within 30 days of the hearing, and a rehearing of the matter may be requested within 15 days after the decision. An appeal to the district court from the decision may be taken pursuant to the Administrative Agencies Practice Act (Chapter 28-32 of the Century Code). The hearing provided for in this chapter is available for persons who have had their vehicle inspected, and for the suspension or revocation of the license of an inspector or station.

Chapter 6 provides for randomly selecting, by computer, vehicles for inspection from the motor vehicle registration master number file. A further random selection of 1,050 vehicles is made for reinspections. Owners of vehicles selected for inspection are notified by first-class mail and must submit their vehicles for inspection within 15 days of receipt of the notice.

The four counties selected to take part in the program were the counties of Bowman, Cavalier, Morton, and Richland. They were randomly selected from a list which placed all the counties in four groups consisting of major urban counties and counties by geographic location. A total of 2,500 vehicles were selected from those counties to be inspected.

Chapter 7 provides for the evaluation of data derived from the trial program on motor vehicle inspection. The effectiveness of the program will be evaluated by analyzing the changes in the vehicle safety quality level. This will be done by reinspecting a random selection of 1,050 vehicles to ascertain changes in the vehicle safety quality level. In addition, each of the sample counties will be compared to each other to determine any significant differences in vehicle safety quality levels. The safety quality level is expressed in terms of the number and percentage of vehicles with single safety defects or multiple defects. Further information will be gathered on the number of vehicles passed and rejected, the number of defects by type of defect, followup procedures to ensure that defective vehicles have been repaired, individual inspection station records to determine costs, and a comparison between safety quality levels for vehicles tested in North Dakota and vehicles tested in Washington, D.C., on the emphasis items of tires and brakes.

After the committee approved the amended regulations, it heard reports during the interim on the statistics derived by the Highway Patrol. The most recent statistical report, covering the period of

January 1, 1976, to September 30, 1976, shows there are 36 inspection stations in the four participating counties, 56 inspection stations in 24 other counties, eight governmental fleet stations (operated by the Highway Department), one private fleet station, and 142 licensed inspectors. During the reporting period, \$5,378 was collected for station signs, inspector and station license fees, and the sale of other inspection material; the funds are deposited in the State Highway Fund.

The report indicates that a total of 2,089 vehicles were inspected during the period; 1,205 (57.6 percent) were found to be defective in one or more areas. The average defect per defective vehicle was 1.7; the average defect per inspected vehicle was 1; the average charge to repair per defective vehicle was \$28.80; and the average charge to repair per inspected vehicle was \$16.40. The most common defects involved lights, exhaust, brakes, and tires. Statistics for voluntarily inspected vehicles show a slightly lower defect rate.

During this period 218 vehicles were reinspected at either three-month or six-month intervals. A total of 63 (28.9 percent) were defective in one or more areas. This percentage rate is roughly half of the defect rate for vehicles inspected for the first time. The reinspection data shows that lights, exhaust, brakes, and tires account for the major portion of the defects found, but those defects were only half as frequent in the reinspected vehicles.

The committee engaged in extended discussion on the merits of motor vehicle inspection. Underlying the discussions was the uncertainty of future federal sanctions against states not adhering to federal safety regulations. The committee heard testimony from representatives of the National Highway Traffic Safety Administration, Department of Transportation, that sanctioning procedures are currently in a state of suspension, and that the Department of Transportation is conducting a thorough review of the nation's traffic and vehicle safety standards. Results of the review will not be known until early in 1977, and Congress will take no action on a new Highway Act, which may or may not include sanctioning procedures, until after July 1, 1977.

The existing, but suspended, sanctions could include withholding all of a state's federal highway safety funds and 10 percent of a state's highway construction funds.

State law provides that the Highway Patrol is to conduct a random motor vehicle inspection program. The committee doubts whether the program could be made mandatory and statewide without a change in the law deleting the random nature of the inspection program. However, because of the uncertainty of future federal action on sanctions, and because the final statistics of the state's trial program will not be known until after April 1, 1977, the committee recommends that the Legislative Council assign to a new interim committee (during the 1977-79 interim) the responsibility of determining whether North Dakota's motor vehicle inspection program should be continued and in what form.

If the motor vehicle inspection program is made statewide, but random, the administrative expense involved in licensing of inspectors and stations will greatly increase because of the Highway Patrol rule which tries to provide a motor vehicle owner with an inspection station within 30 miles of his home.

The committee believes sufficient information will be available by the beginning of the next interim study period to allow a more reasoned determination of the future of motor vehicle inspection in North Dakota.

EXPLANATION OF LEGISLATIVE COUNCIL BILLS AND RESOLUTIONS

SENATE

Senate Bill No. 2016 — Federal Wildlife Area Acquisition Approval. This bill provides that proposed land, wetland, and water acquisitions by the Department of the Interior for wildlife purposes are to be approved or disapproved by the county commissioners of the affected county after inspection, public notice, opportunity for public comment, and consideration of impact analyses. (Committee on Agriculture)

Senate Bill No. 2017 — Negotiation of Wildlife Easements and Leases. This bill provides that a landowner may negotiate easements or leases sought by the Department of the Interior or the State Game and Fish Department for wildlife purposes. Such easements or leases would automatically terminate upon death of the landowner or upon change of ownership. A landowner may restrict leases or easements to the land, wetland, or water areas sought, and may drain any after-expanded wetland or water area in excess of the agreement. Failure to comply will nullify state consent to specified federal acts. (Committee on Agriculture)

Senate Bill No. 2018 — Wildlife and Fish Restoration Project Conditions. This bill provides for state consent to federal aid for wildlife and fish restoration projects to be administered by the State Game and Fish Department subject to the condition that proposed projects involving acquisition of wetland, water, or land areas are to be submitted to the county commissioners of the affected county for approval or disapproval. Physical inspection, public notice, and opportunity for public comment are required, and impact analyses are provided for county commissioner consideration. Leases and easements would terminate upon the death of a landowner or upon change in land ownership. A landowner could restrict a lease or easement to wetland, water, or land areas sought and drain any expanded wetland or water area. Failure to accept the conditions would nullify state consent to the federal acts. (Committee on Agriculture)

Senate Bill No. 2019 — Review of Emergency Commission Action. This bill repeals the section requiring quarterly reports by agencies receiving

Emergency Commission approval to transfer funds or receive additional funds, and requires the State Auditor to review expenditures made pursuant to Emergency Commission action. (Committee on Budget "A")

Senate Bill No. 2020 — Political Subdivision Audits. This bill provides that the State Auditor may, in lieu of conducting an audit every two years, require financial reports from school districts with less than 100 enrolled students and other political subdivisions with less than \$75,000 of annual receipts. (Committee on Budget "A")

Senate Bill No. 2021 — Selection of Elected Official to Serve on State Personnel Board. This bill provides that the state's constitutionally elected officials shall meet to select the elected official to serve on the State Personnel Board. (Committee on Budget "C")

Senate Bill No. 2022 — Construction of State Office Building. This bill authorizes the Board of University and School Lands to invest \$6.25 million from the Permanent Common School Trust Fund for construction of a state office building on the Capitol grounds. (Committee on Budget "C")

Senate Bill No. 2023 — Administration of Heritage Center Building. This bill gives the Historical Board administrative and operational jurisdiction over the Heritage Center building and also makes the Director of Institutions responsible for the maintenance of the Heritage Center. (Committee on Budget "C")

Senate Bill No. 2024 — Indian Education Curriculum. This bill allows the Superintendent of Public Instruction to contract for development of an Indian education curriculum. This curriculum can be implemented within the present minimum curriculum requirement for elementary and secondary schools. However, it would not impose an additional requirement upon schools to provide this curriculum as a prerequisite for certification. The bill provides an appropriation of \$500,000 to cover costs of further research and continued evaluation, revision, production, distribution, and teacher in-service training. (Committee on Education)

Senate Bill No. 2025 — Excess Costs of Special Education. This bill holds the residence district in child-placement cases liable for the excess costs of special education. (Committee on Education)

Senate Bill No. 2026 — Optional Annual Payments for Transmission Line Easements. This bill requires utilities to offer landowners the option of a lump sum payment or annual payments for electric transmission line easements. Annual payment contracts would be renegotiated every 10 years with the right to arbitration of annual payment renewal disputes. (Committee on Finance and Taxation)

Senate Bill No. 2027 — Tax Credit for Transmission Line Towers. This bill provides a property tax credit of six percent of the assessed value of the quarter section of land on which large transmission towers are located, with a maximum credit of 25 percent for all towers located on a quarter. The bill contains an appropriation of \$200,000 to reimburse political subdivisions for the loss of revenue resulting from the tax credit. (Committee on Finance and Taxation)

Senate Bill No. 2028 — Large Transmission Line Taxes. This bill increases the tax on large cooperative transmission lines from \$150 to \$225 per mile. (Committee on Finance and Taxation)

Senate Bill No. 2029 — Postsecondary Education Commission. This bill creates a commission to accept federal moneys and any appropriated state moneys for coordinating comprehensive planning of postsecondary education and conducting comprehensive inventories and studies of all public and private postsecondary educational resources in the state. The Higher Education Facilities Commission authorization would be repealed. (Committee on Higher Education)

Senate Bill No. 2030 — Membership of the Advisory Board of Directors to the Bank of North Dakota. This bill expands the five-member Advisory Board of Directors to the Bank of North Dakota to nine members. Appointments are made by the Governor and subject to Senate confirmation. Members appointed to the board are to represent agriculture, finance, industry, and other appropriate segments of the state's economy. (Committee on Industry, Business & Labor "B")

Senate Bill No. 2031 — Authority of the Advisory Board of Directors to the Bank of North Dakota. This bill specifically designates the authority and

responsibility of the advisory board. The board is required to meet with Bank management to review Bank operations; make recommendations to the Industrial Commission concerning Bank operating policies, objectives, and personnel; and meet with the Industrial Commission to present any recommendations. (Committee on Industry, Business & Labor "B")

Senate Bill No. 2032 — Elimination of Private Deposits in the Bank of North Dakota. This bill prohibits individuals and private businesses from having accounts at the Bank. The Bank could accept deposits only from government entities, financial associations, rural electric cooperatives, and non-profit associations. Checking and savings accounts from prohibited sources are required to be removed by January 1, 1978, and certificates of deposit are required to be removed on or before their first renewal dates after January 1, 1978. (Committee on Industry, Business & Labor "B")

Senate Bill No. 2033 — Examination of State-Chartered Banks. This bill replaces the requirement that the Commissioner of Banking and Financial Institutions inspect state banks at least twice a year with a requirement that he inspect state banks at least once a year. (Committee on Industry, Business & Labor "B")

Senate Bill No. 2034 — Additional Compensation for the Commissioner of Banking and Financial Institutions. This bill repeals Section 6-07-50 which authorizes additional compensation to the Commissioner of Banking and Financial Institutions and the chief deputy examiner for terminating insolvent banks. (Committee on Industry, Business & Labor "B")

Senate Bill No. 2035 — Banking Law Definitions and Obsolete References. This bill removes statutory references to savings banks, replaces the term "state examiner" with "Commissioner of Banking and Financial Institutions," and changes the definition of a credit union to more accurately describe credit union operations. (Committee on Industry, Business & Labor "B")

Senate Bill No. 2036 — Banking Law Statutory References. This bill eliminates references to repealed sections of law and inserts references to appropriate replacement statutes or to statutes which the North Dakota Supreme Court has held appropriate for statutory referencing. (Committee on Industry, Business & Labor "B")

Senate Bill No. 2037 — State Mill and Elevator Discontinuance of Feed Department. This bill requires the North Dakota Mill and Elevator Association to discontinue its feed department operation. The bill deletes the Industrial Commission's authority to acquire, manufacture, store, distribute, and sell animal feed and feed products. The Industrial Commission is to dispose of feed inventory and equipment and machinery not necessary to other Mill activities as soon as possible after July 1, 1977. (Committee on Industry, Business & Labor "B")

Senate Bill No. 2038 — Insurance Laws Update. This bill creates a procedure for the revocation or suspension of the authority of a foreign insurance company to do business in the state; amends the procedure for filing sample policy forms and articles of incorporation (and amendments) with the Commissioner of Insurance (and registers of deeds in certain cases); raises the capital asset and surplus requirements for certain domestic and foreign insurance companies; outlines procedure for revocation of authority of a foreign insurance company to do business in the state; clarifies the liability of insurance company officers to stockholders and policyholders; clarifies collection of premiums by mutual insurance companies; clarifies the procedure by which domestic insurance companies may be consolidated or dissolved; and repeals outdated laws. (Committee on Industry, Business & Labor "C")

Senate Bill No. 2039 — Hospital Insurance Coverage Continued for Incarcerated Juvenile Delinquents. This bill broadens medical hospital insurance coverage to include incarcerated juvenile delinquents, who, but for their incarceration, would have been included under the policy. (Committee on Industry, Business & Labor "C")

Senate Bill No. 2040 — Indexing Insurance Policies. This bill gives the Insurance Commissioner the authority to issue rules and regulations to require insurance companies to issue an index with each policy listing the relevant provisions of the policy. (Committee on Industry, Business & Labor "C")

Senate Bill No. 2041 — Payment of Wages Due Terminated Employees. This bill provides for the payment of a terminated employee's wages within 24 hours of termination. The wages can be paid at the employer's place of business or sent by certified mail within the next pay period, not to exceed 15 days, at

an address specified by the employee. (Committee on Industry, Business & Labor "C")

Senate Bill No. 2042 — Employment Agencies. This bill broadens the definition of "employment agent" or "employment agency" to include an employment service association furnishing other business associations with persons to provide temporary services for a fee. (Committee on Industry, Business & Labor "C")

Senate Bill No. 2043 — Employment Agency License Fees. This bill increases the annual licensing fees of employment agencies to \$200 from the present maximum of \$150. It also increases the minimum bond required for these agencies from \$2,000 to \$5,000 and eliminates sexually discriminatory language. (Committee on Industry, Business & Labor "C")

Senate Bill No. 2044 — Labor Commissioner's Powers. This bill authorizes the Labor Commissioner to conduct elections to determine the exclusive representative and appropriate bargaining unit for purposes of labor negotiations. (Committee on Industry, Business & Labor "C")

Senate Bill No. 2045 — State Equal Employment Opportunity Act. This bill establishes a North Dakota Equal Employment Opportunity Act. Basically, the bill follows the format of the Federal Equal Employment Opportunity Act, except it authorizes the Labor Commissioner to administer the Act rather than the regional federal office. Coverage has been expanded to provide additional protection to employees within the state. (Committee on Industry, Business & Labor "C")

Senate Bill No. 2046 — Political Activities by Public Employees. This bill prohibits all public employees from engaging in political activities while on duty or in uniform. Political activities are defined. State officers and employees are allowed to collect expenses only while engaged in state activities but may not collect such expenses while engaged in political activities. (Committee on Industry, Business & Labor "C")

Senate Bill No. 2047 — Election Expenses. This bill requires the state to reimburse counties for the cost of statewide elections on a percentage basis. (Committee on Judiciary "A")

Senate Bill No. 2048 — Election Expenses. This bill requires the state to reimburse counties for the cost

of statewide elections on the basis of \$3.00 per vote cast in the county. (Committee on Judiciary "A")

Senate Bill No. 2049 — Voting Responsibility Education. This bill requires school boards to give instruction on the duties and responsibilities of voting. (Committee on Judiciary "A")

Senate Bill No. 2050 — State Office of Prosecutor Coordination. This bill creates the office of state prosecutor coordination within the Attorney General's office. The position is designed to assist state's attorneys in all aspects of their work except actual trial work. This assistance will include maintenance of a "brief bank," publication of a newsletter digesting the latest court and Attorney General rulings regarding criminal law, preparing and conducting training seminars, and providing specific criminal law research. (Committee on Judiciary "B")

Senate Bill No. 2051 — Full-Time State's Attorney Option. This bill gives any county, regardless of its population, the option, by resolution of its board of county commissioners, to make the state's attorney position full-time. Now only counties with populations exceeding 35,000 may have full-time state's attorneys. The other counties have state's attorneys who are also allowed to conduct a private law practice. (Committee on Judiciary "B")

Senate Bill No. 2052 — Sealing and Destruction of Juvenile Court Records. Under this bill a juvenile's court records would be automatically sealed when the juvenile reaches 21, has been discharged from the court's jurisdiction for two years or more, or has had the proceedings dismissed. The records would be destroyed two years after sealing. Juvenile court records are now sealed either upon application of the juvenile or upon the court's motion and after a hearing. (Committee on Judiciary "B")

Senate Bill No. 2053 — Mental Health Commitment of Juveniles. This bill clarifies confusion regarding the commitment of minors in juvenile court proceedings for mental health treatment by clearly giving this authority to the juvenile court. It is unclear presently if this authority rests with the juvenile court or the county mental health boards. (Committee on Judiciary "B")

Senate Bill No. 2054 — Juvenile Right to Counsel. Under this bill, all juveniles would have to be represented by counsel in juvenile court proceedings.

Juveniles may presently waive their rights to counsel. (Committee on Judiciary "B")

Senate Bill No. 2055 — Juvenile Court Jurisdiction Over Adults. This bill gives juvenile courts jurisdiction over adults when the court believes this is necessary for the physical, mental, or moral well-being of a child under its jurisdiction. The court's orders under this jurisdiction, however, must be related to the purposes for which it is exercising jurisdiction over the child. (Committee on Judiciary "B")

Senate Bill No. 2056 — Privacy and Security of Criminal Records. This bill creates new laws to ensure the privacy and security of criminal records, to control the access to and dissemination of those records, to allow individuals to inspect and challenge the records law enforcement agencies have on them, to establish procedures requiring that criminal records be accurate and complete, and to allow the State Crime Bureau to serve as a central state repository for criminal records. (Committee on Judiciary "B")

Senate Bill No. 2057 — Job Disqualification Following Criminal Conviction. This bill repeals Section 34-01-16 which prohibits persons convicted of any crime involving moral turpitude or a felony, except traffic violations, from serving in any official capacity or as an officer in any labor union or labor organization in this state. (Committee on Judiciary "C")

Senate Bill No. 2058 — Occupational Licensing. This bill says a person is not disqualified to engage in any occupation, trade, or profession for which a license, permit, or certificate of registration is required from any state agency or board solely because of prior conviction of an offense. However, a person could be denied a license because of a prior conviction if he has not been sufficiently rehabilitated, or if the offense has a direct bearing upon his ability to serve the public in a specific occupation, trade, or profession. (Committee on Judiciary "C")

Senate Bill No. 2059 — Marriage Prohibition. This bill repeals Section 14-03-07 which prohibits marriage by a woman under 45 or by a man of any age, unless he marries a woman over 45, if such a man or woman is a chronic alcoholic, an habitual criminal, mentally deficient, insane, or has been afflicted with hereditary insanity or with any contagious venereal disease. Section 14-03-12 would be

amended to provide that no marriage license shall be granted if either party is infected with syphilis or other venereal disease in communicable form, and no person who is afflicted shall be entitled to marry. (Committee on Judiciary "C")

Senate Bill No. 2060 — Appellate Review of Criminal Sentences. This bill allows a person convicted of a felony in district court to seek permission of the Supreme Court to appeal the sentence imposed. The Supreme Court would have the power to deny permission to appeal the sentence, or upon granting permission to appeal, would have the power to substitute for the sentence under review any penalty, including the possibility of an increased sentence, open to the sentencing court other than probation or conditional release. (Committee on Judiciary "C")

Senate Bill No. 2061 — Interim Retirement Committee. This bill creates a permanent, interim seven-member committee to study proposed changes in governmental retirement systems. No bill proposing such changes could be introduced unless it is accompanied by a report from this committee. (Committee on Legislative Procedure and Arrangements)

Senate Bill No. 2062 — Water Appropriation. This bill amends the water appropriation chapter by reordering priorities for allocation and establishing criteria for the issuance, denial, and forfeiture of water permits. (Committee on Natural Resources)

Senate Bill No. 2063 — Sale of State-Owned Land. This bill requires the Commissioner of University and School Lands to determine the highest and best use and the appraised value of all land authorized to be sold by the legislature. (Committee on Natural Resources)

Senate Bill No. 2064 — Increased Township, City, and County Mill Levy Authorizations. This bill increases the mill levy limitations of counties, cities, and townships by three, five, and three mills, respectively. (Committee on Political Subdivisions)

Senate Bill No. 2065 — Replacement Tax Transfer Based Upon Population [RTT 1]. This bill allocates four percent of the sales and use tax and four percent of the income tax to counties and cities on the basis of population. If a city has a park district, the city's allocation is split between the city and the park district in proportion to their respective mill levies.

The bill expires at the end of the biennium (June 30, 1979). (Committee on Political Subdivisions)

Senate Bill No. 2066 — Replacement Tax Transfer Based Upon Tax Effort [RTT 2]. This bill allocates four percent of the sales and use tax and four percent of the income tax to counties and cities on the basis of population, tax effort, and personal income in each county. The bill would only be in effect during the next biennium, and would expire June 30, 1979. (Committee on Political Subdivisions)

Senate Bill No. 2067 — Replacement Tax Transfer Based Upon Tax Revenues [RTT3]. This bill appropriates \$20 million from the general fund to be apportioned to all political subdivisions, except school districts, on the basis of property tax revenues. The bill expires at the end of the biennium (June 30, 1979). (Committee on Political Subdivisions)

Senate Bill No. 2068 — PERS Benefit Formula Retirement Plan. This bill provides a benefit formula retirement plan for the Public Employee Retirement System. Employees, after 10 years of service or reaching age 65, become entitled to receive lifetime monthly benefits equal to 1.04 percent of their final average salary times years of service. (Committee on State and Federal Government)

Senate Bill No. 2069 — Multicounty Mental Health Boards. This bill provides procedures for any number of counties, by resolution of their boards of county commissioners, to join together to form a single, multicounty mental health board to serve all the counties involved. (Committee on State and Federal Government)

Senate Bill No. 2070 — New Mental Health Commitment Law. This bill repeals Chapter 25-03 and other miscellaneous sections pertaining to mental health commitment procedures and creates a new chapter providing entirely new commitment procedures. The new procedures use a single magistrate system and rely on two hearings — preliminary hearing and treatment hearing — rather than the old system of a single hearing before a county mental health board. The bill deals with voluntary, involuntary, and emergency commitments as well as the commitment of minors and the transfer of Penitentiary inmates to the State Hospital. (Committee on State and Federal Government)

Senate Concurrent Resolution No. 4001 — State Library Services for State Historical Board. This concurrent resolution recommends that the State Library Commission provide technical services to the State Historical Board library operations. (Committee on Budget "C")

Senate Concurrent Resolution No. 4002 — Use of Liberty Memorial Building. This concurrent resolution recommends that the State Library Commission be moved to the Liberty Memorial Building once the Historical Board no longer occupies the building. (Committee on Budget "C")

Senate Concurrent Resolution No. 4003 — Permanent Legislative Council Interim Constitutional Revision Committee. This resolution directs the Legislative Council to establish a permanent interim Constitutional Revision Committee composed of legislators and citizens to provide ongoing study and review of constitutional revision. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4004 — Repeal of Sections 60 and 62 of the Constitution. This measure would repeal Sections 60 and 62 providing, respectively, that no appropriation bill except for governmental expense could be introduced after the 40th legislative day, and that the general appropriations bill can contain nothing but legislative, executive, and judicial branch appropriations. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4005 — Repeal of Article 75 of the Constitution. This measure would repeal Article 75 providing for the continuity of state government in case of enemy attack. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4006 — Repeal of Article 76 of the Constitution. This measure would repeal Article 76 allowing the state to help finance privately or cooperatively owned power and energy conversion facilities. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4007 — Repeal of Section 180 of the Constitution. This measure would repeal Section 180 of the Constitution authorizing a poll tax of \$1.50 on every resident male in the state between the ages of 21 and 50. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4008 — Repeal of Section 181 of the Constitution. This measure

would repeal Section 181 giving the legislature general powers to pass laws concerning revenue and taxes. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4009 — Repeal of Section 214 of the Constitution. This measure would repeal Section 214 that lists the state's original congressional and legislative apportionment. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4010 — Repeal of Sections 1 Through 25 of the Constitution's Transition Schedule. This measure repeals the provisions for the transition from territorial government to state government. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4011 — Constitutional Amendment Regarding State School Land Leases. This measure would amend Section 161 of the Constitution to generally remove the restrictions on the leasing of state school lands only for pasturage and meadow, to allow the legislature to set the lease terms, and to increase the allowed length of a school land lease for grazing and agricultural purposes from five to 10 years. (Committees on Constitutional Revision and Natural Resources)

Senate Concurrent Resolution No. 4012 — Constitutional Amendment Regarding Statewide Property Tax Revenue Totals. This measure would amend Section 174 of the Constitution to clarify the language so it clearly refers to raising revenues based on an ad valorem tax on property and, when referring to the property's valuation, to be figured for tax purposes, removes the qualifying word "assessed". (Committees on Constitutional Revision and Finance and Taxation)

Senate Concurrent Resolution No. 4013 — Constitutional Amendment Regarding Political Subdivision Bond Limits. This measure would amend Section 183 of the Constitution to increase the bonding limitations of political subdivisions from five to eight percent. (Committees on Constitutional Revision and Political Subdivisions)

Senate Concurrent Resolution No. 4014 — Constitutional Amendment Regarding the Lieutenant Governor Voting in the Senate. This measure would amend Section 77 of the Constitution to allow the Lieutenant Governor to vote in the

Senate only in tie votes regarding procedural matters. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4015 — Adult and Vocational Education. This resolution directs a Legislative Council study of the needs and financing of adult and vocational education in light of future needs and new and merging occupations. (Committee on Education)

Senate Concurrent Resolution No. 4016 — Teachers' Salaries to Receive Budget Priority. This resolution commends school districts for raising teachers' salaries in North Dakota and urges them to continue giving first consideration to teachers' salaries. (Committee on Education)

Senate Concurrent Resolution No. 4017 — Urges Congress to Provide Funds for Local Tax Losses Caused by Federally Owned Transmission Lines. This resolution urges Congress to enact legislation providing for the reimbursement of political subdivisions for the loss of property tax revenue resulting from federally owned electric transmission lines. (Committee on Finance and Taxation)

Senate Concurrent Resolution No. 4018 — Council Study of Legislative Process. This is a concurrent resolution directing the Legislative Council to study how the legislature could best use the 80 "natural" days it now can meet. The Council is also to study the legislature's interim structure. (Committee on Legislative Procedure and Arrangements)

HOUSE

House Bill No. 1018 — Community Water Facility Loans. This bill provides supplemental financing of community water facilities in conjunction with federal moneys from the Farmers Home Administration. A \$10 million revolving fund is to be administered by the Bank of North Dakota. (Committee on Agriculture)

House Bill No. 1019 — Depositing of Penitentiary Tax and Sign Income. This bill repeals Section 12-48-13 requiring the Penitentiary to deposit receipts from the manufacture and sale of license plates and road signs in the general fund. This will eliminate the conflict with Section 54-23-25 which requires that such funds be deposited in the institution's operating fund. (Committee on Budget "A")

House Bill No. 1020 — National Guard Unit Funds. This bill authorizes each unit of the North Dakota National Guard to maintain a nonreverting unit fund to pay petty operating, equipment, and supply costs incurred by the individual units. (Committee on Budget "A")

House Bill No. 1021 — Student's Spouse Not Covered by Unemployment Insurance Coverage. This bill excludes a student's spouse working at one of the state's colleges and universities from unemployment coverage if the spouse is told when hired that the job is provided under a financial assistance program and that he or she will not be covered by unemployment insurance. (Committee on Budget "B")

House Bill No. 1022 — State Archives. This bill designates the Historical Board as the official state archives, requires the state archivist to select and preserve state records with permanent research and reference value, and clarifies the relationship of the state archivist to the state's Records Management Program. (Committee on Budget "C")

House Bill No. 1023 — Publication of the State Constitution. This bill requires the Secretary of State to publish a so-called short-form or handbook version of the State Constitution that would be easy to obtain and easy to read. (Committee on Constitutional Revision)

House Bill No. 1024 — Elimination of Textbook and Activity Fees. This bill prohibits school boards

from charging textbook or activity fees. School boards are authorized to require certain fees, such as security deposits and fees for extracurricular activities, where attendance by the pupil is optional. School boards presently charging such fees must eliminate them within five years by reducing them by at least 20 percent a year. School boards are partially reimbursed for this cost by increasing the foundation program per-pupil payment by \$5 the first year and \$10 the second year of the biennium. (Committee on Education)

House Bill No. 1025 — State School Construction Fund. This bill amends the limitations on the State School Construction Fund expenditures to allow a school board borrowing from the fund to allocate any portion of a levy for a school building not otherwise allocated by contract with the fund for purposes determined by the school board within the other limitations for which the mill levy is authorized. The borrowing limitation for school districts is raised from 20 to 30 percent of the school district's taxable valuation, and the monetary limitations which the loan may not exceed is raised from \$600,000 to \$1 million. The State Board of Public School Education, which administers the fund, is given discretionary authority to determine a sufficient mill levy to provide for repayment of the contracted loan within 20 years. A school district cannot borrow more than 30 percent of its taxable valuation and cannot levy less than 10 mills for the maintenance of a building fund. The fund is appropriated an additional \$2.5 million to fund borrowing with these increased limitations. (Committee on Education)

House Bill No. 1026 — Foundation Program. This bill provides a weighting factor to be included in the foundation program for special education pupils between three and six years of age. Per-pupil payments are increased to \$765 the first year and \$840 the second year of the biennium. Transportation payments are increased to 15 cents per mile for school buses having a capacity of 16 or less and to 31 cents per mile for larger buses. This bill continues the basic concepts of state aid to education previously adopted by the legislature. (Committee on Education)

House Bill No. 1027 — Uniform Accounting System in School Districts. This bill establishes a uniform accounting system for all school districts to

provide an initial data base from which future decisions regarding education and accountability in education may be made. The bill provides for testing and establishment of pilot programs through mini-grants. (Committee on Education)

House Bill No. 1028 — Qualifications of County Directors of Tax Equalization. This bill requires all county directors of tax equalization to hold a current assessor's certificate issued by the state supervisor of assessments. (Committee on Finance and Taxation)

House Bill No. 1029 — Preferential Assessment of Agricultural Lands. This bill provides landowners with the option of having their land assessed twice; one assessment based upon the land's agricultural value, and one assessment based upon the prevailing market value. So long as the land would be used for agricultural purposes it would be assessed as adjoining agricultural land, but if the use of the land were changed, the owner would be subject to the taxes which would have been due for the last five years had the special double assessment not been allowed. (Committee on Finance and Taxation)

House Bill No. 1030 — Junior College Budget and Audit Information. This bill amends Section 15-18-08 to require junior colleges to provide budget and audit information to the Appropriations and Audit and Fiscal Review Committees. (Committee on Higher Education)

House Bill No. 1031 — Postsecondary Educational Authorization Act. This bill is modeled after suggested state legislation and would regulate academic, vocational, technical, home study, business, and professional schools. The Board for Vocational Education would have the power to establish and require applicant compliance with minimum standards and criteria relating to quality of education, ethical and business practices, health and safety, and fiscal responsibility. Chapter 15-50, regulating trade and correspondence schools, would be repealed. (Committee on Higher Education)

House Bill No. 1032 — Public Service Commission Powers. This bill authorizes the PSC to charge public utilities for costs incurred in conducting utility rate hearings and investigations. (Committee on Industry, Business & Labor "A")

House Bill No. 1033 — Public Service Commission Hearing Examiners. This bill authorizes the PSC to appoint hearing examiners in addition to those

persons specifically designated by statute to conduct hearings. (Committee on Industry, Business & Labor "A")

House Bill No. 1034 — Public Service Commission Jurisdiction. This bill excludes air carriers, utilities which manufacture synthetic gas, and stockyard companies from PSC jurisdiction; ensures PSC jurisdiction over communications utilities; and extends PSC jurisdiction to utilities which distribute synthetic gas. (Committee on Industry, Business & Labor "A")

House Bill No. 1035 — Auctioneer Licensing. This bill transfers auctioneer licensing from the PSC to a five-member professional licensing board appointed by the Governor. (Committee on Industry, Business & Labor "A")

House Bill No. 1036 — Civil Penalty for Violating Public Service Commission Regulations. This bill authorizes the PSC to assess a civil penalty of not more than \$10,000 for any violation of a PSC rule or related statute. (Committee on Industry, Business & Labor "A")

House Bill No. 1037 — Surface Mine Reclamation Act Amendments. This bill requires the PSC to issue a notice of noncompliance prior to suspending or revoking surface mine operator permits. The bill also clarifies the application of the Act to affected lands rather than just mined areas, requires the results of a soil survey to be included only with limited mining plans rather than with both limited and extended mining plans, provides for the stockpiling of material outside the permit area, and repeals obsolete definitions. (Committee on Industry, Business & Labor "A")

House Bill No. 1038 — Public Utility Certificate of Public Convenience and Necessity. This bill clarifies the applicability of Chapter 49-03 to only electric public utilities and creates a new Chapter 49-03.1 to govern the issuance of certificates of public convenience and necessity to public utilities not covered as a result of the restriction of Chapter 49-03 to electric public utilities. (Committee on Industry, Business & Labor "A")

House Bill No. 1039 — Exception to Required Public Service Commission Consent to Encumber Public Utility Systems. This bill removes the requirement that the PSC approve the sale of public utility securities registered with the Federal

Securities and Exchange Commission. (Committee on Industry, Business & Labor "A")

House Bill No. 1040 — Scale Permits and Inspection Fees. This bill authorizes the PSC to grant special permits for scale installations and provides for certain vehicle scale inspection fees. (Committee on Industry, Business & Labor "A")

House Bill No. 1041 — Mobile Home Park Licensing and Inspection. This bill revises the authority of the State Laboratories Department over motor courts and trailer courts. The department is authorized to regulate mobile home parks, trailer parks, and campgrounds. Existing facilities are allowed eight years to comply with any new requirements. Guidelines are revised or established for plumbing and electrical installations, streets, lighting, fire protection, and playgrounds. Unreasonable service fees are prohibited and park operators are required to post regulations and inform the department of any change in park ownership. Facilities would be inspected at least annually and license fees would be based on the type and size of the facility. The bill also authorizes the department to accept city or county enforcement of local sanitation, safety, zoning, and inspection requirements in lieu of state requirements. The department could waive license fees for facilities subject to local requirements accepted by the department. (Committee on Industry, Business & Labor "A")

House Bill No. 1042 — Mobile Home Tax Assessment Appeals Procedure. This bill establishes an appeals procedure from mobile home tax assessments similar to the appeals procedure for real property tax assessments. (Committee on Industry, Business & Labor "A")

House Bill No. 1043 — Medical Association Proposal — Medical Negligence. This bill creates an alternative and optional statutory method of recovery in medical negligence cases. It limits the liability of qualifying health care providers, creates a trust fund to assure injured patients full recovery of damages, creates a medical review panel to review medical malpractice claims, establishes a commission on medical competency, and makes an appropriation. (Committee on Industry, Business & Labor "C")

House Bill No. 1044 — Elimination of Ad Damnum Clause. This bill eliminates the need for a statement, in the pleadings presented to a court to

start a legal action, of the dollar amount of damages. (Committee on Industry, Business & Labor "C")

House Bill No. 1045 — Reporting of Medical Malpractice Claims. This bill requires all persons making a claim against a health care provider, and the care provider, to report any claim, settlement, or final judgment to the Insurance Commissioner. The bill also requires the commissioner to report these claims to the appropriate licensing board, which is given additional powers to revoke or suspend a health care provider's license to practice. (Committee on Industry, Business & Labor "C")

House Bill No. 1046 — Patients' Bill of Rights. This bill requires physicians to get patients' informed consent prior to treatment, defines and clarifies the rights of patients receiving health care, and requires reporting of maltreatment of patients. (Committee on Industry, Business & Labor "C")

House Bill No. 1047 — Medical Review Panels. This bill establishes medical review panels consisting of two physicians, two attorneys, and one citizen member. These panels are to review or arbitrate medical malpractice claims before an action could be started and are to issue a report regarding the claim. Although this report is not binding unless the parties otherwise agree, it may be admitted into evidence in any subsequent legal proceedings. (Committee on Industry, Business & Labor "C")

House Bill No. 1048 — Discrimination in Optometric Services. This bill provides that where optometric services under a group policy may be provided by either a physician or an optometrist, the group policy contract cannot require a policyholder to receive these services from a physician or an optometrist. (Committee on Industry, Business & Labor "C")

House Bill No. 1049 — Election Law Revision. This bill restates North Dakota election law and reorganizes it in chronological order. The bill provides new procedures for electing precinct committeemen, establishing voting places, instructing election workers, disclosing campaign contributions and expenses, and recounting election results. (Committee on Judiciary "A")

House Bill No. 1050 — Voter Registration. This bill establishes a system of voter registration in the state and allows certain counties to be exempt. (Committee on Judiciary "A")

House Bill No. 1051 — Municipal Elections. This bill transfers a section on the establishment of polling places for municipal elections to the Century Code chapter on municipal elections. (Committee on Judiciary "A")

House Bill No. 1052 — Length of Informal Adjustment Probation Periods for Juveniles. This bill lengthens the initial probation period allowed under juvenile informal adjustment procedures to 12 months from the present three months. The second, or additional probation period, is lengthened to six months from the present three months. (Committee on Judiciary "B")

House Bill No. 1053 — Emergency Treatment of Juveniles in Life-Threatening Situations and for Alcoholism Without Their Parents' Consent. State law presently allows minors to receive care and treatment for venereal disease and drug abuse without their parents' permission. This bill amends that law to include alcoholism as well. This bill also creates a new section of law allowing minors to receive emergency care and treatment in life-threatening situations without their parents' consent. (Committee on Judiciary "B")

House Bill No. 1054 — Juvenile Speedy Trial Provision. This bill amends state law to require that a juvenile must receive a hearing on his or her alleged offense within 30 days of the time he or she is cited for the offense. There are no time limits at present. (Committee on Judiciary "B")

House Bill No. 1055 — Emancipated Minors Act. This bill provides that minors 16 years old or older who are self-supporting and who are either married, divorced, or separated, or who are living apart from their parents are deemed emancipated minors. As such they could contract or enter into other legal transactions concerning property or their estate as if they were adults. (Committee on Judiciary "B")

House Bill No. 1056 — Juvenile Services Coordinator. This bill establishes the position of juvenile services coordinator within the Supreme Court Administrator's office. The coordinator would work on improving communication and uniformity among the state's juvenile courts and juvenile court personnel, would assist juvenile courts in whatever ways possible, would prepare and conduct training sessions for such personnel, and would assist in the preparation of standards for the various juvenile court personnel. (Committee on Judiciary "B")

House Bill No. 1057 — Emergency Medical Treatment For Wards. This bill allows custodians such as foster parents the right to give permission for the emergency medical treatment of their wards. (Committee on Judiciary "B")

House Bill No. 1058 — Police and City Employee Retirement. This bill amends Sections 40-45-15 and 40-46-16 to provide that after a member of a police department or any city employee becomes entitled to retirement, such rights shall not be lost or forfeited by discharge or for any other reason. (Committee on Judiciary "C")

House Bill No. 1059 — Good Conduct and Merit Sentence Reductions. This bill provides good conduct sentence reductions to prison inmates for obedience to institutional rules and regulations and willing work on assigned jobs. Meritorious conduct sentence reductions would be available for outstanding work performance or heroic acts. (Committee on Judiciary "C")

House Bill No. 1060 — Interest on Prisoner Earnings. This bill amends Section 12-48-15 to allow a prison inmate to authorize the deposit of any of his accumulated prison earnings in excess of \$100 in an interest-bearing account in the Bank of North Dakota. (Committee on Judiciary "C")

House Bill No. 1061 — Independent Hearing Examiners. This bill requires an agency to inform a respondent, in its notice of hearing, of the right to a hearing examiner independent of the agency assigned by the Attorney General. If a staff attorney would not be available, the Attorney General could contract with qualified attorneys not employed by the state to serve as temporary hearing examiners. (Committee on Judiciary "C")

House Bill No. 1062 — Administrative Agency Findings of Fact. This bill amends Section 28-32-19 to provide that administrative agency findings of fact must be supported by a preponderance of the evidence. (Committee on Judiciary "C")

House Bill No. 1063 — Amendment to Basic Administrative Procedures Statutes. This bill amends and creates definitions; provides for adoption of a rules description of an agency's organization and functions; provides that a complaint must be served on a respondent at least 45 days prior to a hearing and for an answer to a complaint within 20 days after receipt; provides for

informal disposition of any contested case or issue therein; provides that if the action does not involve a complaint, public newspaper notice must be given at least 14 days prior to the hearing; provides for interrogatories; provides for hearing testimony to be taken by a court reporter, by a stenographer, or by use of an electronic recording device; and provides for Supreme Court review of agency decisions in the same manner as in district court. (Committee on Judiciary "C")

House Bill No. 1064 — Administrative Rulemaking. This bill amends Section 28-32-02 to require agencies to adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit views orally or in writing prior to agency adoption, amendment, or repeal of any rule; and for mandatory oral hearings for substantive rules under certain conditions. (Committee on Judiciary "C")

House Bill No. 1065 — Legislative Review of Rules. This bill allows the chairman of the Legislative Council to assign proposed and existing rules and written complaints received concerning such rules to an appropriate interim subject matter committee. The committee would determine whether or not an agency was properly implementing legislative purpose and intent. The committee could then make recommendations concerning the rules and the statutes under which the rules were adopted. (Committee on Judiciary "C")

House Bill No. 1066 — Codification of Administrative Rules. This bill requires the Legislative Council office to compile, index, and publish all rules and regulations filed pursuant to Chapter 28-32 (Administrative Agencies Practice Act) in a looseleaf administrative code. A code supplement would be published each month that rules and regulations are submitted for publication. (Committee on Judiciary "C")

House Bill No. 1067 — Weather Modification. This bill authorizes water management districts to engage in weather modification activities. (Committee on Natural Resources)

House Bill No. 1068 — Energy Coordinator. This bill establishes the office of energy coordinator in the Governor's office, with responsibility to further energy development and conservation. (Committee on Natural Resources)

House Bill No. 1069 — Solar Easements. This bill

sets out the technical requirements for a valid solar easement. (Committee on Natural Resources)

House Bill No. 1070 — Governmental Immunity — Alternative 1. This bill continues the present temporary law regarding liability insurance coverage for political subdivisions. It increases the limitations on liability to \$100,000 per person and \$300,000 per occurrence, extends the notice period to political subdivisions from 90 days to six months, and protects public employees from torts committed within the scope of their employment. The bill also provides funding for the political subdivision liability fund during the next biennium. (Committee on Political Subdivisions)

House Bill No. 1071 — Governmental Immunity — Alternative 2. This bill contains the same general provisions regarding the scope of liability of political subdivisions, the limits on liability, and other general concepts, as does the alternative bill, but this bill requires political subdivisions either to purchase insurance coverage in the private sector or to self-insure against tort liability up to \$100,000 per person and \$300,000 per occurrence. This bill creates additional powers and optional, alternative methods for the specific purpose of enabling political subdivisions to pay claims and judgments, to issue bonds to fund and satisfy the same, to levy taxes in amounts necessary for such purposes without respect to limitations otherwise existing, and to compromise judgments and to make periodic payments on the compromised claim. Insurance coverage may be purchased from the political subdivision's general fund, or the governing body may include in the annual tax levy the amounts necessary to establish an insurance reserve fund. The tax levy is to be over and above all other mill levy limitations provided by law. (Committee on Political Subdivisions)

House Bill No. 1072 — Liability of State Employees. This bill requires court actions against state officers or employees for alleged acts within the scope of office or employment to proceed in the same manner and subject to the same limitations as an action against the state. (Committee on Political Subdivisions)

House Bill No. 1073 — Appropriation for Unfunded Accrued Liability of TFFR. This bill provides an appropriation for transfer of \$14.5 million from the general fund of the state treasury to the Teachers' Fund for Retirement. (Committee on State and Federal Government)

House Bill No. 1074 — Teachers' Benefit Formula Retirement Plan. This bill provides a uniform benefit formula plan for the Teachers' Fund for Retirement, using the formula under 1971 law for calculating benefits, increasing the teacher and employer contribution rate from four percent to five percent, removing the employer contribution limit of \$500 per teacher per year, and providing a higher minimum guaranteed benefit. (Committee on State and Federal Government)

House Bill No. 1075 — TFFR Board to Set Benefit Levels. This bill gives the authority and responsibility to the Teachers' Fund for Retirement Board to set benefit levels for teachers within a five percent employer and employee contribution rate. (Committee on State and Federal Government)

House Concurrent Resolution No. 3001 — Repeal of Article 14 of the Constitution. This measure would repeal Article 14 authorizing the state to operate terminal grain elevators in Minnesota or Wisconsin. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3002 — Repeal of Article 19 of the Constitution. This measure would repeal Article 19 authorizing the state to operate terminal grain elevators in North Dakota. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3003 — Repeal of Article 24 of the Constitution. This measure would repeal Article 24 allowing a statewide mill levy to create a hail insurance fund. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3004 — Repeal of Articles 59, 65, and 87 of the Constitution. This measure would repeal Articles 59, 65, and 87 authorizing the bond issues to pay bonuses to World War II, Korean, and Vietnam veterans. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3005 — Repeal of Article 88 of the Constitution. This measure would repeal Article 88 authorizing the calling of a constitutional convention. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3006 — Repeal of Sections 132 and 133 of the Constitution. This measure would repeal Sections 132 and 133 dealing with the continuation of corporate charters in existence when the Constitution became effective in 1889. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3007 — Repeal of Section 135 of the Constitution. This measure would repeal Section 135 dealing with shareholders' voting powers in certain corporate elections. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3008 — Repeal of Section 136 of the Constitution. This measure would repeal Section 136 requiring that foreign corporations must have a business place and an agent in the state to do business here. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3009 — Repeal of Section 137 of the Constitution. This measure would repeal Section 137 providing that a corporation can only conduct the business authorized by its charter. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3010 — Repeal of Section 138 of the Constitution. This measure would repeal Section 138 that prohibits corporations from issuing stocks or bonds except for money, labor done, or money or property actually received. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3011 — Repeal of Sections 140, 141, and 143 of the Constitution. This measure would repeal Sections 140, 141, and 143 dealing with the organization, operation, and trackage of railroad corporations in North Dakota. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3012 — Repeal of Section 144 of the Constitution. This measure would repeal Section 144 that defines the term "corporation". (Committee on Constitutional Revision)

House Concurrent Resolution No. 3013 — Repeal of Section 145 of the Constitution. This measure would repeal Section 145 dealing with banks in North Dakota issuing legal tender. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3014 — Constitutional Revision Regarding the Elective Franchise. This measure would create a new Article V of the Constitution dealing with the state's elective franchise, and would repeal all present provisions concerning the elective franchise. The new article provides basically that the state hold biennial elections; that all United States citizens 18 years old and older who are North Dakota residents can vote here; and that the legislature shall pass laws for

determining residence for providing for a secret ballot, for absentee voting, for nominations, and for election administration. Under the new article, no person under a current court declaration of incompetency would be allowed to vote. Convicted felons could not vote until their civil rights were restored. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3015 — Constitutional Amendment Concerning Elected Officials' Salaries. This measure would amend Section 84 of the Constitution to allow the legislature to increase or decrease elected state officials' salaries during their terms. (Committee on Constitutional Revision)