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SUMMARY

BRIEFLY – THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative agency rulemaking actions from November 1986 through October 1988. The Council filed a formal objection to a rule providing that bed and breakfast facilities cannot use food in hermetically sealed containers which was not prepared in a food processing establishment. The committee also made several informal rule change recommendations to the adopting agencies.

The Council studied the Administrative Agencies Practice Act, North Dakota Century Code Chapter 28-32. The Council recommends House Bill No. 1031 to amend substantially Chapter 28-32 to provide for publication of an administrative bulletin and for comprehensive requirements relating to administrative agency rulemaking and adjudicatory hearings. To ensure legislative consideration of the less controversial provisions relating to the administrative bulletin and rulemaking should House Bill No. 1031 not be approved, the Council also recommends House Bill No. 1032 to require the publication of an administrative bulletin and to expand rulemaking procedures.

AGRICULTURE COMMITTEE

The Council studied the use of near infrared reflectance analyzers in determining the protein content of grain. The Council recommends Senate Bill No. 2031 to provide a procedure for resolving disputes over the grade, dockage, moisture content, or protein content of grain.

The Council studied the feasibility and desirability of requiring a history of pesticides applied to agricultural property to be provided to landowners, tenants, and purchasers of the property. The Council makes no recommendation for legislative action.

The Council studied the feasibility of establishing a state bonding fund for grain warehousemen and livestock auction markets. The Council makes no recommendations for legislative action.

The Council received annual reports from the Land Reclamation Research Center which described and analyzed each reclamation research project. The Council also received annual reports from the Reclamation Research Advisory Committee on the status of all reclamation research projects, conclusions reached, and future goals and objectives of the committee.

The Council issued policy statements regarding the United States-Canada Free Trade Agreement, United States easements on Farmers Home Administration property, drought conditions, and branch experiment station funding.

BUDGET SECTION

The Council received status reports of the state general fund for the 1987-89 biennium presented by the Office of Management and Budget, which projected a \$2.9 million June 30, 1989, unobligated general fund balance, which is \$2.9 million less than the estimate made in May 1987 of \$5.8 million. Estimated general fund revenues for the 1987-89 biennium were reduced by \$3.2 million because of a successful referral of a sales tax on cable television with corresponding reductions from budgets of agencies funded by the general fund. In addition, in August 1988, estimated general fund revenues were reduced by \$35 million because of the 1988 drought and low oil prices, and as a result, the Governor mandated a two percent across-the-board general fund budget allotment to reduce general fund expenditures for the 1987-89 biennium by approximately \$21 million.

The Council received reports on the state's oil and coal taxes, the enhanced audit program, the PERS group health insurance program, and 1987-89 federal funds available to North Dakota state government.

The Council approved the nonresident tuition rates set by the State Board of Higher Education, the expenditure of grant funds for the Children's Services Coordinating Committee, the Adjutant General's request to vacate an armory, the Department of Human Services' request to make payments to the Department of Health and Consolidated Laboratories for the inspection of care in intermediate care facilities for the mentally retarded, the Economic Development Commission's request for authority to lease buildings at San Haven,

the expenditure of grant and other funds for the construction of facilities at UND and the NDSU Agricultural Experiment Station.

The Council made recommendations to the Office of Management and Budget regarding the form in which the executive budget is presented to the Budget Section and also sent letters to the North Dakota Congressional Delegation urging them to take action to reflect the drop in North Dakota personal income, because of the drought in 1988, in the calculations of the federal medical assistance percentage for fiscal year 1990, rather than 1991, as would be the case under current law.

Budget Section members, along with the Budget Committee on Government Finance, Budget Committee on Human Services, and the Budget Committee on Institutional Services, visited major state agencies and institutions during the 1987-88 interim to evaluate requests for major improvements and structures and to discuss problems of the institutions.

BUDGET COMMITTEE ON GOVERNMENT ADMINISTRATION

The Council studied the makeup of the advisory councils appointed under the North Dakota unemployment insurance law, monitored the status of the unemployment insurance trust fund reserve, and examined other approaches to the problem of unemployment. The Council recommends Senate Bill No. 2032 and Senate Bill No. 2033, each authorizing Job Service North Dakota the option to appoint local advisory councils, but no longer requiring those appointments. Senate Bill No. 2033 also adds two legislative members to the Job Service State Advisory Council.

The Council studied the differences in the employee benefits between part-time and full-time employment in the private sector. The Council recommends House Bill No. 1036 to grant part-time employees access to their employer's group health insurance plans if the employer has a commercially insured plan or if the employer's plan is a self-insured plan of the state or any political subdivision of the state.

The Council studied the use of comparable worth to determine the existence of wage-based sex discrimination in state government. The Council worked with the Central Personnel Division and contracted with Booz Allen and Hamilton, Inc., on its study of the North Dakota Class Evaluation System. The Council recommends House Bill No. 1033 to require the Central Personnel Division, in cooperation with state agencies and institutions, to develop uniform compensation, classification, and salary administration plans for the state's classified employees. The Council also recommends House Bill No. 1034 to direct the Central Personnel Division to establish a classification plan recognizing certain compensable factors required in the performance of work for all positions in the classified service. The bill, which does not go into effect until July 1, 1991, requires that all employees in the state classified service be under one classification plan by June 30, 1993, and provides a \$337,416 general fund appropriation during the 1989-91 biennium to the Office of Management and Budget for additional positions in the Central Personnel Division to be used in preparing for the implementation of the bill. The Council also recommends House Bill No. 1035 to require the Central Personnel Division to establish a seven-member pay equity implementation committee, and to provide for the establishment of a pay equity implementation fund to be used for establishing equitable compensation relationships among all positions and classes in the state classification plan. The bill, which also would not take effect until July 1, 1991, contains an expiration date of June 30, 1993, for all sections except the one relating to the state's compensation policy.

BUDGET COMMITTEE ON GOVERNMENT FINANCE

The Council studied alternative methods for establishing a state capital construction fund. The Council recommends revisions to the guidelines and procedures for a state capital construction budget that includes developing criteria for evaluating and reviewing capital budget requests and requiring the Executive Budget Office to provide the Legislative Assembly comprehensive information on the state's existing capital facilities and future capital requirements. The Council recommends that the unit trust with charitable remainder concept be considered as a method of financing capital improvements at the institutions of higher education and that privatization or the private development of facilities on state land for use by state government be considered

as a method of financing capital improvements at state institutions. The Council recommends Senate Bill No. 2036 to expand the duties and membership of the State Building Authority to include four members of the Legislative Assembly and to provide the authority with responsibility to develop and maintain long-range capital construction plans for state government and make recommendations to the Office of Management and Budget on capital construction plans. The Council recommends House Bill No. 1037 to allocate a portion of the sales, use, and motor vehicle excise taxes, equal to 40 percent of the equivalent of a one percent sales, use, and motor vehicle excise tax, to a capital construction fund.

The Council studied the policy of appropriating special funds. The Council recommends Senate Bill No. 2035 to remove several continuing appropriation provisions that are not currently used or the funds are currently included in the agencies' appropriations.

The Council received the actuarial valuation reports of the Public Employees Retirement System, Teachers' Fund for Retirement, and Highway Patrolmen's Retirement System.

The Council monitored the status of major state agency and institution appropriations. The review focused on expenditures of the institutions of higher education and the charitable and penal institutions, the appropriations for the foundation aid program, and the appropriations to the Department of Human Services for aid to families with dependent children and medical assistance. In addition, the Council monitored agency compliance with legislative intent included in 1987-89 appropriations.

The Council considered the feasibility of receiving information on state payments to political subdivisions and encourages, to the extent possible within the limits of available resources, the Office of Management and Budget's preparation of information summarizing and categorizing state payments by source of funds made to each political subdivision.

The Council considered changes to North Dakota law to allow counties to combine for the purpose of issuing bonds to finance capital improvements and recommends Senate Bill No. 2034 to allow two or more counties or cities to issue bonds jointly for the purpose of acquiring equipment or constructing roads, bridges, and road and bridge improvements.

BUDGET COMMITTEE ON HUMAN SERVICES

The Council studied the future role and function of the State Hospital. The Council recommends House Concurrent Resolution No. 3001 to urge the Department of Human Services as it implements its plan for expansion of community and mental health services during the 1989-91 biennium to present information, along with the State Hospital, to the Legislative Council on the implementation of additional community services and the effect those services will have on the future services to be provided by the State Hospital and House Concurrent Resolution No. 3002 to urge the Department of Human Services, in its development of a continuum of services for the chronically mentally ill and chemically dependent, to conduct pilot projects during the 1989-91 biennium, for new programs developed to be reviewed by the 1991 Legislative Assembly in its consideration of expanding the programs for the 1991-93 biennium. The Council recommends House Bill No. 1038 to provide for the commitment of mentally ill and chemically dependent individuals to the Department of Human Services rather than the State Hospital. This bill along with regional intervention services at the human service centers will assist in reducing the number of inappropriate admissions to the State Hospital.

The Council studied the Department of Human Services' establishment of a prospective case mix Medicaid reimbursement system for long-term care facilities which includes a setting of rates based on the condition and needs of the residents and as a condition of participation prohibits long-term care facilities from charging private pay residents rates that exceed those approved by the department for medical assistance recipients. The Council makes no specific recommendations for change to 1987 House Bill No. 1448 requiring nursing care rate equalization and establishment of a case mix reimbursement system effective January 1, 1990.

The Council studied the system of community-based care provided by the Department of Human Services for the developmentally disabled, chronically mentally ill, aged and infirm, and other persons including the process of

reimbursement for providers of such services. The Council recommends House Concurrent Resolution No. 3003 to direct the Legislative Council to study the budgeting, auditing, and management of the reimbursement system for the Department of Human Services' developmental disabilities program. In addition, the resolution states that the Appropriations Committees of the 1989 Legislative Assembly should consider the budget concerns of the developmental disabilities providers, including differentials in rates between private and state-operated facilities, facility staff salary differences, and the department's reimbursement penalty for facilities with less than 95 percent occupancy, in the development of the Department of Human Services' 1989-91 appropriation.

The Council received reports from the Department of Human Services regarding changes to the human service delivery system in North Dakota. The Council makes no additional recommendations regarding the human service delivery system.

BUDGET COMMITTEE ON INSTITUTIONAL SERVICES

The Council studied the services available to the deaf and hearing impaired and blind and visually impaired, examined the role of the North Dakota School for the Deaf and the School for the Blind in the provision of educational and rehabilitative services, and tried to determine if there are alternative methods of educating and rehabilitating the deaf and blind in communities throughout the state. The Council recommends that while local school districts should be encouraged to establish services for the hearing and visually impaired, students with multiple or severe impairments or students who do not have the services available locally should continue to be educated at the School for the Deaf and the School for the Blind. The Council also recommends that the School for the Deaf and the School for the Blind continue to function as state resource and reference centers, develop short-term and special topic courses, and expand services to meet the educational needs of some students currently educated out of state.

The Council studied the problems faced by and the liability and funding of the North Dakota emergency medical services system, in particular volunteer ambulance services. The committee recommends House Bill No. 1039 to provide a definition of a volunteer as "an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or combination thereof to perform the services for which the individual volunteered." The Council also recommends House Bill No. 1040 to impose a 25-cent-per-month excise tax on telephone access lines to provide financial assistance to licensed ambulance services during the 1989-91 biennium for training (\$736,000) and to provide funds for equipment (\$1,804,000) on a matching basis. The bill, which carries a \$3 million appropriation, also appropriates \$460,000 to the Division of Emergency Health Services of the Department of Health and Consolidated Laboratories.

BUSINESS COMMITTEE

The Council studied charitable solicitation laws, with emphasis on the model Charitable Solicitation Act as recommended by the National Association of Attorneys General. The Council makes no recommendation for legislative action.

The Council studied real estate licensing for property managers and makes no recommendation for legislative action.

The Council studied the relationship of railroads and their tenants on railroad right-of-way property and makes no recommendation for legislative action.

DICKINSON STATE ADDITION COMMITTEE

The Council studied the problems relating to the title transfer of the Dickinson State Addition property from the Board of Higher Education to the Board of University and School Lands.

After the problems were resolved, the Council recommended that the Board of Higher Education transfer title of the old Dickinson Experiment Station property to the Board of University and School Lands.

The Council encouraged the Board of University and School Lands, within constitutional limitations, to sell the old Dickinson Experiment Station property in a manner resulting in the highest possible return considering present economic conditions.

EDUCATION COMMITTEE

The Council studied the feasibility, cost, and benefits of utilizing current technology to enhance the educational opportunities of students. The Council recommends House Bill No. 1041 to change the membership of the Educational Broadcasting Council, change the name of the Educational Broadcasting Council to the Educational Telecommunications Council, and broaden the council's focus from television and radio to telecommunications; House Bill No. 1042 to exempt the use of fiber-optic cable for educational purposes from regulation by the Public Service Commission; and House Bill No. 1043 to appropriate an amount equal to one percent of the amount appropriated for operating expenses for the institutions of higher education and one percent of the amount appropriated for foundation aid to the Educational Broadcasting Council to coordinate, fund, and assist in the development of educational telecommunication programs and systems throughout the state.

The Council studied the feasibility and desirability of establishing and providing assistance for educational programs in career guidance and development for children and adults. The Council makes no recommendation for legislative action.

The Council studied the feasibility and desirability of implementing a program for competency testing of elementary and secondary students in the areas of mathematics, reading, and writing skills and of providing remedial programs to educationally deprived students. The Council makes no recommendation for legislative action.

The Council received a report regarding the status of interagency agreements for the provision of education and related services to handicapped students.

EDUCATION FINANCE COMMITTEE

The Council studied education finance issues, including the issues of adequate funding for school districts, the amount of money spent by school districts for noninstructional purposes, the inequities and the distribution of transportation aid to schools, local effort in support of schools, other funding sources including federal programs and energy tax revenue available to schools, the special needs of schools in sparsely populated areas of the state, small but necessary schools, and the funding of adult basic and secondary education.

The Council recommends House Bill No. 1044 to decrease the mileage payments for schoolbus transportation aid and increase the per-pupil payments; Senate Bill No. 2037, relating to special education finance, to, among other things, make the state financially responsible to pay the entire tuition and excess costs of certain handicapped children placed outside their school districts of residence, increase the weighting factor for preschool handicapped students, and appropriate \$13 million for special education; Senate Bill No. 2038 to require children of parents or guardians who seek an exemption from the compulsory school attendance laws on the basis that the children have a physical or mental condition that would render attendance or participation in a regular or special education program inexpedient or impractical to first be identified as handicapped under the special education laws; Senate Bill No. 2039 to require any facility that provides boarding care services to more than four students to be licensed under the foster care laws; House Bill No. 1045 to permit proportionate foundation aid payments for summer elementary school courses approved by the Superintendent of Public Instruction; House Bill No. 1046 to appropriate \$200,000 to the Superintendent of Public Instruction for adult basic and secondary education; Senate Concurrent Resolution No. 4001 to direct the Legislative Council to study mineral tax revenues, in lieu of property tax payments, and other payments to school districts to determine whether to include these funds as local resources; and Senate Concurrent Resolution No. 4002 to direct the Legislative Council to study the use of various factors in addition to property wealth which could be used in the education finance formula.

The Council studied the administrative structure of school districts in North Dakota. The Council recommends House Bill No. 1047 to replace the offices of the county superintendent with area service agencies for the provision of special education, inservice training, coordination of continuing education and adult basic and secondary education, administrative services, and other educational programs and services. The Council also recommends Senate Concurrent Resolution No. 4003 to direct the Legislative Council to study various duties of the county superintendents of schools.

The Council studied the effects of federal law on state law relating to the age of schoolbus drivers. The Council recommends House Bill No. 1048 to remove the upper age limit for schoolbus drivers and raise the minimum age requirement.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Council received three briefings on the progress of litigation surrounding the Garrison Diversion Unit Project and project updates from representatives of the Garrison Diversion Conservancy District, State Water Commission, United States Bureau of Reclamation, Association of North Dakota Water Resource Districts, North Dakota Water Users Association, and the United States Fish and Wildlife Service.

JOBS DEVELOPMENT COMMISSION

The Council studied methods and the coordination of efforts to initiate and sustain new economic development in this state. The Council recommends Senate Bill No. 2040 to authorize the State Board of Higher Education to authorize and encourage institutions of higher education under its control to enter into contractual arrangements with private business and industry; Senate Bill No. 2041 to exempt certain economic development records and information from disclosure under the state's open records and open meetings laws; House Bill No. 1049 to amend statutory provisions relating to public and private venture capital corporations organized under state law; and Senate Bill No. 2042 to authorize cities to use tax increment financing for the development of unused or underutilized industrial or commercial property. The Council also recommends House Concurrent Resolution No. 3004 to direct the Legislative Council to again establish a Jobs Development Commission for the purpose of studying methods and coordinating efforts to initiate and sustain new economic development in the state.

The Council studied the need to revise the state's securities laws to foster legitimate capital formation in the state in a manner that does not diminish necessary public protections. The Council recommends Senate Bill No. 2043 to authorize the Securities Commissioner to adopt, by rule, one or more transactional exemptions to further the objectives of facilitating sales of securities by North Dakota issuers and providing uniformity among the states; and Senate Bill No. 2044 to substantially incorporate by statute the uniform limited offering exemption.

JUDICIAL PROCESS COMMITTEE

The Council studied the nonagricultural real estate mortgage foreclosure laws of the state in relation to the foreclosure laws of other states. The Council recommends House Bill No. 1050 to enable a mortgagee or holder of a sheriff's certificate of sale, if that person reasonably believes that the property is abandoned, to petition the court to determine abandonment and to receive immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The Council also recommends House Bill No. 1051 to provide that except for parties having an ownership interest in the real property subject to foreclosure of a mortgage, the names of all other defendants may be omitted from the public notice of sale.

The Council studied the state's game and fish laws and rules, with an emphasis on those laws and rules concerning the issuance of game and fish licenses and the role of county auditors in the issuance of game and fish licenses. The Council recommends Senate Bill No. 2045 to provide that county auditors who receive less than \$1,000 in commissions from the sale of hunting, fishing, fur-bearer, and general game licenses in any year are entitled to retain, as compensation, 25 cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in the following year; Senate Bill No. 2046 to provide that county auditors may require agents to show evidence of adequate financial security before the agents may be appointed; and Senate Concurrent Resolution No. 4004 to direct the Legislative Council to study the state's game and fish laws and rules and review the effect of any legislation enacted by the 1989 Legislative Assembly relating to the bonding of county auditors and agents appointed by county auditors to issue game and fish licenses or stamps.

The Council studied the payment of attorneys' fees in workers' compensation cases at the request of the Attorney General. The Council recommends that the

Workers Compensation Bureau, in conjunction with the Workers Compensation Bureau Advisory Committee and the Attorney General, develop a proposal concerning the payment of attorneys' fees in workers' compensation cases and submit the proposal to the 1989 Legislative Assembly.

JUDICIARY COMMITTEE

The Council studied criminal sentencing statutes for misdemeanor and felony cases, with emphasis on resolving inconsistencies and conflicts within these statutes. The Council recommends House Bill No. 1052 to consolidate the laws governing suspended sentences and penalties and sentencing, to clarify a court's authority to impose a sentence if conditions of probation are violated following the suspended execution of sentence, to clarify the status of a person receiving a deferred imposition of sentence, and to provide uniform maximum periods of probation that may be imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence.

The Council studied the adequacy of present procedures and standards for appeals for judicial review of decisions of county commissioners and local governing bodies, with emphasis on methods to improve those procedures and standards. The Council recommends Senate Bill No. 2047 to establish uniform procedures for appeals from the decisions of local governing bodies and to designate all appeals from the decisions of local governing bodies, with certain exceptions, as appeals on the record.

The Council studied the Constitution of North Dakota. The Council recommends Senate Concurrent Resolution No. 4005 to propose a constitutional amendment to remove the Lieutenant Governor as presiding officer of the Senate and to allow the Senate to select the presiding officer from among its members and House Concurrent Resolution No. 3005 to propose a constitutional amendment to provide an August 1 effective date for laws passed during a regular session of the Legislative Assembly. Measures filed with the Secretary of State on or after August 1 and before January 1 of the following year would be effective 90 days after filing with the Secretary of State.

The Council studied the legal issues associated with acquired immune deficiency syndrome (AIDS) in North Dakota. The Council recommends Senate Bill No. 2048 to provide for mandatory testing for the presence of antibodies to the human immunodeficiency virus (HIV); Senate Bill No. 2049 to require physicians and certain other individuals to report cases of HIV infection; Senate Bill No. 2050 to establish the confidentiality of the results of a test for the presence of the antibodies to the HIV; Senate Bill No. 2051 to provide that it is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental handicap; Senate Bill No. 2052 to provide that a person who, knowing that that person is or has been afflicted with AIDS, afflicted with AIDS-related complexes, or infected with the HIV, willfully transfers any of that person's body fluid to another person is guilty of a Class A felony; Senate Bill No. 2053 to establish isolation measures and procedures for those individuals with a contagious or infectious disease who are determined to be a threat to public health; and Senate Bill No. 2054 to require school districts to adopt a policy concerning students, employees, and independent contractors who are diagnosed as having the HIV infection.

The Council reviewed uniform Acts and proposed amendments to uniform Acts recommended by the North Dakota Commission on Uniform State Laws. The Council recommends adoption of the Uniform Law on Notarial Acts; the Uniform Commercial Code, Article 2A-Leases; and amendments to the Uniform Limited Partnership Act, the Uniform Trade Secrets Act, the Uniform Federal Lien Registration Act, and the Uniform Probate Code. The Council recommends Senate Bill No. 2055 to adopt the Uniform Anatomical Gift Act (1987).

The Council makes several recommendations as a result of its statutory revision responsibility. The Council recommends House Bill No. 1053 to amend all pertinent North Dakota Century Code sections to clarify which violations of Chapter 39-21, governing motor vehicle equipment, are infractions and which violations are noncriminal traffic offenses; House Bill No. 1054 to provide that if a personal representative elects to publish a notice to creditors, the personal representative must mail a copy of the notice to those creditors whose identities are known to the personal representative or are reasonably ascertainable and who have not already filed a claim; House Bill No. 1055 to provide for a jury

of 12 in felony cases; House Bill No. 1056 to require the appointment of a guardian ad litem in any proceeding to appoint or remove a guardian of an incapacitated person; House Bill No. 1057 to ensure that credit unions are protected against those who may issue a draft without an account; and Senate Bill No. 2056 to make technical corrections to the Century Code.

LAW ENFORCEMENT COMMITTEE

The Council studied alternative means of providing protective services for vulnerable adults who are subject to abuse, neglect, self-neglect, or exploitation. The Council recommends House Bill No. 1058 to establish a program of protective services for vulnerable adults to be developed and administered by the Department of Human Services with the advice and cooperation of county social service boards; and House Bill No. 1059 to provide for additional classifications for the grading of the criminal offense of misapplication of entrusted property depending on the value of the property misapplied.

The Council studied the reporting, investigation, prosecution, and treatment procedures of child abuse and neglect cases. The Council recommends Senate Bill No. 2057 to clarify the scope of interviews of children by child protective services social workers or law enforcement officials; Senate Bill No. 2058 to provide general parameters concerning the scope of investigations of reports of child abuse or neglect; House Bill No. 1060 to require the Department of Human Services to establish a program of continuing education or inservice training for child protective services staff; Senate Bill No. 2059 to require the Department of Human Services to adopt rules establishing policies and procedures to conduct reviews and resolve complaints relating to investigations of reports of child abuse or neglect and determinations of probable cause to believe that child abuse or neglect is indicated; Senate Bill No. 2060 to provide a procedure for the removal of an alleged sexual offender from the residence of a child; and Senate Bill No. 2061 to provide for the availability of a civil remedy against an employer who retaliates against an employee because of a report of child abuse or neglect or against a person who makes a false report.

The Council studied the state's role in the handling, assisting, or funding of victims of and witnesses to crimes. The Council recommends House Bill No. 1061 to authorize counties and cities to fund victim and witness advocacy programs or victim and witness services through fees assessed as part of criminal sentences imposed in county or municipal courts.

The Council studied state laws and administrative rules and practices relating to the exchange and use of records and information relating to services provided to minors. The Council makes no recommendation for legislative action.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council reviewed 84 audit reports presented by the State Auditor's office and independent accounting firms and filed an additional 110 audit reports.

The Council studied methods of reducing losses incurred by the Comprehensive Health Association. The Council recommends Senate Bill No. 2062 to change the Comprehensive Health Association's board of directors, benefits, and premium rates to limit the association's future losses.

The Council monitored and studied fine revenues deposited in the common schools trust fund.

The Council received reports from the Public Service Commission identifying certain railroad rights of way in the state which may be sold, transferred, or leased. The Council recommends Senate Bill No. 2063 to repeal the law that requires the Public Service Commission to report periodically to the Legislative Audit and Fiscal Review Committee regarding potential changes in the ownership of railroad rights of way. The bill also requires a party intending to acquire or lease a railroad right of way to file a notice with the Public Service Commission.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Council reviewed legislative rules and makes a number of recommendations intended to clarify existing rules and expedite the legislative process. The Council recommends Senate Bill No. 2064 to eliminate the statutory requirements specifying the contents of statements of intent on constitutional amendment resolutions and Senate Bill No. 2065 to update the procedure for approving use of legislative space during the interim.

The Council approved a pilot project for a legislative information system during the 1989 session as well as arrangements for the session. The Council recommends House Bill No. 1062 to identify legislative records not subject to public inspection.

The Council reviewed the smoking policy that should be in effect in areas under control of the Legislative Assembly during legislative sessions and recommends that each standing committee and each chamber establish its own policy with respect to smoking. The committee also recommends Senate Bill No. 2066 to clarify that a proprietor of a public facility need not designate a smoking area.

The Council studied the Appropriations Committee structure and the structure of all standing committees for the purpose of reducing workloads and increasing the number of legislators involved in the appropriation process. The Council makes no recommendation for legislative action.

The Council received a report from the Director of Institutions which describes four proposals for additional committee rooms. The Council only received the report and makes no recommendation with respect to the feasibility of an addition to the State Capitol.

The Council supervised the continuing renovation of the legislative wing of the State Capitol and recommends House Bill No. 1063 to appropriate funds to make improvements during the 1989-91 biennium.

The Council continued its participation in the 1990 census redistricting data program.

POLITICAL SUBDIVISIONS COMMITTEE

The Council studied the legal status and relationships among political subdivisions and the effect of new legislation on county and city budgets. The Council recommends Senate Bill No. 2067 to create a North Dakota Advisory Commission on Intergovernmental Relations composed of 11 members including four members of the Legislative Assembly appointed by the Legislative Council, the director of the Office of Management and Budget, two members appointed by the North Dakota League of Cities, two members appointed by the North Dakota Association of Counties, one member appointed by the North Dakota Township Officers Association, and one member appointed by the North Dakota Recreation and Parks Association. The commission is intended to serve as a forum for discussion and resolution of problems experienced by local governments and to allow local governments more substantial input into the legislative process.

The Council studied insurance premium tax distributions to fire protection districts. The Council does not recommend a bill in connection with this study but recommends that appropriations for fire insurance premium tax distributions to fire protection districts should come from the state general fund.

RETIREMENT COMMITTEE

The Council solicited and reviewed various proposals affecting public employee retirement programs. The Council obtained actuarial and fiscal information on each of these proposals and reported this information to each proponent.

The Council studied the uniform group insurance program administered by the Public Employees Retirement System and other benefits administered by the various public employee retirement boards. The Council recommends Senate Bill No. 2068 to provide a mechanism for prefunding hospital and medical benefits coverage under the uniform group insurance program for retired members of the Public Employees Retirement System and Highway Patrolmen's Retirement System. The Council recommends Senate Concurrent Resolution No. 4006 to direct the Legislative Council to study the issues and the feasibility of various options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and judges and state employees who are not members of the Public Employees Retirement System or the Highway Patrolmen's Retirement System.

The Council also recommends House Concurrent Resolution No. 3006 to direct the Legislative Council to study the feasibility and desirability of consolidating various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board.

WATER RESOURCES COMMITTEE

The Council studied the feasibility and desirability of restoring Devils Lake and the Devils Lake lacustrine system through alternate sources of water. The Council makes no recommendation for legislative action.

The Council studied the beneficial or adverse economic impact that implementation of a "no net loss of wetlands" policy would have on this state, including the impact on landowners, farmers, local businesses, and the hunting industry in this state, and the effect implementation of such a policy would have on rivers, lakes, and farmland in this state. This study also included a determination of the number of migratory and residential waterfowl relying on wetlands in this state and the effect drained and undrained wetlands have on the water table of salt-affected soils, the effect on surrounding croplands, and the resulting impact on agricultural land. The Council makes no recommendation for legislative action.

REPORT

of the

NORTH DAKOTA LEGISLATIVE COUNCIL

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



NORTH 1889-1989 **DAKOTA**
CENTENNIAL

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1989

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**KATHERINE
CHESTER VER WEYST**
Code Revisor

January 4, 1989

Honorable George A. Sinner
Governor of North Dakota

Members, 51st Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations of 21 interim committees to the 51st Legislative Assembly.

Major recommendations include proposals to assist in the development of telecommunications programs for schools; changes in the methods of providing state aid for special education financial assistance to school districts; encouragement of venture capital corporations and other measures to encourage economic development; provisions relating to the disease AIDS; establishment of protective services for vulnerable adults; improvements in procedures relating to child abuse and neglect cases; changes in the Comprehensive Health Association intended to reduce losses; creation of a North Dakota Advisory Commission on Intergovernmental Relations; prefunding of public employee retiree health benefits; establishment of a pay equity implementation committee and changes in the state's classification plan; expansion of the State Building Authority membership and responsibilities; and changes in mental health commitment procedures.

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

Respectfully submitted,

Representative Charles F. Mertens
Chairman, North Dakota
Legislative Council

CFM/CG

HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

I. HISTORY OF THE LEGISLATIVE COUNCIL

The North Dakota Legislative Council was created in 1945 as the Legislative Research Committee (LRC). The LRC had a slow beginning during the first interim of its existence because, as reported in the first biennial report, the prevailing war conditions prevented the employment of a research director until April 1946.

After the hiring of a research director, the first LRC held monthly meetings prior to the 1947 Legislative Session and recommended a number of bills to that session. Even though the legislation creating the LRC permitted the appointment of subcommittees, all of the interim work was performed by the 11 statutory members until the 1953-54 interim, when other legislators participated in studies. Although "research" was its middle name, in its early years the LRC served primarily as a screening agency for proposed legislation submitted by state departments and organizations. This screening role is evidenced by the fact that as early as 1949, the LRC presented 100 proposals prepared or sponsored by the committee, which the biennial report indicated were not all necessarily endorsed by the committee and included were several alternative or conflicting proposals.

The name of the LRC was changed to the Legislative Council in 1969 to reflect more accurately the scope of its duties. Although research is still an integral part of the functioning of the Legislative Council, it has become a comprehensive legislative service agency with various duties in addition to research.

II. THE NEED FOR A LEGISLATIVE SERVICE AGENCY

The Legislative Council movement began in Kansas in 1933. At present, nearly all states have such a council or its equivalent, although a few states use varying numbers of special committees.

Legislative service agencies provide legislators with the tools and resources that are essential if they are to fulfill the demands placed upon them. In contrast to other branches of government, the Legislative Assembly in the past had to approach its deliberations without its own information sources, studies, or investigations. Some of the information relied upon was inadequate or slanted because of special interests of the sources.

To meet these demands, the Legislative Assembly established the North Dakota Legislative Council. The existence of the Council has made it possible for the Legislative Assembly to meet the demands of the last half of the 20th century while remaining a part-time citizen legislature which meets for a limited number of days every other year.

III. COMPOSITION OF THE COUNCIL

The Legislative Council by statute consists of 15 legislators, including the majority and minority leaders of both houses and the Speaker of the House. The speaker appoints five other representatives, two

from the majority and three from the minority from a list of nine members recommended by each party. The Lieutenant Governor, as President of the Senate, appoints three senators from the majority and two from the minority from a list of seven members recommended by each party.

The Legislative Council is thus composed of eight majority party members and seven minority party members (depending upon which political party has a majority in the Senate), and is served by a staff of attorneys, accountants, researchers, and auxiliary personnel who are hired and who serve on a strictly nonpartisan basis.

IV. FUNCTIONS AND METHODS OF OPERATION OF THE COUNCIL

Although the Legislative Council has the authority to initiate studies or other action deemed necessary between legislative sessions, much of the Council's work results from study resolutions passed by both houses. The usual procedure is for the Council to designate committees to carry out the studies, although a few Council committees, including the Budget Section, the Administrative Rules Committee, the Retirement Committee, the Garrison Diversion Overview Committee, and the Legislative Audit and Fiscal Review Committee, are statutory committees with duties imposed by state law.

Regardless of the source of authority of interim committees, the Council appoints the members with the exception of a few ex officio members named by statute. Nearly all committees consist entirely of legislators, although a few citizen members are sometimes selected to serve when it is determined they can provide special expertise or insight for a study.

The Council committees hold meetings throughout the interim at which members hear testimony, review information and materials provided by staff, other state agencies, and interested persons and organizations, and consider alternatives. Occasionally it is necessary for the Council to contract with universities, consulting firms, or outside professionals on specialized studies and projects. However, the vast majority of studies are handled entirely by the Council staff.

Committees make their reports to the full Legislative Council, usually in November preceding a regular legislative session. The Council may accept, amend, or reject a committee's report. The Legislative Council then presents the recommendations it has accepted, together with bills and resolutions necessary to implement them, to the Legislative Assembly.

In addition to conducting studies, the Council and its staff provide a wide range of services to legislators, other state agencies, and the public. Attorneys on the staff provide legal advice and counsel on legislative matters to legislators and legislative committees. The Council supervises the publication of the Session Laws, the North Dakota Century Code, and the North

Dakota Administrative Code. The Council has on its staff the Legislative Budget Analyst and Auditor and assistants who provide technical assistance to Council committees and legislators and who review audit reports for the Legislative Audit and Fiscal Review Committee. A data processing division provides computer services to the legislative branch, including research and bill drafting capabilities. The Legislative Council library contains a wide variety of materials and reference documents, many of which are not available from other sources.

V. MAJOR PAST PROJECTS OF THE COUNCIL

Nearly every facet of state government and statutes has been touched by one or more Council studies since 1945. Statutory revisions, including the rewriting of criminal laws, election laws, game and fish laws, insurance laws, motor vehicle laws, school laws, and weapons laws have been among the major accomplishments of interim committees. Another project was the republication of the North Dakota Revised Code of 1943, the resulting product being the North Dakota Century Code.

Government reorganization has also occupied a considerable amount of attention. Included have been studies of the delivery of human services, agriculturally related functions of state government, centralized state government computer and microfilm services, and organization of the state's charitable and penal institutions, as well as studies of the feasibility of consolidating functions in state government. Creation of a court of appeals and the establishment of a public venture capital corporation were subjects of recent studies.

The review of uniform and model acts, such as the Uniform Probate Code, have also been included in past

Council agendas. Constitutional revision has been studied several interims, as well as studies to implement constitutional measures which have been approved by the voters, such as the new Legislative Article.

Pioneering in new and untried areas is one major function of interim committees. The regulation and taxation of natural resources, including oil and gas in the 1950s and coal in the 1970s, have been the highlights of several interim studies. The closing of the constitutional institution of higher education at Ellendale also fell upon an interim committee after a fire destroyed one of the major buildings on that campus. The expansion of the University of North Dakota Medical School is another area that has been the subject of several interim studies.

Among the innovations of interim committees was the creation of the Regional Environmental Assessment Program (REAP) in 1975. This was a resource and information program designed to provide environmental, socioeconomic, and sociological data acquisition and monitoring. REAP was terminated with a gubernatorial veto in 1979, after four years as a joint legislative-executive program under the tutelage of the Legislative Council.

Perhaps of most value to citizen legislators are committees which permit members to keep up with rapidly changing developments in complex fields. Among these are the Budget Section, which receives the executive budget prior to each legislative session. The Administrative Rules Committee allows legislators to monitor executive branch department rules and regulations. Other subjects which have been regularly studied include school finance, property tax levies, and legislative rules.

ADMINISTRATIVE RULES COMMITTEE

The Administrative Rules Committee is a statutory committee deriving its authority from North Dakota Century Code (NDCC) Sections 54-35-02.5, 54-35-02.6, and 28-32-03.3. The committee is statutorily required to review administrative agency rules to determine:

1. Whether administrative agencies are properly implementing legislative purpose and intent.
2. Whether there are court or agency expressions of dissatisfaction with state statutes or with rules of administrative agencies promulgated pursuant thereto.
3. Whether court opinions or rules indicate unclear or ambiguous statutes.

The committee may make rule change recommendations to the adopting agency and may make recommendations to the Legislative Council for amendment or repeal of enabling legislation serving as authority for rules.

In addition, the Legislative Council delegated to the committee the Council's authority to review and approve or disapprove state purchasing rules pursuant to NDCC Section 54-44.4-04 and to approve extensions of the time allowed administrative agencies to adopt rules pursuant to NDCC Section 28-32-02.

The Administrative Rules Committee was assigned one study. House Concurrent Resolution No. 3001 directed a study of the Administrative Agencies Practice Act (NDCC Chapter 28-32).

Committee members were Representatives Ronald A. Anderson (Chairman), John Dorso, William E. Kretschmar, Theodore A. Lang, Thomas Lautenschlager, Jay Lindgren, Arthur Melby, Rosemarie Myrdal, and Ben Tollefson and Senators Dean J. Meyer, Curtis N. Peterson, and Jens Tennesos.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

ADMINISTRATIVE AGENCY RULES REVIEW

The committee is statutorily required to review administrative agency rules. Administrative agencies are those state agencies authorized to adopt rules in accordance with the requirements of the Administrative Agencies Practice Act (NDCC Chapter 28-32). By statute a rule is an agency statement that implements, interprets, or prescribes law or policy. Properly adopted rules have the force and effect of law. A copy of each rule adopted by an administrative agency must be filed with the office of the Legislative Council for inclusion in a publication known as the North Dakota Administrative Code (NDAC).

The committee's review authority is statutorily limited to rules assigned to the committee by the Legislative Council chairman. At the committee's request, the Legislative Council chairman assigned to the committee all rules published in the North Dakota Administrative Code effective after October 1986. This allows continuation of the rules review process initiated on July 1, 1979.

As rules were scheduled for review, each adopting agency was requested to provide information on:

1. Whether the rules resulted from statutory changes made by the 1979, 1981, 1983, 1985, or 1987 Legislative Assembly.
2. Whether the rules resulted from federal programs or whether the rules were related in subject matter to any federal statute or regulation.
3. The rulemaking procedure followed in adopting the rules.
4. Whether any person had filed any complaint concerning the rules.
5. The approximate cost of giving public notice and holding any hearing on the rules, and the approximate cost of staff time used in developing rules.
6. The subject matter of the rules and the reasons for adopting the rules.

Review of Current Rulemaking

The committee reviewed 2,681 rule changes from October 1986 through October 1988. Table A tabulates the rule changes published in the Administrative Code and reviewed by the committee. The tabulation depicts the number of rules amended, created, superseded, repealed, or redesignated. The most important qualification of the tabulation is that each rule is viewed on one unit, although rules differ in length and complexity. This tabulation includes tables, appendices, and some organizational rules.

Although the agencies' methods of reporting made it difficult to determine the exact number of rules resulting from a particular Legislative Assembly's action or from federal statute or regulation, most of the changes made as a result of legislative action were due to 1987 Legislative Assembly changes or federal statutes. A few changes resulted from 1985 legislative action, and no changes resulted from legislation enacted in previous sessions. During the 1985-86 interim, 225 rule changes were made as a result of legislative action in 1983 or before. Thus, it appears that agencies are now more current in adopting rules required by legislative action.

North Dakota Century Code Section 28-32-02 requires that any rule change made to implement a statutory change must be adopted within nine months of the effective date of the statutory change. Pursuant to the committee's authority to grant extensions of that time period, the committee granted five administrative agencies extensions ranging from three to five months.

Informal Objections

Effective September 1987 the Department of Human Services adopted amendments to NDAC Chapter 75-02-06, relating to provider reimbursement for long-term care. The committee heard objections from several providers concerning a number of these rules. The committee decided not to file a formal objection to any of these rules because there is a court case pending against the Department of Human Services concerning provider reimbursement for long-

term care and because new rules will be adopted upon the effective date, January 1, 1990, of the case mix reimbursement requirements of 1987 House Bill No. 1448.

The providers and the committee did express particular concern about NDAC Section 75-02-06-18, which provided:

Application. This chapter shall be applied, in rate periods beginning on and after October 1, 1987, in the establishment and determination of reimbursement rates for all nursing facilities participating as providers of intermediate care or skilled nursing care through the medicaid program unless a different method or standard for establishing rates of reimbursement for different categories or classes of institutions is created by an express written statement of general policy by the department. (emphasis provided)

The concern was that this section allowed the department to supersede the ratesetting rules by "an express statement of general policy" rather than by amendment of the rules.

Although the Department of Human Services did not agree with that interpretation of the rule, the department addressed the concern by amending this section, effective June 1, 1988, to remove the controversial language.

The committee also received a complaint from a representative of a group home about rules, NDAC Chapter 75-03-16, adopted by the Department of Human Services, concerning the licensing of residential child care facilities and group homes. Problems were described which were perceived to be created when the department combined two separate chapters covering requirements for residential child care facilities and group homes. In November 1987, the committee sent a letter to the Department of Human Services recommending that the department meet with the appropriate group home administrators to address the problems presented to the committee concerning Chapter 75-03-16. In response to the committee's concerns, the department has had several meetings with various group home representatives and is working on revision of the rules.

Formal Objections

North Dakota Century Code Section 28-32-03.3 provides:

1. If the legislative council's committee on administrative rules objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.
2. The office of the legislative council shall attach to each objection a certification of the time and date of its filing and as soon as possible shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The office of the legislative council

shall also maintain a permanent register of all committee objections.

3. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
4. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
5. After the filing of the committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. These court costs shall include a reasonable attorney's fee and shall be payable from the appropriation of the agency which adopted the rule in question.

This section was passed in 1981 and prior to last interim the Administrative Rules Committee had never made a formal objection pursuant to it. The 1985 Legislative Assembly passed Senate Bill No. 2463, which required the State Laboratories Department, prior to January 1, 1986, to establish by rule the procedures for licensing, qualifying, classifying, inspecting, and regulating persons providing bed and breakfast facilities in private homes, including rules affecting the health and safety of the facilities and persons using the facilities. A bed and breakfast facility is a private home that is used to provide accommodations for a charge to the public, with at most two lodging units for up to eight persons per night in which no more than two family-style meals per day are provided.

The State Laboratories Department adopted a rule, NDAC Section 47-04-05-04, prohibiting bed and breakfast facilities from using food in hermetically sealed containers which was not prepared in a food processing facility. In December 1985 the committee filed an objection to the rule which was published following the rule in the North Dakota Administrative Code.

In 1987 the State Laboratories Department and the State Department of Health were consolidated into a Department of Health and Consolidated Laboratories. The new consolidated agency was given the rulemaking authority formally possessed by the State Laboratories Department and the State Laboratories Commission. As a result, NDAC Section 47-04-05-04 was repealed effective August 1, 1988.

The State Department of Health and Consolidated Laboratories adopted the same rule as NDAC Section 33-33-06-04 effective August 1, 1988. This section reads:

Food supplies. Food must be in sound condition, free from spoilage, filth, or other contamination and must be safe for human consumption. Food shall be obtained from or be equal to food from sources that comply with all laws relating to food and food labeling. Before serving any food to the public, the bed and breakfast facility shall comply with all applicable inspections of food required by law. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited. Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law. (emphasis provided)

At its October 12, 1988, meeting, the committee by motion objected to a portion of the rule and the objection was filed in the Legislative Council office on October 20, 1988:

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO THAT PORTION OF NORTH DAKOTA ADMINISTRATIVE CODE SECTION 33-33-06-04 RELATING TO PROHIBITING IN BED AND BREAKFAST FACILITIES THE USE OF FOOD IN HERMETICALLY SEALED CONTAINERS WHICH WAS NOT PREPARED IN A FOOD PROCESSING ESTABLISHMENT.

The committee objects to this rule as being unreasonable because:

1. The prohibition on the use of food in hermetically sealed containers which was not prepared in a food processing establishment prevents the serving of home-canned foods by a bed and breakfast facility.
2. The prohibition was intended to prevent food poisoning caused by home-canned food.
3. One of the principal attractions to staying at a bed and breakfast facility located in a rural area is eating locally grown and prepared, including home-canned, foods.
4. Food poisoning may be caused by leaving commercially prepared foods in the can after opening.
5. Many of the reported cases of food poisoning have been in large restaurants, which do not serve home-canned foods.

A letter containing a copy of the objection was sent to the Department of Health and Consolidated Laboratories on October 21, 1988. On October 27, 1988, the department informed the committee that the department had initiated proceedings to strike the language objected to by the committee. The Health Council will consider the change at its November 17, 1988, meeting. The committee's objection will be published following the rule in the North Dakota Administrative Code until the rule is amended to address the objection.

ADMINISTRATIVE AGENCIES PRACTICE ACT STUDY

House Concurrent Resolution No. 3001 directed a study of the Administrative Agencies Practice Act, NDCC Chapter 28-32, to include consideration of the agencies subject to the Act, the agencies not subject to the Act, the various rulemaking procedures under current law, any public hearing requirements, the procedures and practices prior to and after such hearings, the appeals available, the feasibility and desirability of establishing a separate administrative hearings officer branch, the feasibility and desirability of standardizing administrative rulemaking authority, and the extent administrative agency rules should be published in the North Dakota Administrative Code.

Background

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 1981, and more than half the states have general and comprehensive statutes substantially and recognizably based on that model Act. The state laws are "comprehensive" in the sense that they cover all three main subjects dealt with by the model Act—rulemaking, adjudication, and judicial review.

The 1985-86 interim Administrative Rules Committee was assigned a study of the statutes governing rulemaking authority and procedures of state agencies and statutes containing rights of appeal from decisions of state agencies, with emphasis on standardizing the rulemaking and appeals procedures by deleting such provisions in recognition of the provisions of the Administrative Agencies Practice Act.

After hearing the testimony of the agencies and examination of the statutes, that committee concluded that Chapter 28-32 was inadequate in that, among other things:

1. Social changes since the adoption of Chapter 28-32 had greatly altered the functions of administrative agencies, including the regulation of the environment, welfare programs, and public safety, and procedural requirements in the chapter had not changed accordingly.
2. The chapter does not clearly define the parties to the proceedings or provide for alternative types of hearings depending on the circumstances.
3. The chapter does not detail procedures to be used in prehearing conferences or in the hearing itself.
4. It is unclear whether emergency rules become effective upon approval by the Attorney General or receipt of the rules by the Legislative Council for publication in the Administrative Code.
5. The chapter does not specify the agency responsible for filing the rules with the

Legislative Council for publication in the Administrative Code.

That committee concluded that no changes should be made to standardize the rulemaking and appeal procedures by deleting such provisions throughout the Century Code or to require all agencies to meet Chapter 28-32 requirements until improvements had been made in Chapter 28-32. As a result of that conclusion, that committee recommended the study directed by House Concurrent Resolution No. 3001.

Committee Consideration

After considering the recommendations of last interim's Administrative Rules Committee and hearing testimony from representatives of numerous agencies during this interim concerning their vastly varying notice and rulemaking procedures, the committee decided that NDCC Chapter 28-32 should be considerably revised to provide for more uniform rulemaking and adjudicatory procedures.

The National Conference of Commissioners on Uniform State Laws approved the revised Model State Administrative Procedure Act in August 1981. The committee compared the major administrative agency rulemaking, hearing, and appeal procedures of the model Act with the Administrative Procedure Acts in North Dakota, South Dakota, and Minnesota. Although the committee originally considered recommending most of the provisions of the model Act, a number of the Act's provisions were determined to be not appropriate for North Dakota. The committee decided that the Administrative Rules Committee structure, the administrative rules publication requirements, and the appeal procedures as contained in present law were adequate and that the creation of a separate administrative hearings agency would be too expensive at this time.

The committee presented for public consideration a bill draft containing many of the model Act's procedures relating to rulemaking, adjudicatory hearings but as applied to contested cases only, and administrative bulletin publication; and a bill draft containing some of the procedures of the draft relating to the publication of the administrative bulletin and rulemaking.

To provide for more uniform rulemaking notice requirements, the bill drafts provided for the publication of a monthly administrative bulletin, published by the Legislative Council, in which agencies would have to provide notice of all proposed rule adoptions. Agencies could continue to provide additional notice to interested persons or in newspapers if they thought it appropriate. The cost of publication of the bulletin was difficult to figure because of the unknown length of the document and the unknown number of subscribers. Considering only material costs at an estimated 250 subscribers per month, the cost of publication would be approximately \$2,700 per biennium. An increase in subscriptions would correspondingly increase the cost of publication. Much of the cost of publication could be recovered through the subscription charges paid by all subscribers except those provided bulletins at no cost as required by law. The costs to agencies for publication of notices in newspapers would also likely

decrease. The bill drafts contained specific requirements relating to public participation in the rulemaking process, time and manner of rule adoption, and content and style of rules.

The more comprehensive bill draft would have also required agencies to issue declaratory orders as to the applicability in specified circumstances of statutes, rules, or orders and to prepare a regulatory analysis of the rules if requested by the Administrative Rules Committee or the Governor. The agencies would have been required to maintain a public rulemaking docket and an agency rulemaking record. The bill draft also contained extensive specific requirements relating to the adjudicatory process. The bill draft provided for three specific types of hearing—the formal, the conference, and the summary. The bill draft contained many technical requirements regarding hearings including who may conduct the hearings, representation of parties, prehearing conferences, notice of hearings, default, intervention, subpoenas, evidence, ex parte communications, separation of functions, the issuance of initial and final orders, the review of orders, stay of orders, reconsideration of orders, and effective dates of orders.

The committee received considerable testimony from representatives of administrative agencies generally in opposition to the more comprehensive bill draft. Most of the additional rulemaking procedures of both drafts were supported; however, objections were made that requiring notice only in the administrative bulletin did not provide adequate notice of the proposed rules to the public, and that the requirements that administrative agencies issue declaratory orders and provide regulatory analysis would slow down the process and would be expensive. All agency representatives testified that the requirements relating to the adjudicatory process contained in the more comprehensive bill draft were too time consuming and costly. Representatives of the Department of Human Services and the Public Service Commission were concerned that the requirements of the bill draft would prevent them from meeting federal time limit requirements for certain types of hearings. A representative of Job Service was concerned that the agency's referees would be disqualified from serving as hearing officers and that the procedures were too complicated for the agency and claimants.

The committee concluded the bill drafts greatly improved rulemaking by providing more uniformity. Members of the committee thought the notice in the administrative bulletin improved the rulemaking notice process by providing one place individuals could look for notice of proposed rules by all agencies. Members of the committee did not think notice in newspapers should be required because those notices were generally not read by the public and an agency could voluntarily publish any additional notices it thought necessary. The committee recognized the more controversial nature of the hearing procedures contained in the more comprehensive bill draft but also concluded that those procedures would improve the hearing process.

The committee also considered a bill draft that removed the exemptions for a number of agencies from

the definition of administrative agency in NDCC Section 28-32-01. Representatives of most of the agencies on the exempt list testified in opposition to the bill draft. Although the agencies' reasons for requesting continued exemption varied, the majority concerned the increased costs of the rulemaking and adjudicatory procedures required by Chapter 28-32. Although committee members disagreed as to whether the agencies should continue to be exempt, the committee decided not to recommend the bill draft at this time due to possible increased costs during these fiscally difficult times.

Recommendations

The committee recommends House Bill No. 1031 to amend substantially NDCC Chapter 28-32 to provide for publication of an administrative bulletin and for comprehensive requirements relating to administrative agency rulemaking and adjudicatory hearings.

The committee also recommends House Bill No. 1032 to require the publication of an administrative bulletin and to expand rulemaking procedures. This bill is recommended to ensure legislative consideration of the less controversial provisions relating to the administrative bulletin and rulemaking should the first bill containing the adjudicatory hearing procedures not be approved.

TABLE A
STATISTICAL SUMMARY OF RULEMAKING

Agency	Amend	Create	Supersede	Repeal	Special	Reserved
Accountancy, Board of Public	11	28				
Management and Budget, Office of		4				
Board of Addiction Counseling Examiners		17				
Agriculture, Commissioner of	16	44		2		
Attorney General	124	265			1*	1
Banking and Financial Institutions,	1	28				
Department of						
Centennial Commission		4				
Credit Review Board	4	15		1		
Dietetic Practice, Board of	1	8				
Electrical Board	18	1				
Engineers and Land Surveyors, Board of	1	47	38			
Registration for Professionals						
Game and Fish Department	2	2		1		
Cosmetology, Board of	59	2		4		
Health and Consolidated Laboratories,	56	359	125	256	12**	
Department of						
Highway Department	13	4		1	3***	
Highway Patrol	1	11				
Historical Board		3				
Industrial Commission	9	29		1		
Insurance, Commissioner of	8	60		2	4****	
Livestock Sanitary Board	26	6		6		
Medical Examiners, Board of	10	1		3		
Milk Stabilization Board	1					
Motor Vehicle Department		1				
Nursing, Board of	2	26		2		
Occupational Therapy Practice, Board of		15				
Optometry, Board of	11	11		1		
Parks and Recreation Department	1	18				
State Personnel Board	3					
Pharmacy, Board of	4	37				
Plumbing, Board of	3	4				
Psychologists Examiners, Board of	8					
Public Instruction, Superintendent of	12	5		1		
Public Service Commission	99	7		18		
Real Estate Commission		1				
Secretary of State	180					
Securities Commissioner	2	2				
Seed Commission	32	5		2		
Department of Human Services	100	36		31		
Social Work Examiners, Board of		29*****				
Tax Commissioner	40	34		5		
Veterans' Affairs, Administrative		54				
Committee on						
Water Commission		76				
Water Well Contractors	1					
Workers Compensation Bureau	1	1				
Total	<u>680</u>	<u>1,480</u>	<u>163</u>	<u>337</u>	<u>20</u>	<u>1</u>

Grand total all sections = 2,681

* Cross reference chart

** 2 appendixes amended, 1 appendix created, 3 tables amended, 6 charts amended

*** 1 chart amended, 2 appendixes amended

**** 1 appendix amended, 3 appendixes created

***** New title created

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned three studies. House Concurrent Resolution No. 3048 directed a study of the use of near infrared reflectance analyzers in determining the protein content of grain. House Concurrent Resolution No. 3085 directed a study of the feasibility and desirability of requiring a history of pesticides applied to agricultural property to be provided to landowners, tenants, and purchasers of the property. Senate Concurrent Resolution No. 4051 directed a study of the feasibility and desirability of establishing a state bonding fund for those persons who are required by state law to be bonded to engage in business activities. By directive, the Legislative Council limited the study to grain warehousemen and livestock auction markets. In addition, the Legislative Council delegated to the committee the responsibility under North Dakota Century Code (NDCC) Section 38-14.1-04.2 to receive annual reports prepared by the Reclamation Research Advisory Committee on the status of all reclamation research projects, conclusions reached, and future goals and objectives. The committee was also delegated the responsibility to receive the annual reports of the Land Reclamation Research Center.

Committee members were Senators Allen Richard (Chairman), Ben Axtman, Bruce Bakewell, E. Gene Hilken, Adam Krauter, Byron Langley, Walter A. Meyer, F. Kent Vosper, and Dan Wogsland and Representatives Arthur Melby, Jack Murphy, Eugene Nicholas, Robert Nowatzki, Emil J. Riehl, Don Shide, Kelly Shockman, Wilbur Vander Vorst, and Gene Watne.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

GRAIN PROTEIN STUDY

Background

During the past few years, the protein content of grain has been a significant factor affecting the market price of grain. The value of protein was at historically high levels in 1987. For example, the difference on the Minneapolis cash market between grain with 14 and 17 percent protein was as high as \$2.50 a bushel. The results of an investigation conducted by The Dakota Farmer in February 1987 reported that elevators in Minnesota, South Dakota, and North Dakota measured wheat protein content incorrectly 61 percent of the time. Elevator protein analysis of the same wheat varied as much as 3.4 percentage points. Because of the economic value of protein in grain, producers complained about the variance in protein content test results and the accuracy of the machines used to measure protein content.

Federal Law

The United States Department of Agriculture, Federal Grain Inspection Service, is authorized by the United States Grain Standards Act, 7 U.S.C. 71 et seq., to test wheat for protein content as "other criteria." Under the procedures adopted by the service, all

official protein analyses under the Act must be performed in accordance with procedures prescribed by the service and must be performed by authorized or licensed employees of the service at delegated or designated agencies.

Approved near infrared reflectance devices or the Kjeldahl method may be used for official protein determinations. The Kjeldahl method is a chemical analysis used to determine the percent of nitrogen in a sample. The Kjeldahl method requires the use of a laboratory and takes several hours. The percentage of protein in wheat is then calculated by multiplying the percentage of nitrogen times 5.7. The near infrared reflectance method is the only approved method for export grain and is used by most warehouses to test protein. The Kjeldahl method can only be used to determine protein content on domestic lots at interior locations by delegated or designated agencies. The Quality Control Branch, Standardization Division, United States Department of Agriculture, is required to use the Kjeldahl method as a standard to which the near infrared reflectance instruments are referenced.

The Federal Grain Inspection Service Inspection Handbook on Protein establishes procedures for determining and certifying official protein content of wheat, monitoring the accuracy of official protein results, and maintaining protein equipment accuracy. The handbook contains a list of approved near infrared protein testing equipment and the rules regarding calibration constants, protein testing facilities, initial laboratory setup, and equipment maintenance.

When grain is shipped out of the United States, it must be officially weighed and officially inspected by inspection personnel who are licensed or authorized by the federal government to perform functions involved in inspections and weighing. The Federal Grain Inspection Service has approved four privately owned laboratories in North Dakota to officially approve grain. These laboratories are located in Grand Forks, Minot, Jamestown, and Fargo. The service designates the area in which those laboratories are entitled to officially test and grade grain.

North Dakota Law

North Dakota Century Code Section 60-02-05 provides that if there is a dispute as to the proper grade or dockage of grain delivered to a public warehouse, a sample of the grain can be forwarded to the Public Service Commission for inspection by a federally licensed inspector for a determination of the grade or dockage of the grain. The determination is based on the inspection rules and grades adopted by the Secretary of Agriculture of the United States. Protein is not part of the grade standards for wheat and is not covered by this provision. Grain producers or elevators can send samples to the Federal Grain Inspection Service but the protein results are not binding on the elevators. Section 60-02-05 also provides that when a dispute or disagreement arises between a person delivering grain and a person receiving grain over the quality factors of the grain

and no inspection rules or grades have been adopted by the United States Secretary of Agriculture, the interested parties may provide a sample of at least three pints of the grain to a federally licensed inspector or a mutually agreed upon third party for inspection. The inspector's or third party's determination of the quality factors must be used in the settlement of the dispute. The Secretary of Agriculture has adopted inspection procedures for testing wheat for protein content and thus protein is not covered by this provision.

1987 Proposal

House Bill No. 1541 (1987) would have established a procedure for testing protein measuring devices. The bill would have provided that all protein measuring devices used to determine grain protein content were subject to testing and certification by the Department of Weights and Measures of the Public Service Commission. This bill would have required the department to test randomly protein measuring devices and to certify their accuracy on an annual basis. If a protein measuring device was not accurate, the department would have informed the public warehouseman that use of the protein measuring device was prohibited until it had been repaired, retested, and found to be accurate by the department. The Public Service Commission did not have the facilities or equipment necessary to implement the proposed legislation, and the bill was withdrawn prior to committee hearings.

Testimony

The Kjeldahl test for measuring grain protein has largely been replaced by the use of the near infrared device because the device is faster, less expensive, and simpler to use. While statistically established tolerances are expected and accepted in the industry, several other factors can cause protein test results to vary. Those factors include sampling, cleanliness of grain, moisture content of grain, equipment maintenance, temperature and dust in the air of the room in which the test is performed, location of the grinder in relation to the air intake of the protein tester, temperature of the sample, bias of the machine, particle size of the ground grain, and various other laboratory techniques. These factors can be controlled by the operator of the protein tester through maintenance and operation of the machine. Testimony from representatives of manufacturers of protein testers said protein results are often inaccurate and vary due to unskilled operators and poor environmental conditions.

Testimony indicated that establishing a procedure to test protein measuring devices would not be effective because numerous environmental factors and operating techniques can affect the accuracy of the devices. Even if a device is certified as accurate when inspected, something could happen to change the machine and affect its accuracy five minutes after certification. Testimony indicated that in some cases, operators of the devices intentionally set protein devices to obtain lower protein results as a means of protection because elevators are paid based on the protein readings of the people who buy from the

elevators. Some elevators lose money because when the grain buyers recheck the protein, they obtain lower readings than the elevator did when it bought the grain. There was also testimony that some elevator managers tamper with samples in order to obtain lower protein readings. The committee generally agreed that it would be difficult to legislate honesty with regard to the operators of the devices, or to enforce a law regulating human error or cleanliness with respect to maintenance or operation of the devices.

Under current procedures, if there is a dispute between an elevator manager and a producer, the Public Service Commission recommends that the producer try to negotiate with the manager. If the producer has difficulties negotiating, the producer can contact the commission and the commission will send a field officer to the elevator to assist in the negotiations. The commission, however, cannot make a binding decision.

Committee Considerations

The committee reviewed a bill draft, based on Minnesota law, which establishes a procedure for resolving grain protein disputes between grain producers and elevator operators. The bill draft provides that if there is a dispute between the person receiving grain and the person delivering grain as to the proper grade, dockage, moisture content, or protein content of any grain, the parties can take an average sample of the grain and have it inspected by a federally licensed inspector or mutually agreed upon third party. The bill draft requires each party to vouch in writing that the sample is a true and representative sample of the grain in dispute. The person requesting the inspection service is required to pay for it. Either party can appeal the determination made by the federally licensed inspector or the third party. Under the bill draft, any person not abiding by the final determination is liable for damages. The committee discussed whether grain warehousemen should be required to post a notice in their grain inspection rooms of the procedures specified in the law for resolving disputes.

According to the director of the Grain Inspection Division of the Minnesota Department of Agriculture, the Minnesota law is accomplishing its intended purpose, i.e., helping solve the problem caused by disputes over varying protein test results. The law is successful because elevator managers are aware that producers can send samples in for inspection and the results are binding.

Proponents of the bill draft contend that third-party involvement is necessary to protect producers. In addition, the results should be binding, otherwise, a producer whose only option is to try and negotiate with the elevator manager will have to accept what the elevator manager gives the producer or take the grain to another elevator, which is not always feasible.

Opponents of the bill draft contend that the final decision as to the price and quality factors of grain should be made by the producer and elevator manager. Mediation should be used rather than making a third party's decision binding. In addition, inaccurate results are in large part due to the lack of education

of the operators of the devices with regard to maintenance and operation. Education, rather than legislation, is suggested as the solution to the problem. Also, the Public Service Commission has received only six complaints regarding grain protein and thus the protein problem is not widespread enough to necessitate legislative action.

Recommendation

The committee recommends Senate Bill No. 2031 to provide that if there is a dispute over the grade, dockage, moisture content, or protein content of grain, the parties can send a sample of the grain to a federally licensed inspector or third party for inspection and the results will be binding on the parties. Elevator managers would be required to post a notice in their elevators. The notice must contain the statutory procedures for resolving disputes. The Public Service Commission would prescribe the form of the notice and provide copies of the notice to each warehouseman.

NOTICE OF PESTICIDE USE STUDY

Background

House Bill No. 1614 (1987), which was withdrawn, would have required all landowners to provide any person who rents, leases, or acquires property used for farming or ranching with a statement describing all pesticides used on the property for three years prior to each new tenant's or new owner's possession. The bill was introduced due to the concern that herbicide residues can seriously damage crops planted a year or more following the application of the herbicide.

Federal and State Law

Pesticides are regulated by federal and state law. The United States Environmental Protection Agency administers an environmental pesticide control program established by 7 U.S.C. 136 et seq. The federal pesticide law focuses on product registration, product labeling, and pesticide applicator certification. States are authorized to certify applicators of pesticides and regulate the sale or use of any federally registered pesticide to the extent the sale or use does not violate the federal law. The states have primary responsibility for enforcing pesticide use violations.

In response to the federal Act, North Dakota enacted NDCC Chapter 4-35. Section 4-35-02 creates a pesticide control board consisting of the Commissioner of Agriculture, the director of the Cooperative Extension Service at North Dakota State University, and the director of the Agricultural Experiment Station at North Dakota State University. Chapter 4-35 provides for certification of pesticide applicators and authorizes the board to adopt rules that do not permit a use prohibited by the federal Act. The Commissioner of Agriculture has the responsibility for enforcing the chapter.

Although Section 4-35-21.1 addresses the issue of damage caused by drifting pesticides, neither federal nor state law addresses the issue of damage or loss caused by pesticide carryover or residue. Although the state has the authority to regulate pesticides, federal law prohibits states from enacting any legislation

imposing any requirements for labeling or packaging in addition to or different from those required by the federal Act.

Testimony

Testimony indicated that House Bill No. 1614 (1987) was too broad because it would have required records to be kept on all property used for farming and ranching and it also would have applied to all pesticides used on the property. Representatives of the Cooperative Extension Service, North Dakota State University, and of chemical companies that produce persistent herbicides testified that only a few herbicides, e.g., Glean, Ally, and Tordon, are persistent and cause residue problems. Federal law requires manufacturers of any herbicide that carries over for 12 or more months to indicate so on the label. Users of Glean and Ally are encouraged to follow certain recrop restrictions. Recommended recrop intervals range from 22 months for certain sensitive crops after Ally applications and three to four or more years after Glean applications. A representative of a company that markets Glean and Ally in North Dakota testified that these restrictions are clearly stated on the product labels.

Opponents of adopting legislation requiring records to be kept contend that although in various parts of the state problems have been caused by the residual properties of herbicides, the problems are not widespread. In addition, it would be difficult to enforce a law regulating farm management practices. Many farmers split the application of pesticides on a field, change boundaries on their property, or forget the rate of pesticide or herbicide applied. Even if records were required to be kept, the owner or renter could neglect to keep them or they could be destroyed or lost. Additionally, application records would not always provide the best information regarding product breakdown because many herbicides degrade not due to passage of time, but due to factors indigent to particular sites such as temperature, moisture, and organic matter content. Tillage practices also affect herbicide carryover. There are private laboratories that test soils to determine what crops can and cannot be planted on those soils. The cost of a test was estimated to be between \$50 to \$150 per herbicide. A representative of one of the herbicide manufacturers testified that his company charges \$100 to sample a 50- to 60-acre field but conducts a laboratory recrop bioassay test free of charge to determine which crops can be planted on that field. Thus, soil tests would more accurately identify residual herbicides and protect the purchaser or lessee of the property regardless of the operator's land management practices or other factors such as those indigent to the site. A representative of the Commissioner of Agriculture testified that the area of pesticides is overregulated and legislation requiring records to be kept would be expensive to enforce. A representative of the North Dakota Wheat Producers, Inc., and the United States Durum Growers Association opposed legislation requiring records to be kept because such legislation is based on the premise that the farmer needs to be taken care of.

Conclusion

Although the committee makes no recommendation regarding the notice of pesticide use study, various committee members suggested that the Commissioner of Agriculture, who is responsible for regulating the use and misuse of pesticides, and the Cooperative Extension Service, North Dakota State University, which is responsible for training and certifying pesticide applicators, should make an effort to educate purchasers or lessees of property with regard to the potential problems caused by persistent herbicides. The committee generally agreed that the purchaser or lessee of the property should be responsible for having the soil tested to determine whether certain crops should or should not be planted.

LIVESTOCK AUCTION MARKET AND GRAIN WAREHOUSE BONDING FUND STUDY

Background

Senate Concurrent Resolution No. 4051 directed a study of the feasibility and desirability of establishing a state bonding fund for those persons who are required by state law to be bonded in order to engage in business activities. By directive, the Legislative Council limited the study to grain warehousemen and livestock auction markets. The study was proposed to consider the establishment of a state bonding fund to address problems created by the escalating costs of obtaining bonds and the decreasing number of companies willing to provide bond coverage.

Federal Regulation of Warehouses

Grain warehouses are regulated by either federal or state law. The federal government regulates grain warehouses under the United States Warehouse Act, 7 U.S.C. 241-273, which is administered by the United States Department of Agriculture. There is no requirement that a grain warehouse be licensed under the Act.

Licensing under the Act is voluntary and may be accomplished by applying and qualifying. Therefore, a grain warehouse can elect to be licensed by federal or state authorities. With respect to a grain warehouse licensed by federal authorities, matters regulated by the Act cannot be regulated by the state. A grain warehouse licensed under the federal Act must meet requirements for sound warehouse operations, i.e., furnish an acceptable bond, maintain a minimum net worth, and pay inspection and licensing fees. The amount of the bond required is 20 cents per bushel for the first 1,000,000 bushels of storage capacity, 15 cents per bushel for the next 1,000,000 bushels of storage capacity, and 10 cents per bushel for all storage capacity over 2,000,000 bushels. The minimum bond is \$20,000 and the maximum bond is \$500,000. In lieu of a bond, a warehouse may file a certificate of participation in and coverage by an indemnity or insurance fund, approved by the Secretary of Agriculture, and established, maintained, and backed by the full faith and credit of the applicable state.

State Regulation of Warehouses

North Dakota statutory provisions relating to grain warehousemen and roving grain or hay buyers are found in NDCC Chapters 60-02, 60-03, and 60-04. Sections 60-02-02 and 60-02-03 set out the duties and powers of the Public Service Commission in regulating grain and seed warehouses. In addition to other prescribed duties, the commission is to exercise general supervision of public warehouses. Section 60-02-09 contains bond requirements, which must be met prior to issuance of a public warehouseman's license. The bond must be in a sum of not less than \$5,000 for any one warehouse (with the actual amount determined by the commission) and must be for the specific purposes of protecting holders of outstanding receipts and covering the costs incurred by the commission in the event of the licensee's insolvency. North Dakota Administrative Code Section 69-07-02-02 provides the schedule for bond amounts required of public warehousemen. The amount of bond required ranges from \$50,000 for a warehouse with a capacity up to 50,000 bushels to \$500,000 for a warehouse with a capacity between 475,001 and 500,000 bushels. For a warehouse with a capacity of more than 500,000 bushels, the bond amount is \$500,000 plus \$5,000 for each additional 25,000 bushels or fraction thereof. The commission may require additional bonds if necessary. Although the bond must be issued by a corporate surety company, the commission may accept bond substitutes in the form of cash, negotiable instruments, or a bond executed by personal sureties, if the bond substitute provides adequate protection to the holders of outstanding receipts.

North Dakota Century Code Section 60-02-09.1 provides a procedure to be followed during the cancellation of a bond. Before a surety company may cancel a bond, the company must provide 90 days' notice to the licensee and commission. Within 60 days of receipt of the notice, the licensee must file a new bond with the commission. Failure to file a new bond within this time period results in the suspension of the license until a new bond is filed.

Chapter 60-03 applies to roving grain or hay buyers. In addition to other requirements set forth in the chapter, Section 60-03-03 provides that roving grain or hay buyers are subject to the laws governing public warehouses, insofar as they apply. Licenses for roving grain or hay buyers are issued on an annual basis, and may be revoked or suspended for cause. The license of a roving grain or hay buyer is automatically suspended for failure to have or maintain the required bond.

The bond requirements for roving grain or hay buyers are similar to bond requirements for grain warehouses. One substantial difference is that the minimum bond for a roving grain or hay buyer is \$50,000, which may be increased at the discretion of the Public Service Commission. Transacting business without procuring a bond is a Class B misdemeanor.

Chapter 60-04 pertains to insolvent grain warehousemen. The chapter establishes a procedure for the appointment of the Public Service Commission as trustee for an insolvent warehouseman, the establishment of a trust fund containing the assets

of the insolvent warehouseman, and the marshaling and distribution of the assets of the warehouseman to receiptholders. Receiptholders must, within 45 days of the last publication of notice or a longer period if prescribed by the commission, file claims against the warehouseman. Failure to file a claim within the prescribed time may bar the receiptholder from participation in the distribution of the trust fund. Additionally, receiptholders are barred from bringing separate claims for relief against the warehouseman's bond, insurance proceeds, and other trust assets. However, the receiptholder may seek an action against the warehouseman for the whole amount owed or any deficiency.

Regulation of Livestock Auction Markets

Livestock dealers and livestock auction markets or stockyards are regulated by both state and federal law. Under state law, the duties associated with livestock dealers and livestock auction markets are delegated to the Commissioner of Agriculture. Livestock dealers are regulated under NDCC Chapter 36-04. With certain exceptions, this chapter requires that all dealers be licensed. A "dealer" is defined broadly to include most sales activities. The requirements for livestock auction markets are provided in NDCC Chapter 36-05. With certain exceptions, all livestock auction markets must be licensed. "Livestock auction markets" are defined broadly to include most places or establishments which are operated for profit as a public market for livestock.

Livestock dealers and livestock auction markets are also regulated by the federal Packers and Stockyards Act of 1921, 7 U.S.C. 181 et seq., which vests authority in the United States Department of Agriculture, Packers and Stockyards Administration. The Act was remedial legislation aimed at eliminating monopolistic practices in the stockyards and providing protection for producers of livestock and the consuming public. The United States Secretary of Agriculture has the power to regulate stockyards and dealers under the Act. Also, under the Act, as well as the similar state provision, a person may be required to comply with registration and bonding requirements to engage in the activities which the statutes are intended to regulate.

Under NDCC Section 36-04-04(2), the Commissioner of Agriculture must refuse to issue or renew a license if an applicant for a livestock dealer's license has not filed a proper surety bond. A livestock dealer or stockyard may have its registration suspended if the Packers and Stockyards Administration finds that the applicant does not have the required bond.

North Dakota Century Code Section 36-04-05 provides the state bond requirements for livestock dealers. This bond is held for the purpose of protecting and for the benefit of any person selling livestock or wool to a dealer. The bond must be conditioned for the faithful performance of the dealer's duties, compliance with the requirements of the code, full and complete payment to sellers, and the full protection of any person dealing with the dealer. The minimum amount of bond required is \$10,000, and it may be greater if required by the formula adopted under the provisions

of the federal Act. Additionally, the Commissioner of Agriculture may demand a bond amount greater than that derived from the formula under the federal Act when, in the commissioner's judgment, the volume of business warrants a greater bond. The dealer need only file one bond, either with the United States Department of Agriculture, under the federal Act, naming the State Commissioner of Agriculture as trustee, or with the state. The minimum requirement of the bond filed with the federal government can be increased by the State Commissioner of Agriculture to an amount reasonable to protect the public interest. A dealer may be automatically deemed insolvent if that dealer's bond is defaulted. Section 36-04-12 provides that the bond constitutes a trust fund in the hands of the commissioner for all persons having a cause of action against the dealer.

North Dakota Century Code Section 36-05-04 provides the state bond requirements for livestock auction markets. The bond must be conditioned for payments received by the market less commissions, the faithful performance of duties, and the faithful performance of the provisions of the code. The minimum bond amount under this statute is \$10,000. The actual amount of the bond is set by the Commissioner of Agriculture based upon the volume of business of the licensee. A livestock auction market need only file one bond, either a bond naming the commissioner as trustee filed under the federal Act or one filed under NDCC Chapter 36-05.

Sections 36-04-05 and 36-05-04 specifically allow livestock dealers and auction markets to be bonded under the provisions of the federal Act in lieu of the state bonding requirement. About 65 out of approximately 210 livestock dealers in the state are bonded with the state and all livestock auction markets operating in the state are bonded with the Packers and Stockyards Administration. Under the federal Act, the Secretary of Agriculture has the power to set a reasonable bond for every stockyard and dealer. The secretary has the authority to revoke a stockyard's or dealer's registration if the stockyard or dealer violates the provisions of the Act or becomes insolvent.

The basic federal formula for determining the bond requirements for stockyards selling livestock on commission is arrived at by dividing the dollar value of livestock sold in the preceding year by the number of sales days (maximum number of sales days is 130). The amount of bond coverage must be the next multiple of \$5,000 above the amount determined. If the amount is greater than \$50,000, the bond requirement is \$50,000 plus 10 percent of the amount over \$50,000, when raised to the next multiple of \$5,000. Furthermore, the bond cannot be "less than \$10,000 or such higher amount as required to comply with any State law." Therefore, it appears that a state has the authority to set the minimum bond amount for that state.

The federal bond requirement for dealers and other entities that buy on commission is based on the average amount of livestock purchased during two business days. The bond is determined by taking the total dollar value of livestock purchased during the preceding business year and dividing that amount by

one-half of the number of days business was conducted (maximum number of 260 business days, maximum divisor 130), and raising that amount to the next multiple of \$5,000. If greater than \$75,000, 10 percent of the amount over plus \$75,000 is the bond requirement, when raised to the next multiple of \$5,000. The bond coverage cannot be less than \$10,000 or such higher amount as required to comply with state law.

Action in Other States

Illinois, Iowa, Ohio, Kentucky, New York, Oklahoma, and South Carolina have indemnity funds or similar programs to provide grain warehouse deposits with varying degrees of protection against losses incurred in grain warehouse failures.

Illinois has a program that operates through the use of two separate but interrelated funds: (1) the grain indemnity trust fund, and (2) the Illinois grain insurance fund. All grain assets of failed grain warehouses are placed in the grain indemnity trust fund and all claims are paid from the fund. The Illinois grain insurance fund consists of assessments made against elevators, in lieu of requiring elevators to have bonds. The insurance fund is intended as a supplementary means of payment when the amount of the grain indemnity trust fund is insufficient to pay all claims. The grain insurance fund is financed by an assessment on each licensed grain dealer and grain warehouseman for a period of three years and then as needed to maintain a fund balance of \$3 million. Each state licensed grain dealer and grain warehouseman is required to participate in the program. Federally licensed warehouses may participate in the program through the use of a cooperative agreement. The fees assessed against the grain dealers and grain warehousemen are consistent with the current cost of bonds that are required in the grain industry on an annual basis. To generate sufficient initial funding, the assessments were doubled for the first year, and for the initial year of each subsequent participant. Any claimant who has suffered a financial loss due to the use of a credit-sale contract is entitled to compensation for 85 percent of the balance claimed up to a maximum of \$100,000 from the fund. A claimant who has a financial loss other than through the use of a credit-sale contract is entitled to compensation for 100 percent of a valid claim.

Iowa created a grain indemnity fund in 1986. The indemnity fund consists of a per-bushel fee on grain sold and an annual fee remitted by licensed grain dealers, licensed warehouse operators, and participating federally licensed grain houses; sums collected by the Department of Agriculture through legal action on behalf of the fund; and interest, property, or securities acquired through the use of moneys in the fund. The indemnity fund is liable to a depositor or seller for 90 percent of a loss up to a maximum of \$150,000 per claimant.

Ohio has a fund similar to the Iowa fund. A depositor can recover 100 percent of the first \$10,000 of the depositor's loss and 80 percent of the remaining dollar value of the loss.

Testimony and Committee Considerations

The committee reviewed a bill draft, based on Illinois law, which would have established a grain indemnity trust fund and a grain insurance fund to compensate claimants of insolvent grain warehouses or roving grain and hay buyers. The bill draft would have required grain warehousemen and roving grain and hay buyers to pay assessments into a state fund in lieu of purchasing a bond. The bill draft would not have established similar funds for livestock dealers and auction markets. Because livestock dealers and auction markets are regulated by both state and federal law, as opposed to grain elevators, which are regulated by either state or federal law, livestock auction markets would have been required to be bonded, or have a federal bond alternative, even if the state established an indemnity fund and an insurance fund for them. Livestock dealers and auction markets would then have been required to purchase a bond under federal law and to pay assessments into the state fund. Although a state fund could provide supplemental protection to producers, dealers, and auction markets in excess of commercial bond coverage, this would increase costs to livestock auction markets and dealers.

A representative from the Illinois Department of Agriculture testified that the key to keeping the fund solvent and to good management of grain elevators is strict state regulation. Illinois had strict financial requirements in place four years prior to establishing the grain insurance fund in 1983. The Illinois law requires annual certified financial statements from all grain dealers and warehouses. Certified financial statements have to be in the form of an unqualified opinion from a certified public accountant. Department staff accountants review the financial statements to determine the net worth of grain dealers and warehouses and the department takes additional collateral from dealers or warehousemen whose corporate assets are not sufficient to cover their debts. The department examines all grain warehouses and dealers annually.

No assessments have been paid into the fund since 1985. This cost savings has been passed down to the producer and has decreased costs to elevators. Lending institutions whose debts are covered by warehouse receipts can recover from the insurance fund. This feature has aided elevators in obtaining financing because lenders no longer have to rely on the surety bond as protection for losses on loans. Producers are more willing to take their grain to a warehouse that participates in the fund because if the elevator goes insolvent, the producers will recover 100 percent of their claims. The creation of the fund has shortened the time period in which payments are made to those in the farming community from one year to 90 days.

Representatives of the North Dakota Stockmen's Association, North Dakota Grain Dealers Association, and Public Service Commission opposed the establishment of an indemnity trust fund and insurance fund. They testified that any person or company that is having difficulty obtaining a bond is probably having financial difficulty. They argued that if the state established an indemnity fund and an insurance fund, the state would be required to

assume the responsibilities of the surety bond companies with regard to screening applicants to determine whether they have adequate financial capabilities to operate a business. Surety companies will not bond those companies that do not have the necessary financial strength required to operate. Although it would be easier and less expensive for companies to obtain bonds if the bonding requirements were lowered, doing so would decrease the financial protection afforded to producers. Because bond costs are based on risk, healthy companies pay less than a company in financially poor shape. Opposition was expressed to the bill draft because all companies would have been required to pay the same assessment, thus penalizing financially healthy companies.

Representatives of the Public Service Commission testified that recent changes made by the commission make it easier for a warehouseman having warehouses in two locations to obtain bonds. Under the changes, companies can total the capacity of their elevators, annexes, and additional storage using a \$1 per bushel bond requirement for the first 500,000 bushels plus \$5,000 for each additional 25,000 bushels or fraction thereof. For example, under the old policy a warehouseman with two warehouses having a 450,000 bushel capacity each was required to have a \$900,000 bond. Under the new policy, a warehouseman with two warehouses having a 450,000 bushel capacity each would be required to have a \$548,000 bond. The commission also does not perceive a problem in the bonding industry, i.e., healthy companies rarely have problems obtaining bonds, the cost of obtaining bonds does not appear to be a problem, and the difficulty of obtaining bonds which existed a few years ago no longer exists. The only types of insolvencies where producers were not fully compensated for losses were those of processors. If a law similar to the Illinois law were adopted in North Dakota, the commission would be required to audit 615 sites annually and this would require an additional 18 auditors. The cost would approximate \$820,000 for the first year of the biennium and \$750,000 annually thereafter to establish the proposed grain indemnity trust fund and insurance fund. Additionally, the annual financial audit required of grain warehouses and roving grain and hay buyers under the proposal would cost from \$5,000 to \$15,000. In many cases this would exceed the current cost to elevators of obtaining bonds. Testimony indicated that the bonding system in North Dakota was working well and that North Dakota has the highest bonding level requirements of any state.

Conclusion

The committee makes no recommendation concerning the establishment of an indemnity trust fund and grain insurance fund.

RECLAMATION RESEARCH REPORTS

Reclamation Research Advisory Committee

North Dakota Century Code Section 38-14.1-04.1 establishes a three-member Reclamation Research Advisory Committee, appointed by the Governor. The

committee's responsibilities include inventorying all reclamation research projects in the state, reviewing all past and current reclamation research projects to identify and establish priorities for research needs and to prevent duplication, reviewing proposed reclamation research projects administered by the Public Service Commission, and determining which reclamation research projects should be funded. The Reclamation Research Advisory Committee also recommends to the Public Service Commission future reclamation research budgets to be administered by the commission. The Reclamation Research Advisory Committee is required to prepare yearly reports for submission to the Legislative Council on the status of all reclamation research projects, conclusions reached, and future goals and objectives.

Land Reclamation Research Center

House Bill No. 1005 (1987) appropriated \$1,350,137 to the Land Reclamation Research Center. The center is a branch station of the Agricultural Experiment Station at North Dakota State University. The center's laboratories and offices are located at the Northern Great Plains Research Center, Agricultural Research Service, United States Department of Agriculture. Approximately \$707,000 of the appropriation to the center is a transfer from the lignite research fund. The funds appropriated to the center are to be used for research projects regarding prime farmland soil productivity, development of productivity indices for reclaimed land, soil respreading and depth of soil replacement, and runoff and erosion on reclaimed land.

The Land Reclamation Research Center must file an annual report with the Legislative Council, the Office of Management and Budget, and the Public Service Commission on August 1, 1987, 1988, and 1989. (A similar report was required by Senate Bill No. 2009 (1985) on August 1, 1985, 1986, and 1987.) Each annual report is to contain a description and analysis of the conclusions reached from each reclamation research project to date for the preceding fiscal year as well as a brief description and analysis of any tentative conclusions reached from all the ongoing projects. Each report must also include the recommendations of the center for reducing unnecessary and duplicative regulatory costs that are not required by federal or state reclamation law and which do not contribute to effective reclamation practices.

The reports are on file in the Legislative Council office. The committee accepted the reports and took no further action with regard to them.

POLICY STATEMENTS

During the interim, the committee discussed the United States-Canada Free Trade Agreement, perpetual conservation easements obtained by the United States on farmland being sold by the Farmers Home Administration, drought conditions across the state, and funding for the individual experiment stations. The supplementary rules of operation and procedure of the Legislative Council require all communications expressing a policy of an interim committee to be referred to the chairman of the

Legislative Council for approval prior to publication, distribution, or introduction during a legislative session. The committee received authorization from the Legislative Council, or the chairman of the Legislative Council, to issue policy statements to various officials regarding these areas.

United States-Canada Free Trade Agreement

The United States-Canada Free Trade Agreement would phase out most tariffs and other trade barriers between the United States and Canada by 1990. Opening up American markets to Canadian producers could lower prices for North Dakota producers of durum, spring wheat, and barley. North Dakota energy producers could be harmed because America would provide new markets for Canada's electrical power, much of which is subsidized. This could result in erosion of job security in the coal industry. The agreement does not address currency exchange rates between the two countries. Canadians could have an advantage because they will be able to sell products below the cost of production in the United States and make a profit because the Canadian dollar is worth less than the United States dollar. The committee adopted a policy statement expressing opposition to the Free Trade Agreement, in its present form, between the United States and Canada. The Legislative Council, by motion, authorized the committee to forward a copy of the policy statement to the members of the North Dakota Congressional Delegation and the associate director of the Agriculture and Trade Division of the United States Department of Agriculture. The motion specifically provided that a copy of the Agriculture Committee's minutes, reflecting the discussion of the agreement by the committee members, be sent with the policy statement.

United States Easements on Farmers Home Administration Property

According to the Farmers Home Administration, the Farmers Home Administration has an "affirmative responsibility" to preserve and enhance wetlands and to preserve and restore floodplains in its management and disposal of federal land. The Farmers Home Administration and the United States Fish and Wildlife Service entered into a memorandum of understanding in May 1987 which sets forth consultation procedures to be followed by the Farmers Home Administration and the United States Fish and Wildlife Service. Pursuant to the memorandum, the Farmers Home Administration is to consult with the service in implementing the Farmers Home Administration's responsibilities to preserve and enhance wetland resources. The service is to assist the Farmers Home Administration in selecting real property in which the United States may acquire easements for conservation, recreation, and wildlife purposes; formulating the terms and conditions of the easements; and enforcing the easements. The United States may assign its right to easement management and administration to other agencies such as the Farmers Home Administration, the United States Forest Service, a state fish and game agency, or the United States Fish and Wildlife Service.

In the easement, the landowner must agree that no buildings or other structures will be built in the easement area and that the vegetation or hydrology of the easement area will not be altered in any way by cutting or mowing; cultivating; harvesting wood products; burning; placing refuse, waste, sewage, or other debris on the easement area; or draining, dredging, channeling, filling, discing, pumping, diking, or impounding. The restrictions also provide that the landowner is responsible for the control of noxious or other undesirable plants on the easement area. Easements acquired by the United States Fish and Wildlife Service on wetland acres are not as restrictive as those that will be acquired on the Farmers Home Administration property. Fish and Wildlife Service easements generally prohibit the landowner from burning, draining, or filling the easement area. As authorized by the chairman of the Legislative Council, the committee issued a policy statement to officials at the United States Fish and Wildlife Service, the Farmers Home Administration, and the members of the North Dakota Congressional Delegation urging them to take appropriate action to ease the restrictions contained in the easements that the United States is obtaining on farmland being sold by the Farmers Home Administration and to prohibit the placement of easements on Farmers Home Administration property until a farmer's right to redemption has expired. The committee generally agreed that the restrictions in easements obtained on property owned by the Farmers Home Administration should not be more restrictive than the easements acquired by the United States Fish and Wildlife Service on wetland acres.

Drought Conditions

The committee, with authorization from the chairman of the Legislative Council, forwarded a resolution to the Governor, the Commissioner of Agriculture, the State Office of the Agriculture Stabilization and Conservation Service, the director of the United States Agriculture Stabilization and Conservation Service, the United States Secretary of Agriculture, and the members of the North Dakota Congressional Delegation. The resolution urged the United States Department of Agriculture to release the agricultural conservation reserve, waterbank, and conservation reserve program acreages for emergency haying and grazing and to reopen the 0/92 program to allow producers to participate in it if they were prevented from planting crops or the crops they planted failed because of drought conditions. The resolution also urged the state's Agriculture Stabilization and Conservation Service to choose five months for prohibiting haying and grazing of agricultural conservation reserve acres that are more appropriate to North Dakota's climate. Grazing and haying is prohibited on conservation reserve acres from April 1 through August 31.

Branch Experiment Station Funding

The Governor's 1987-89 executive budget attempted to consolidate the appropriations for the branch experiment stations into one appropriation. The committee, with authorization from the chairman of

the Legislative Council, issued a policy statement supporting continued funding of each branch experiment station as an individual unit with a line item appropriation to each station rather than consolidation of the funding for all experiment stations into one appropriation. The policy statement was forwarded to the director of the Office of

Management and Budget; the commissioner of the Board of Higher Education; the dean of the College of Agriculture, North Dakota State University; and the superintendents of the experiment stations at Dickinson, Streeter, Hettinger, Langdon, Minot, Williston, and Carrington.

BUDGET SECTION

North Dakota Century Code (NDCC) Section 54-44.1-07 directs the Legislative Council to create a special Budget Section to which the budget director is to present the Governor's budget and revenue proposal. In addition, the Budget Section is assigned other duties by law which are discussed in this report.

Budget Section members were Senators Harvey D. Tallackson (Chairman), William S. Heigaard, Evan E. Lips, Corliss Mushik, Pete Naaden, Gary J. Nelson, John M. Olson, Rolland W. Redlin, R. V. Shea, Bryce Streibel, Floyd Stromme, Russell T. Thane, Malcolm S. Tweten, Jerry Waldera, Dan Wogsland, and Jim Yockim; Representatives Gordon Berg, Gereld F. Gerntholz, Jayson Graba, Ronald E. Gunsch, Roy Hausauer, Julie A. Hill, Serenus Hoffner, Tish Kelly, David W. Kent, Harley Kingsbury, Richard Kloubec, Tom Kuchera, Bruce Laughlin, Charles F. Mertens, Robert Nowatzki, Olaf Opedahl, Douglas G. Payne, Jim Peterson, Verdine D. Rice, Beth Smette, R. L. Solberg, Scott B. Stofferahn, Earl Strinden, Kenneth N. Thompson, Francis J. Wald, Brent Winkelman; and Lt. Governor Lloyd Omdahl.

The report of the Budget Section was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

The Budget Section duties and responsibilities are:

1. Senate Concurrent Resolution No. 4020 (1987) authorizes the Budget Section to hold the required legislative hearings for federal block grants under the Omnibus Budget Reconciliation Act of 1981. The Budget Section authority is in effect through September 30, 1989.
2. North Dakota Century Code Section (NDCC) 57-01-11.1 requires the Tax Commissioner to submit quarterly reports to the Budget Section on the progress made in collecting additional tax revenues under the enhanced audit program and on settlements of tax assessments.
3. North Dakota Century Code Section 50-06-05.1(18) provides that the Department of Human Services, with the approval of the Budget Section, may terminate the food stamp program should the rate of federal financial participation and administrative costs provided under Public Law 93-347 be decreased or limited, or should the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
4. North Dakota Century Code Section 50-06-05.1(20) provides that the Department of Human Services, with the approval of the Budget Section, may terminate the energy assistance program should the rate of federal financial participation and administrative costs be decreased or limited to less than 50 percent of the total administrative costs, or should the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
5. The 1973 Legislative Assembly assigned the

duties of the auditing board to the Executive Budget Office. North Dakota Century Code Section 54-14-03.1 requires the Executive Budget Office to submit a written report to the Budget Section documenting irregularities, discovered during the preaudit of claims, and areas where more uniform and improved fiscal practices are desirable. The definition of irregularities includes payments of bonuses, cash incentive awards, and temporary salary adjustments to state employees.

6. North Dakota Century Code Section 54-14-01.1 requires the Budget Section to periodically review the actions of the Office of the Budget (a division of the Office of Management and Budget) regarding the following budget office statutory duties: (1) requiring itemized statements before payment of claims against the state; (2) regulations regarding departmental payroll procedures; (3) use of electronic funds transfer systems for payment of departmental payrolls; (4) regulations regarding standardized voucher forms and disapproval of claims; and (5) withholding from state employee compensation.
7. House Bill No. 1005 (1987) provides for an appropriation of up to \$1 million in gifts for the construction of a research and extension service staff facility at the Main Experiment Station or a branch station. Expenditure of the funds is subject to Budget Section approval. An appropriation of \$1,200,000, more or less, from federal or other funds was provided to acquire and equip a barley and feed milling demonstration feed processing facility. Expenditure of the funds is subject to Budget Section approval. An appropriation of \$1,300,000, more or less, from federal or other funds was provided to acquire and equip a pilot durum and hard red spring wheat demonstration facility. Expenditure of the funds is subject to Budget Section approval. An appropriation of \$95,000 from the North Central Experiment Station reserve income fund, contingent upon the fund balance being \$180,000 or more on June 30, 1988, is provided for construction of a superintendent's residence on the North Central Experiment Station. Funds spent for this purpose require Budget Section approval.
8. North Dakota Century Code Section 21-11-05 provides for the Economic Development Commission to file applications for natural resources development bond issues to be filed with the Legislative Council. The Legislative Council is required to prepare and submit any necessary legislation for authorization of issuance of bonds or appropriation of funds. The loans from the bond issue can be made to any qualifying enterprise to plan, acquire, or improve facilities for the conversion of North Dakota natural resources into low cost power and the generation and transmission of such power.

9. North Dakota Century Code Section 15-65-03 provides that before a public broadcasting facility can accept a gift of a tax-producing property it must receive Budget Section approval.
 10. North Dakota Century Code Section 54-16-01 allows Emergency Commission transfers from the state contingency fund in excess of \$500,000 only to the extent the requests for transfers are approved by the Budget Section.
 11. North Dakota Century Code Section 15-10-18 requires institutions of higher education to charge nonresident students tuition in amounts to be determined by the State Board of Higher Education with the approval of the Budget Section.
 12. North Dakota Century Code Section 15-10-12.1 requires the Budget Section to review and act upon State Board of Higher Education requests for authority to construct buildings or campus improvements on land under the board's control when the construction is financed by donations, gifts, grants, and bequests; and to act upon requests from the board for authority to sell any property or buildings which an institution of higher education has received by gift or bequest.
 13. North Dakota Century Code Section 54-27-22 requires Budget Section approval of state agency and institution requests for moneys from the capital improvements preliminary planning revolving fund.
 14. North Dakota Century Code Section 54-44.1-07 requires the Budget Section to review, prior to the 1989 legislative session, the executive budget for the 1989-91 biennium.
 15. A Legislative Council directive provides that the Budget Section receive information on tax breaks approved by the 1987 Legislative Assembly for the oil and coal industries.
 16. House Bill No. 1446 (1987) requires the Attorney General to report to the Budget Section any deficiency appropriation to be introduced in the 1989 Legislative Assembly to reimburse the state bonding fund, for the purpose of providing defense services to eligible state employees.
 17. Senate Bill No. 2004 (1987) amended NDCC Section 54-27-23, regarding cash flow financing, to provide that evidences of indebtedness may not be issued to offset projected deficits in state finances unless approved by the Budget Section. The Budget Section may approve additional cash flow financing of up to 80 percent of estimated general fund revenues relating to sales or production occurring prior to June 30, to be collected in July or August after the end of the biennium. If a revenue shortfall of more than five percent occurs, the Office of Management and Budget must order budget allotments prior to approval by the Budget Section of additional cash flow financing. All borrowing must be repaid by the end of the biennium.
 18. Senate Bill No. 2013 (1987) requires the Adjutant General to obtain Budget Section approval prior to vacating any National Guard armories during the 1987-89 biennium.
 19. Senate Bill No. 2015 (1987) requires the Department of Human Services to obtain Budget Section approval prior to spending funds included in its appropriation to unify the Department of Human Services' and the Department of Health's Medicaid inspection of care responsibilities and the health facility certification survey functions relating to long-term care facilities.
 20. Senate Bill No. 2016 (1987) requires the approval of the Budget Section and the Governor prior to the sale, lease, exchange, or transfer of the San Haven properties by the Director of Institutions.
 21. Senate Bill No. 2039 (1987) requires the approval of the Budget Section prior to spending grants and gifts received by the Children's Services Coordinating Committee.
 22. Senate Bill No. 2471 (1987) provides an appropriation of any federal, private, and other funds that may become available, to the University of North Dakota to establish a child welfare research bureau. Expenditure of the funds is subject to Budget Section approval.
 23. Senate Bill No. 2536 (1987) provides that, subject to Budget Section approval, the director of the budget is to reduce state agency and institution budgets by a percentage sufficient to cover the estimated losses caused by an initiative or referendum action.
 24. A directive by the chairman of the Legislative Council provides that the Budget Section receive the report from the Board of Higher Education on its progress in implementing the 1986 advisory panel recommendations as provided in 1987 House Concurrent Resolution No. 3027.
- The Budget Section was not required to hold public block grant hearings since the state did not receive, in addition to the moneys appropriated by the Legislative Assembly for the 1987-89 biennium, federal block grant moneys under the Omnibus Budget Reconciliation Act of 1981.
- The Budget Section did not receive requests or reports:
1. From the Department of Human Services to terminate the food stamp or energy assistance programs as a result of a decrease in the rate of federal financial participation.
 2. To receive applications for natural resources development bond issues.
 3. From a public broadcasting facility to accept a gift of a tax-producing property.
 4. From the Emergency Commission to transfer in excess of \$500,000 from the state contingency fund.
 5. From state agencies or institutions for moneys from the capital improvements preliminary planning revolving fund.
 6. To approve cash flow financing to offset projected state financial deficits.
 7. From the Attorney General of any deficiency appropriation to be introduced in the 1989 Legislative Assembly to reimburse the state bonding fund.

STATUS OF THE STATE GENERAL FUND

At each Budget Section meeting a representative of the Office of Management and Budget reviewed the status of the state general fund and revenue collections. In addition, the Budget Section heard reports from the Office of Management and Budget on the effect of the 1988 drought on state revenues.

General Fund Balance

The following is a summary of the state general fund for the 1987-89 biennium:

July 1, 1987, unobligated general fund balance estimated during the 1987 legislative session.....		\$ 7,700,000
Adjustments made to the estimated July 1, 1987, balance		<u>11,000,000</u>
July 1, 1987, actual unobligated general fund balance		\$ 18,700,000
Original revenue estimate.....	\$1,055,300,000	
Less: Reductions caused by cable television sales tax referral	3,200,000	
August 1988 revenue revisions	<u>35,000,000</u>	
1987-89 revised revenue estimate		<u>1,017,100,000</u>
Total funds available		\$1,035,800,000
1987-89 legislative appropriations.....	\$1,057,200,000	
Less: Reductions caused by cable television sales tax referral	3,200,000	
Two percent allotments - September 1988	<u>21,100,000</u>	
1987-89 revised expenditures		<u>1,032,900,000</u>
June 30, 1989, estimated unobligated general fund balance		\$ 2,900,000

Revenue Revisions

Because of the successful referral of the sales tax on cable television, original revenue projections were decreased by approximately \$3.2 million with a corresponding decrease from budgets of agencies funded by the general fund. In August 1988, because of severe drought conditions and significantly lower

than estimated oil prices, the 1987-89 estimated revenues were revised. The revised estimates include actual collections through June 1988 and estimates for the remainder of the biennium. The following schedule compares the original 1987-89 revenue estimates adopted by the 1987 Legislative Assembly to the revised revenue estimates:

Revenue Type	Original Estimate	Revised Estimate	Variance
Sales and use taxes	\$ 505,379,000	\$ 470,066,957	\$(35,312,043)*
Individual income tax	198,794,000	203,647,558	4,853,558
Corporate income tax	74,102,500	66,720,930	(7,381,570)
Cigarette and tobacco tax	28,063,000	28,460,016	397,016
Oil and gas production tax	40,699,000	39,198,519	(1,500,481)
Oil extraction tax	59,705,000	58,263,631	(1,441,369)
Coal severance tax	18,647,000	20,368,193	1,721,193
Coal conversion tax	16,349,000	18,130,946	1,781,946
Insurance premium tax	31,660,457	27,939,480	(3,720,977)
Interest income	15,681,000	18,531,784	2,850,784
Other	66,203,200	65,788,520	(414,680)
Total general fund revenues	\$1,055,283,157	\$1,017,116,534	\$(38,166,623)

*Includes revenue reduction of \$3,175,000 caused by the referral of the cable television sales tax.

In addition to the \$3.2 million budget reductions required because of the referral of the cable television sales tax, the Governor, in September 1988, mandated a two percent across-the-board general fund budget allotment due to the significant decrease in estimated revenues. The two percent allotment decreased general fund expenditures by approximately \$21 million.

Through September 1988 total general fund revenue collections exceeded the revised revenue forecast by \$1.6 million. Sales and use tax collections exceeded the revised estimate by \$2.2 million, while individual income tax collections were less than the revised estimate by \$450,000.

REFERENDUM APPROPRIATION REDUCTIONS

In accordance with NDCC Section 54-44.1-13.1, the Budget Section was requested to approve the Office of Management and Budget's proposed general fund allotments caused by the loss of sales tax revenue on cable television because of a referral.

A question arose as to the interpretation of the Budget Section's duty for approving budget reductions caused by an initiated or referred measure. Based on a Legislative Council staff memorandum, the Budget Section interpreted its role as having discretionary authority to approve or disapprove certain reductions recommended by the Office of Management and Budget. This could require the Office of Management and Budget to submit alternative reduction options if the Budget Section would not approve certain reductions. In addition, the Budget Section determined that the Office of Management and Budget cannot proceed with budget reductions without Budget Section approval.

The Office of Management and Budget's allotment proposal called for uniform reductions for all agencies funded by the general fund. The reductions are from each agency's total general fund appropriation. Each agency has the discretion of determining its specific area of reduction. The Budget Section approved the Office of Management and Budget's proposed general fund allotments of \$3,175,000.

FORM OF EXECUTIVE BUDGET

In accordance with NDCC Section 54-44.1-07, which provides that the executive budget be presented to the Budget Section in a form that is acceptable to it, the Budget Section made the following recommendations to the Office of Management and Budget:

1. That the Office of Management and Budget provide information to the Budget Section supporting its budget recommendations which indicates how the executive recommendations affect the agencies' original requested budget priorities and five percent reduction decision packages. The Office of Management and Budget provides to the Appropriations Committees the agencies' original budget requests, which include agencies' priorities and five percent reductions. In the past, the Governor's budget recommendations would adopt some of the priorities and modify others including the reduction decision packages.

Subsequently, when the Legislative Assembly would refer back to the agencies' original requests, since the amounts had been adjusted, the priorities and reductions would no longer be applicable. Therefore, the Budget Section recommended that the Office of Management and Budget supply this information to support its budget recommendations to assist members of the Legislative Assembly in their review of agency needs.

2. That agencies and institutions the Office of Management and Budget recommends for combination into one operating unit be included as separate units in the appropriation bills presented to the Legislative Assembly. The Budget Section was advised that because of the transfer of the Grafton State School to the Department of Human Services and other agencies being considered for combination into major consolidated departments, appropriation bills may no longer be prepared for individual agencies or institutions, but may contain several agencies and institutions within one large consolidated appropriation. The Budget Section recommended that if more than one agency or institution is included in an appropriation bill, each agency or institution should be reflected individually and have its appropriate line items separate from the other governmental units included in the bill.

The Budget Section also discussed with the Office of Management and Budget the extent to which appropriation bills should contain statutory changes in addition to the appropriation of funds. In the past, appropriation bills have contained statutory changes. Budget Section members indicated that, although some Appropriations Committees' members may prefer to consider bills that contain statutory changes directly affecting an appropriation, it may be appropriate for committees other than Appropriations to also consider some of the provisions in these bills. However, because of the Appropriations Committees' workload and hearing schedule, it may not be advisable to refer the bills to another committee. Some Budget Section members expressed concerns about this issue and suggested that it be given further consideration.

OIL AND COAL TAXES

Pursuant to a Legislative Council directive that the Budget Section monitor the state's oil and coal taxes and receive information on the oil and coal tax breaks approved by the 1987 Legislative Assembly, the Budget Section received periodic reports from the Legislative Council staff on the status of the state's oil and coal taxes.

North Dakota imposes the following oil and coal taxes:

1. Oil and gas gross production tax. This tax is in the amount of five percent of the gross value of oil and gas production at the well. A portion of the oil and gas gross production tax proceeds is deposited into the state general fund and the remainder is distributed to the oil and gas producing counties.

2. Oil extraction tax. This tax is based on the gross value of oil production at the well. Ninety percent of the oil extraction tax proceeds is deposited into the state general fund and 10 percent is deposited into the resources trust fund. The major changes made by the 1987 Legislative Assembly to the oil extraction tax were to reduce the oil extraction tax rate on wells drilled and completed after April 27, 1987, from 6.5 percent to four percent and to provide a 15-month exemption from the tax on these wells.
3. Coal severance tax. This tax is imposed on coal when removed from the earth. Fifty percent of the coal severance tax proceeds is deposited into the state general fund, 35 percent is distributed to political subdivisions in the state, and the remaining 15 percent is deposited into the coal development trust fund. The major change made to the coal severance tax by the 1987 Legislative Assembly was to reduce the coal severance tax rate from \$1.04 to 75 cents per ton.
4. Coal conversion tax. This tax is imposed on coal conversion facilities such as electrical generating plants and coal gasification plants. Differing tax rates are imposed on different types of coal conversion facilities. Sixty-five percent of the coal conversion tax proceeds is deposited into the state general fund; and the remaining 35 percent is distributed to the counties in which coal conversion facilities are located. The major change made to the coal conversion tax by the 1987 Legislative Assembly was to base the coal conversion tax on a quarter mill of 60 percent of an electrical generating plant's installed capacity rather than basing the tax on each kilowatt hour of production.

The following are the number of oil wells drilled in North Dakota since 1985:

Time Period	Number of Oil Wells Drilled	Number of Producing Oil Wells Drilled
Calendar Year 1985	519	271
Calendar Year 1986	205	100
Calendar year 1987	185	102
January 1988-August 1988	176	106

North Dakota had 13 oil rigs operating in the state on October 3, 1988, compared to 16 oil rigs on July 1, 1987, six on July 1, 1986, and 37 on July 1, 1985.

For fiscal year 1988, oil production exceeded the forecast made during the 1987 legislative session by approximately 600,000 barrels. A revised forecast was prepared in August 1988, which increased estimated oil production for the biennium by 4.8 million barrels, from 74.9 million barrels to 79.7 million barrels.

Oil prices fluctuated during the first 16 months of the biennium, from \$19.15 per barrel in July 1987 to \$12.15 in October 1988. The original forecast projected October 1988 oil at \$17.90 per barrel. The revised forecast reduced the estimated price per barrel of oil for the remainder of the biennium. At the end

of the 1987-89 biennium, the original forecast projected oil at \$16.84 per barrel, while the revised forecast is projecting oil at \$14.40 per barrel.

For fiscal year 1988, the oil and gas gross production tax collections and the oil extraction tax collections exceeded the forecast made during the 1987 legislative session by approximately \$2 million each. Because of lower oil prices, a revised forecast was prepared reducing the projected oil and gas production tax collections for the biennium by \$1.5 million, from \$40.7 million to \$39.2 million. The revised forecast reduced the projected oil extraction tax collections for the biennium by \$1.4 million, from \$59.7 million to \$58.3 million.

For fiscal year 1988, coal severance tax collections exceeded the forecast made during the 1987 legislative session by approximately \$700,000. The revised forecast increased projected coal severance tax collections for the biennium by \$1.7 million, from \$18.7 million to \$20.4 million.

For fiscal year 1988, coal conversion tax collections exceeded the forecast made during the 1987 legislative session by approximately \$900,000. The revised forecast increased projected coal conversion tax collections for the biennium by \$1.8 million, from \$16.3 million to \$18.1 million.

For graphs relating to oil production and price and oil and coal tax collections, please see the attached appendix.

Some Budget Section members' observations on the impact of the oil and coal tax incentives on oil and coal production were:

1. Although difficult to determine because of lower oil prices, the increase in oil production in North Dakota this biennium may be attributed to the tax incentives.
2. Once the oil tax reductions were in effect, North Dakota's rig count increased more than in Wyoming and Montana.
3. The number of producing oil wells drilled in North Dakota increased this biennium compared to last biennium.
4. In addition to the coal tax incentives which encouraged increased coal production, another reason for the increased coal production was the short supply of hydroelectric power because of the drought and high temperatures in 1988, which placed a greater reliance on coal generated power.

ENHANCED AUDIT PROGRAM

In accordance with NDCC Section 57-01-11.1, which requires the State Tax Commissioner to submit quarterly reports to the Budget Section of the progress made in collecting additional taxes under the auditing enhancement program and settlements of tax assessments, the State Tax Commissioner reported at each Budget Section meeting on the enhanced audit program collections and on assessments and settlements.

The enhanced audit program was established in 1983 and allowed the Tax Department to hire additional auditors to collect more effectively taxes due to the state. For the period July 1, 1987, through September 30, 1988, enhanced audit program

collections were \$9.93 million, \$3.99 million more than the goal for the same period of \$5.94 million. The 1987-89 enhanced audit program goal is \$10.1 million.

For the period June 1, 1988, through September 30, 1988, the Tax Department issued \$12.2 million of major assessments, and collected \$1.8 million of these assessments during the same time period.

**STATE BOARD OF HIGHER EDUCATION
Tuition Rates**

In accordance with NDCC Section 15-10-18, the Budget Section approved the 1987-88 and the 1988-89 nonresident tuition rates as proposed by the State Board of Higher Education.

North Dakota nonresident tuition rates vary depending on where a nonresident student is from. North Dakota has a reciprocity agreement with Minnesota, whereby Minnesota students pay a special nonresident tuition rate. At the University of North Dakota, North Dakota State University, and North Dakota's two-year institutions, Minnesota students pay the same tuition rate as they would for attending a comparable Minnesota institution. At North Dakota's four-year regional universities, Minnesota students pay the average of the Minnesota State University resident tuition rate and the North Dakota four-year regional university resident rate.

For the 1988 academic year, students from South Dakota, Montana, Saskatchewan, and Manitoba pay, at North Dakota's four-year regional universities and two-year institutions, the same rate as Minnesota students pay. At the University of North Dakota and North Dakota State University, these students pay 150 percent of the North Dakota resident tuition rate.

For nonresident students from areas other than those referred to above, the nonresident tuition rate

for the 1988 academic year is 2.5 times the North Dakota resident tuition rate.

Tuition rates for South Dakota, Montana, Saskatchewan, and Manitoba students did not change for the 1987 academic year at the University of North Dakota and North Dakota State University, but increased five percent for the 1988 academic year. At the four-year regional universities, South Dakota, Montana, Saskatchewan, and Manitoba students' tuition rates decreased six to 11 percent in each of the 1987 and 1988 academic years. At the two-year institutions and branches, tuition rates for these students decreased 10 to 15 percent in each of the 1987 and 1988 academic years.

Tuition rates for Minnesota students at all institutions of higher education were increased two to nine percent in each of the 1987 and 1988 academic years.

Tuition rates for other nonresident students at all institutions of higher education were increased 17 to 18 percent for the 1987 and 1988 academic years.

The 1988 academic year headcount enrollment at North Dakota's institutions of higher education is:

North Dakota students	24,962
Minnesota students	6,056
Other	3,583
Total 1988-89 enrollment	34,601

In addition, North Dakota has approximately 4,000 students attending Minnesota institutions of higher education.

The approved nonresident tuition rates, including the 1986-87 previously approved rates, are:

NONRESIDENT SCHOOL TERM TUITION RATES

	Undergraduate			Graduate		
	1986-87	1987-88	1988-89	1986-87	1987-88	1988-89
University of North Dakota and North Dakota State University						
South Dakota, Montana, Saskatchewan, and Manitoba students	1,812	1,812	1,902	2,034	2,034	2,136
Minnesota students	1,458	1,494	1,536	1,470	1,506	1,546
Other nonresident students	2,286	2,688	3,138	2,658	3,132	3,660
Four-Year Regional Universities						
South Dakota, Montana, Saskatchewan, and Manitoba students	1,554	1,398	1,240	1,854	1,746	1,546
Minnesota students	1,104	1,140	1,240	1,470	1,506	1,546
Other nonresident students	2,046	2,400	2,802	2,352	2,772	3,243
Two-Year Institutions and Branches						
South Dakota, Montana, Saskatchewan, and Manitoba students	1,554	1,398	1,193	N/A	N/A	N/A
Minnesota students	1,104	1,140	1,193	N/A	N/A	N/A
Other nonresident students	2,046	2,400	2,802	N/A	N/A	N/A

Advisory Panel Recommendations

Pursuant to 1987 House Concurrent Resolution No. 3027, the Budget Section heard a report on the Board of Higher Education's progress in implementing the recommendations of a 1986 advisory panel. The advisory panel was appointed by the State Board of Higher Education to study key policy issues of the North Dakota higher education system and develop recommendations to maintain the strengths of the system and to improve it. The report indicated that 29 recommendations were made, and all but four are either in the process of being implemented or have been implemented. The major recommendations made by the advisory panel dealt with North Dakota's system organization, educational access, institutional missions and roles, and improved methods of financing higher education to increase equity, flexibility, and accountability. The four recommendations that have not yet been addressed relate to the effectiveness of open enrollment, comparability of general education opportunities throughout the state, fairness of single formula funding, and a state work-study program.

CHILDREN'S SERVICES COORDINATING COMMITTEE

Pursuant to 1987 Senate Bill No. 2039, the Children's Services Coordinating Committee requested Budget Section approval to receive and spend the following grants:

1. A \$45,700 Mental Health Association grant received from the Bremer Foundation for salaries and wages and operating expenses of the Children's Services Coordinating Committee. The Budget Section approved the request.
2. A \$750,000 grant received from the Anna Casey Foundation. The grant is to be used to change North Dakota's current system of providing services to children at risk by placing the child outside of the home to a system in which the child remains in the home and treatment services are provided there. Once the transition is made, the state of North Dakota will need to provide funding to maintain the system. The Budget Section approved the request.
3. A \$150,000 grant received from the Office of Human Development Services to be used for crisis child care in the counties of Benson, Cavalier, Eddy, Grand Forks, Nelson, Ramsey, Pembina, Rolette, Towner, and Walsh. The Budget Section approved the request.

ADJUTANT GENERAL Armories

Pursuant to 1987 Senate Bill No. 2013, the Adjutant General requested the approval of the Budget Section to vacate an armory of Company A, the 164th Engineer Battalion at either Hazen or Beulah. The North Dakota National Guard has 31 locations—10 have 151 members, 10 have 273 members, and 11 have 2,236 members. Because resources are limited, priorities need to be established to use the resources efficiently. The National Guard intends to vacate an additional six armories over the next 12 years. The Budget Section approved the Adjutant General's

request. Effective September 30, 1988, the National Guard vacated its armory at Beulah.

DEPARTMENT OF HUMAN SERVICES

Pursuant to 1987 Senate Bill No. 2015, the Department of Human Services requested Budget Section approval to make payments from its appropriation to the Department of Health and Consolidated Laboratories for the inspection of care in intermediate care facilities for the mentally retarded. In 1986 the two departments conducted a pilot project to determine the feasibility of unifying the inspection of care functions of the Department of Human Services with the certification survey function of the Department of Health and Consolidated Laboratories. A representative from the Department of Human Services reported that the pilot program was successful and the two agencies would like to make the arrangements permanent. The Department of Human Services requested authority to make payments of \$88,000 from salaries and wages and \$16,000 from operating expenses for the program costs for the 1987-89 biennium. The Budget Section approved the request.

SAN HAVEN PROPERTY

Pursuant to 1987 Senate Bill No. 2016, the Economic Development Commission requested the approval of the Budget Section for authority to lease five primary buildings at San Haven to the San Haven Development Corporation, a nonprofit group incorporated to manage San Haven properties in cooperation with the state of North Dakota for \$1 per year renewable on an annual basis. The San Haven Development Corporation intends to lease the property to Peace Garden Industries, Inc., which will house a new garment factory at San Haven. The garment factory is projected to employ 122 full-time employees within 18 months of startup. An estimated \$700,000 of renovations will be required for San Haven to house the garment factory. The 1987 Legislative Assembly appropriated \$250,000 for the development of an alternative use for San Haven and a \$450,000 federal Economic Development Administration grant has been applied for to make the necessary renovations. The Budget Section approved the Economic Development Commission's request.

GROUP HEALTH INSURANCE PROGRAM

The Budget Section heard reports from the Public Employees Retirement System (PERS) on the status of the group health insurance program. At the beginning of the 1987-89 biennium, the PERS health insurance program began experiencing cash flow problems. Due to a number of attractive HMO plans, the PERS health plan lost over 3,300 of its 13,700 total contracts during the 1987 enrollment period. The loss of these contracts resulted in a decrease of approximately \$563,000 per month in premium income. In addition, PERS membership claims experience increased dramatically in both hospital services and physician services. The cash flow problem was temporarily alleviated by having state agencies prepay two months of premiums.

Because PERS implemented a number of benefit design changes in 1988 to make the plan more cost effective and during the 1988 enrollment period the plan regained most of the membership it had lost in 1987, the condition of the PERS health plan improved and the following projections were made:

1. The Public Employees Retirement System had anticipated the need for a deficiency appropriation of approximately \$3.5 million early in the biennium; however, by October 1988, PERS projected that at most a \$500,000 deficiency appropriation will be requested from the 1989 Legislative Assembly.
2. The Public Employees Retirement System had expected to request a \$5 million appropriation from the 1989 Legislative Assembly to establish a reserve fund; however, with the increased membership, it now projects that a \$6.7 million reserve fund should be established.
3. The Public Employees Retirement System projected, in October 1988, that a 50 percent increase in premiums will be needed for the 1989-91 biennium. This increase amounts to an additional \$21.5 million for the biennium, \$13.4 million of which would be from the state general fund.

FEDERAL MEDICAL ASSISTANCE PERCENTAGE

The Budget Section considered the effect of the drought on the Federal Medical Assistance Percentage that is used to calculate federal matching funds for Medicaid, aid to families with dependent children (AFDC), and other programs. The percentage is based on the per capita incomes of the states. The last year of per capita incomes used in the percentage is three years prior to the effective year. Early projections indicate that because of the severe drought in 1988, North Dakota personal income will decrease from an estimated \$8.8 billion in 1987 to \$8.4 billion in 1988. North Dakota per capita incomes have been increasing in recent years; in 1985 North Dakota's per capita income was \$11,921, in 1986, \$12,440, and in 1987, \$13,004. North Dakota's Federal Medical Assistance Percentage was 64.87 in federal fiscal year 1988, it is currently 66.53, and is projected to increase to 67.52 in 1990.

The Budget Section expressed concern that since the formula was designed to be responsive to a state's ability to pay, for North Dakota to be "under" a formula based on predrought calculations for most of next biennium seemed, to the Budget Section, to be contrary to the purpose of the matching formula. The Budget Section recommended that the chairman of the Legislative Council send letters to the North Dakota Congressional Delegation urging them to take action to reflect the drop in North Dakota personal income, because of the severe drought, in the calculations of the Federal Medical Assistance Percentage for fiscal year 1990, rather than 1991, as would be the case under current law.

DICKINSON STATE ADDITION PROPERTY

Senate Bill No. 2138 (1985) requires that the Board of Higher Education transfer title of the old Dickinson

Experiment Station property to the Board of University and School Lands. It was reported to the Budget Section that a problem had arisen in the title transfer; therefore, the Board of Higher Education still owned the property.

The Budget Section recommended that the Legislative Council chairman create a special Legislative Council committee to study this issue. The special Legislative Council committee was created and subsequently the problems related to the title transfer were resolved. See the Legislative Council report on the Dickinson State Addition Committee for additional information.

FEDERAL FUNDS

The Budget Section heard a Legislative Council staff report on the status of 1987-89 federal funds available to North Dakota state government. The Budget Section was informed that \$804,804,560 of federal funds was appropriated by the 1987 Legislative Assembly. This amount includes \$9,216,293 of 1987-88 interim Emergency Commission approvals. The report indicated that based on actual federal funds received for the first 11 months of the biennium, and estimates for the remainder of the biennium, North Dakota will receive an estimated \$732,387,554 of federal funds, \$72,417,006 less than was appropriated by the 1987 Legislative Assembly and Emergency Commission approvals. The agencies affected most are the Highway Department, which is estimated to receive \$35 million less, and the Department of Human Services, which is estimated to receive \$15 million less.

TOUR GROUPS

Budget Section members, along with the Budget Committee on Government Finance, Budget Committee on Human Services, and Budget Committee on Institutional Services, conducted budget tours during the 1987-89 biennium.

The tour group minutes are available in the Legislative Council office and will be submitted to the Appropriations Committees during the 1989 legislative session.

Appointed members of the Budget Section's western tour group, Senator Harvey D. Tallackson, Chairman, and the institutions visited were:

Membership	Institutions Visited
Rep. Gordon Berg	Minot State University
Rep. Julie A. Hill	North Central Human Service Center
Rep. David W. Kent	State Fair Association
Rep. Charles F. Mertens	North Central Experiment Station
Rep. Scott B. Stofferahn	UND-Williston
Rep. Earl Strinden	Williston Experiment Station
Sen. Gary J. Nelson	Dickinson State Addition Property
Sen. Rolland W. Redlin	Dickinson State University
Sen. Richard V. Shea	Dickinson Experiment Station
Sen. Jim Yockim	Southwest Water Pipeline Project—Richardton
Sen. Harvey D. Tallackson	

The Budget Committee on Government Finance, Senator Corliss Mushik, Chairman, also joined the Budget Section's western tour group for the tours of the Minot area institutions.

Appointed members of the Budget Section's

southeastern tour group, Senator Dan Wogsland, Chairman, and the institutions visited were:

Membership	Institutions Visited
Rep. Jayson Graba	Bismarck State College
Rep. Serenus Hoffner	State Industrial School
Rep. Thomas Kuchera	Central Grasslands Experiment Station—Streeter
Rep. Bruce Laughlin	Valley City State University
Rep. Robert Nowatzki	Veterans Home
Rep. Douglas G. Payne	North Dakota State College of Science
Rep. Richard L. Solberg	
Rep. Francis J. Wald	
Sen. William S. Heigaard	
Sen. John M. Olson	
Sen. Dan Wogsland	

The Budget Committee on Institutional Services, Representative Olaf Opedahl, Chairman, constituted the budget tour group for the following state institutions:

- School for the Deaf
- UND-Lake Region
- Camp Grafton
- Devils Lake Human Service Center
- School for the Blind
- Grafton State School

In addition to joining the Budget Section's western tour group for the tours of Minot area institutions, the Budget Committee on Government Finance constituted the budget tour group for the following state institutions:

- North Dakota State University
- NDSU Agricultural Experiment Station
- Mayville State University
- University of North Dakota

The Budget Committee on Human Services, Representative Tish Kelly, Chairman, constituted the budget tour group for the State Hospital and also toured Progress Enterprise, Inc., in Jamestown. The Budget Section toured the State Penitentiary, Roughrider Industries, and the State Farm.

Recommendations contained in the tour group reports which were adopted by the Budget Section are as follows:

1. That the 1989 Legislative Assembly make a good faith effort to respond to the need for increases in salaries and wages.
2. That the 1989 Legislative Assembly support the request for expanded library facilities and additional library materials at Minot State University, UND-Williston, and Dickinson State University.
3. That the 1989 Legislative Assembly support the four western NDSU agricultural branch experiment stations' requests for an additional research position at each of the North Central, Williston, Dickinson, and Hettinger branch experiment stations.
4. That the 1989 Legislative Assembly take into consideration the reduced incomes of the agricultural experiment stations, because of the drought, when analyzing their budget requests.
5. That the 1989 Legislative Assembly receive alternate solutions to the electrical switchgear installation at Dickinson State University to

resolve the problem at a lower cost without jeopardizing safety and also request information on how the current system was inspected and approved.

6. That the custodial crews and maintenance personnel be recognized for the exemplary job they have done in the upkeep of the institutions toured.
7. That the students and residents at the institutions toured be commended for the care and respect given the facilities.
8. That the 1989 Legislative Assembly support the Veterans Home's request to receive \$2,169,593 from the Veterans Administration and to borrow \$1,168,243 for capital improvements.
9. That the 1989 Legislative Assembly support the requests for handicapped accessibility improvements at Bismarck State College, Valley City State University, and North Dakota State College of Science.
10. That the 1989 Legislative Assembly make the agricultural mechanics technology facility at the State College of Science a major construction priority.
11. That the 1989 Legislative Assembly consider funding equipment for the State College of Science outside of the higher education formula because it is an equipment intensive institution.

OTHER ACTION

In accordance with NDCC Section 15-10-12.1, the Budget Section approved the University of North Dakota's request to spend a \$3 million grant from the Federal Aviation Administration and \$3 million of bond proceeds for the construction of an aerospace technology center. In addition, the Budget Section approved the University of North Dakota's request to spend a \$1 million gift for the renovation of the west gymnasium into an art museum.

Pursuant to 1987 House Bill No. 1005, the Budget Section approved the NDSU Agricultural Experiment Station's request to receive and spend:

- \$1.2 million in federal or other funds to construct and equip a demonstration feed processing mill.
- \$1.2 million in federal or other funds to construct and equip a pilot wheat mill.
- \$8 million in federal or other funds to construct and equip a weed science and technology center.
- \$95,000 from the North Central Experiment Station reserve income fund for construction of a superintendent's residence on the North Central Experiment Station.

In accordance with NDCC Section 54-14-03.1, the Office of Management and Budget reported to the Budget Section on irregularities in fiscal practices discovered during the preaudit of claims. It was reported that the Energy Development Impact Office overspent its 1985-87 salaries and wages line item by \$1,743. The Emergency Commission authorized the Energy Development Impact Office to use unspent funds in its 1985-87 operating expenses line item for payment of the \$1,743.

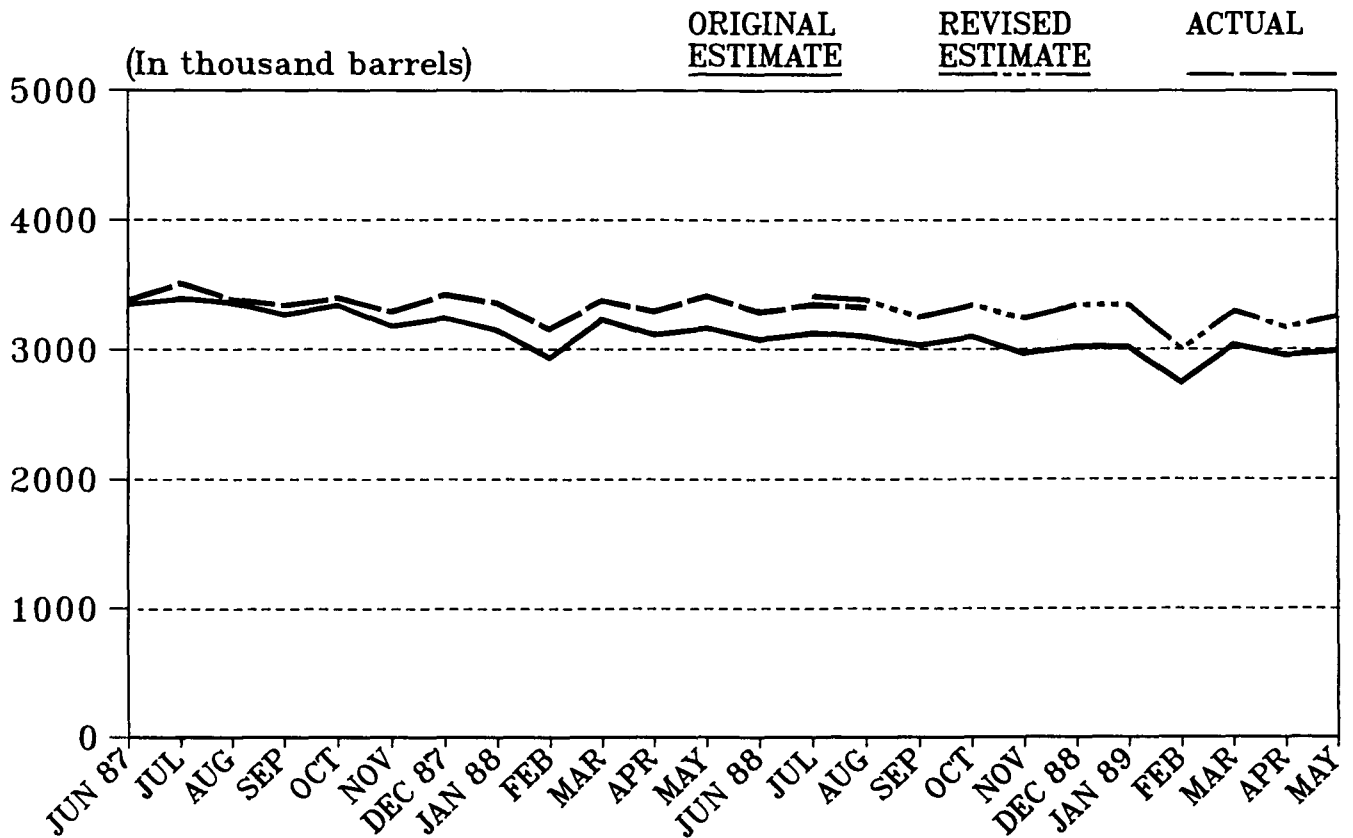
Pursuant to 1987 Senate Bill No. 2471, the Budget Section approved the receipt and expenditure of \$230,000 in grants from the Anna Casey Foundation, the federal government, private organizations, and other sources to the Child Welfare Research Bureau.

The Budget Section heard reports from the Board of Higher Education on the allocations of higher education general fund budget reductions provided in 1987 House Bill No. 1003, comparative higher education financial information, the North Dakota Scholars Program, and status reports of the Partnerships to Enhance Academic Quality (PEAQ) projects and on the Experimental Program to Stimulate Cooperative Research (EPSCoR).

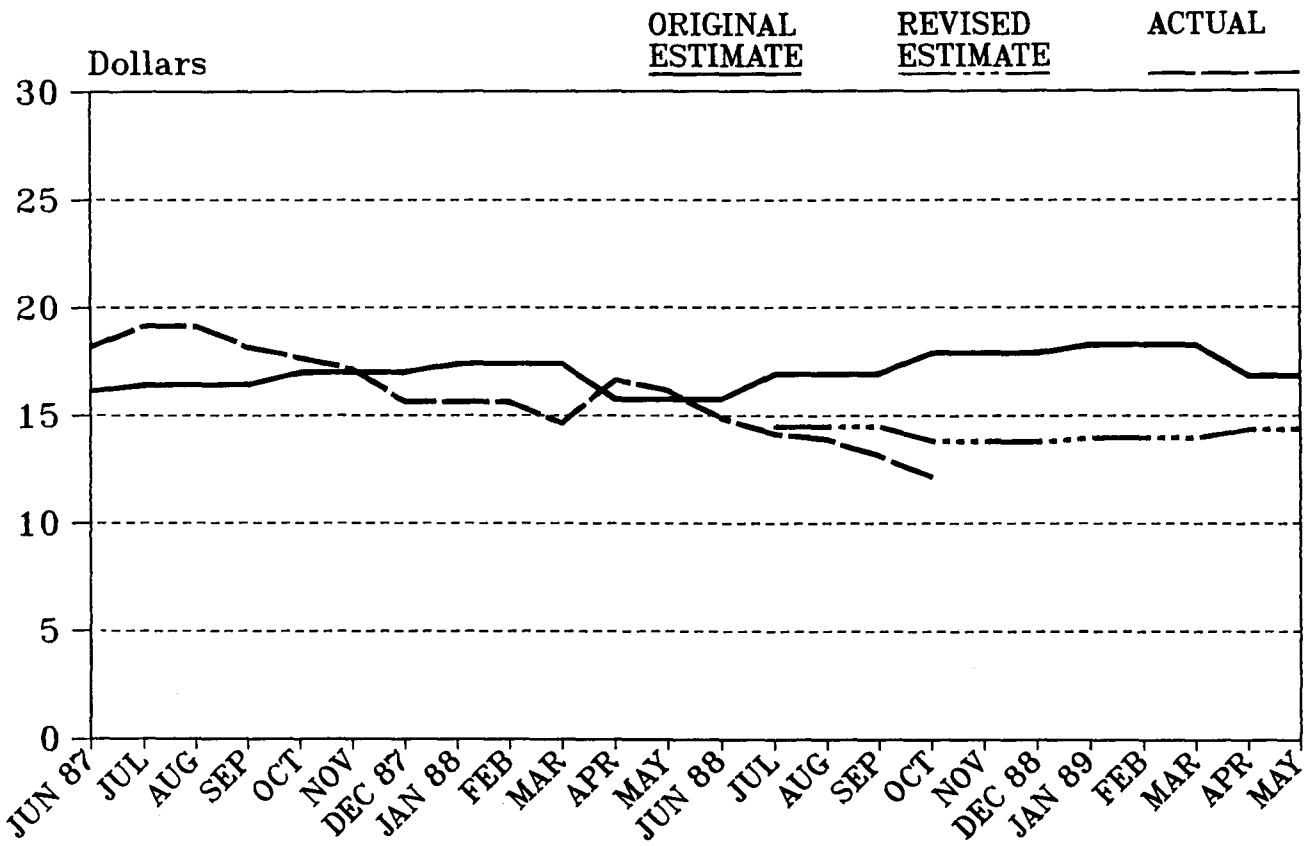
The Budget Section heard additional status reports on the Farm Credit Counseling program, the PERS retirement fund, the Teachers' Fund for Retirement, the workers' compensation fund, and of World Trade, Inc., which has established a trade office in Japan to attract Japanese investors to North Dakota and to sell North Dakota products in Japan.

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

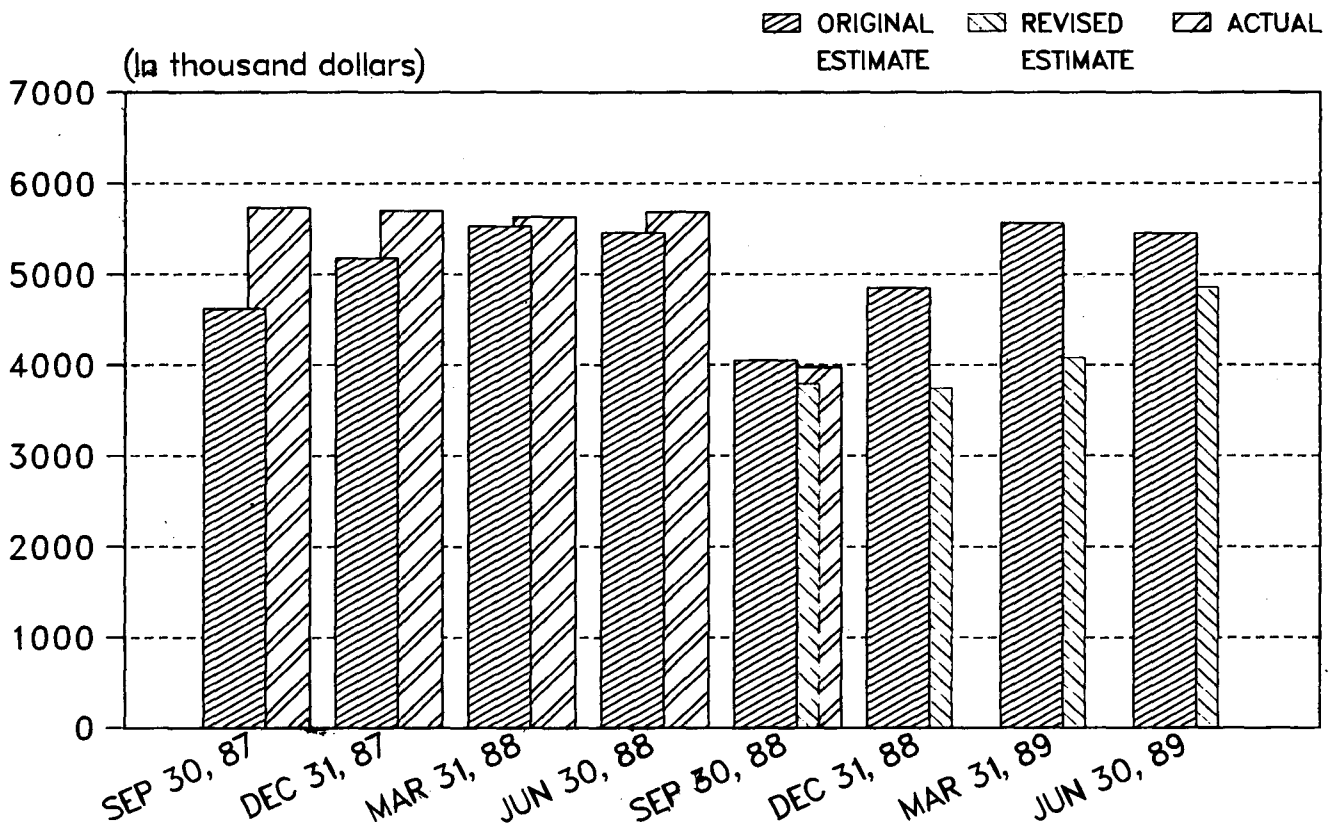
OIL PRODUCTION FOR THE 1987-89 BIENNIUM



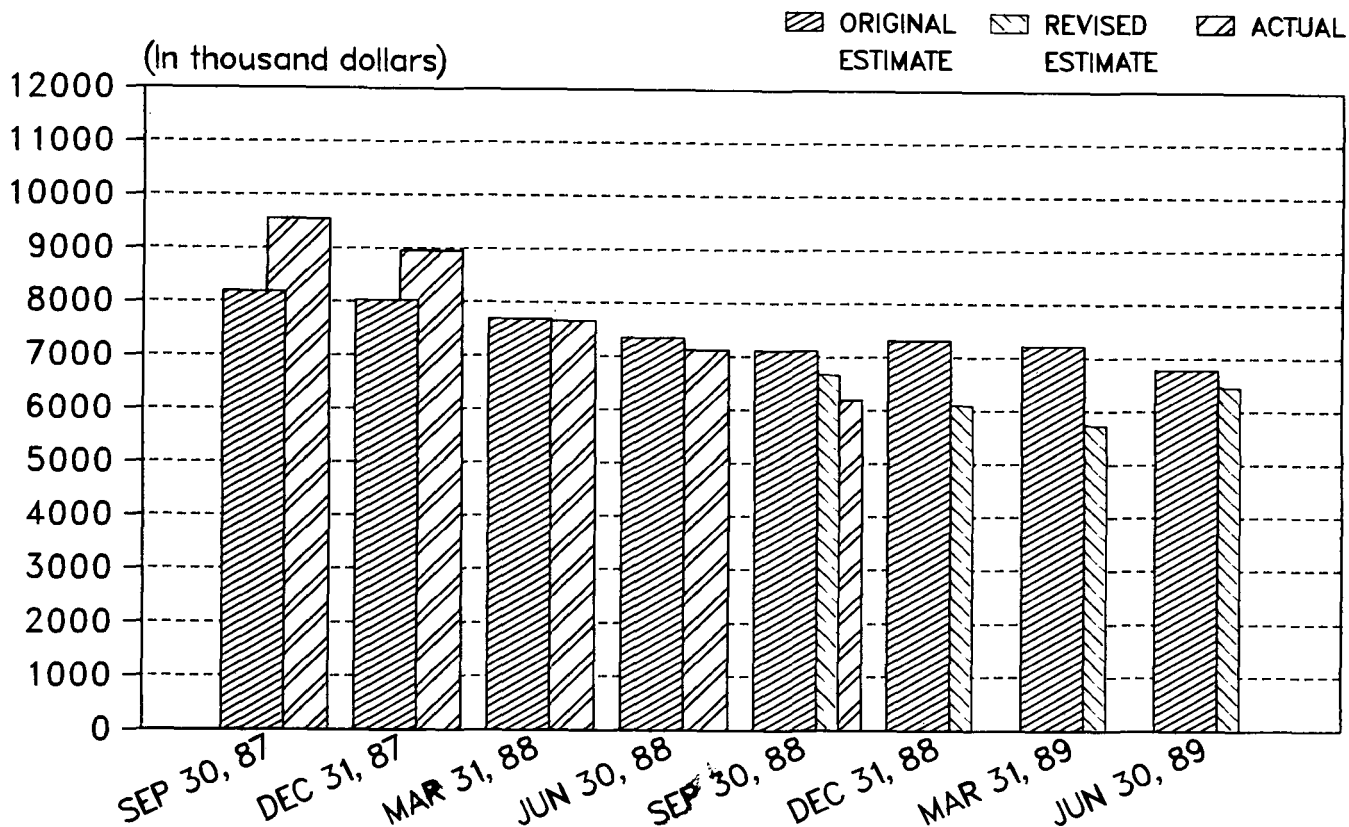
OIL MARKET PRICES FOR THE 1987-89 BIENNIUM



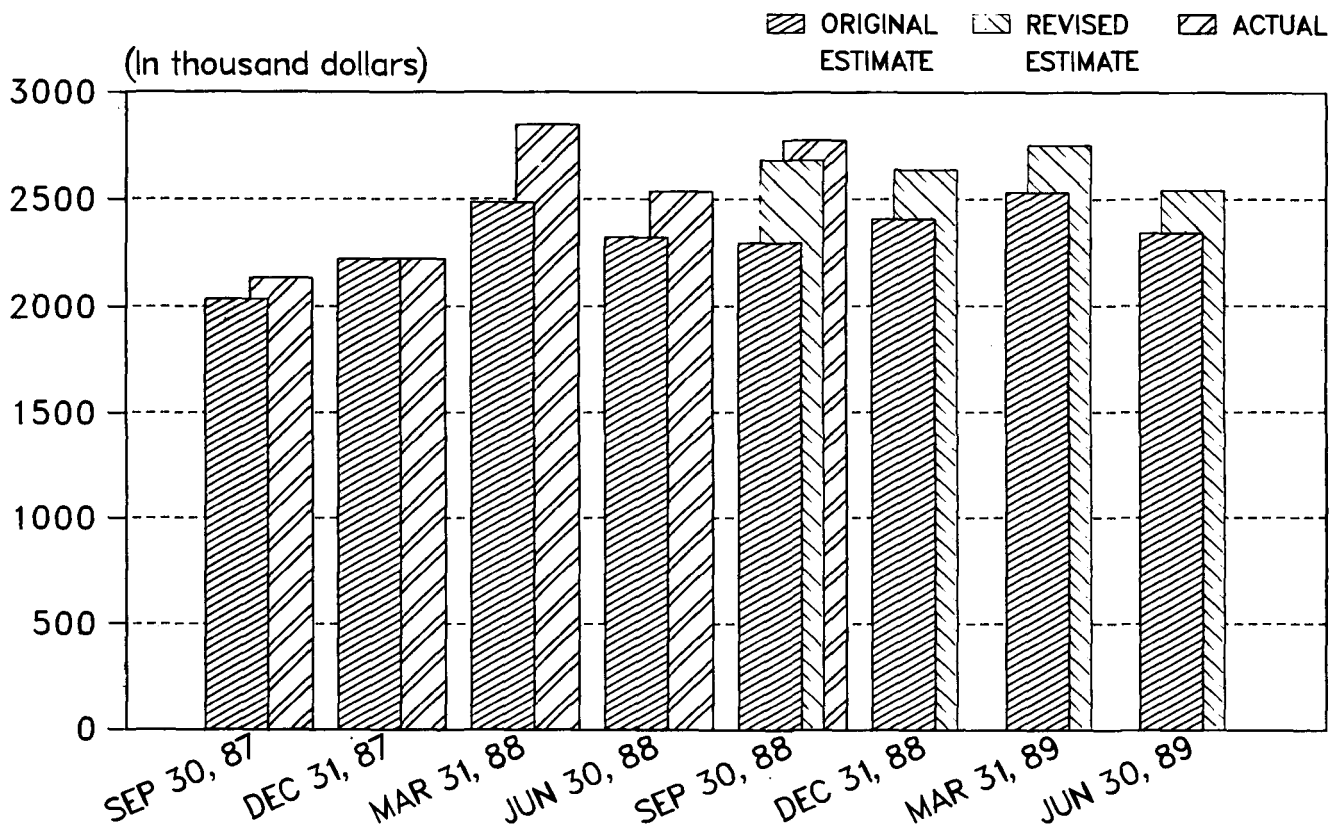
GENERAL FUND OIL AND GAS PRODUCTION TAX REVENUE COLLECTIONS FOR THE 1987-89 BIENNIUM



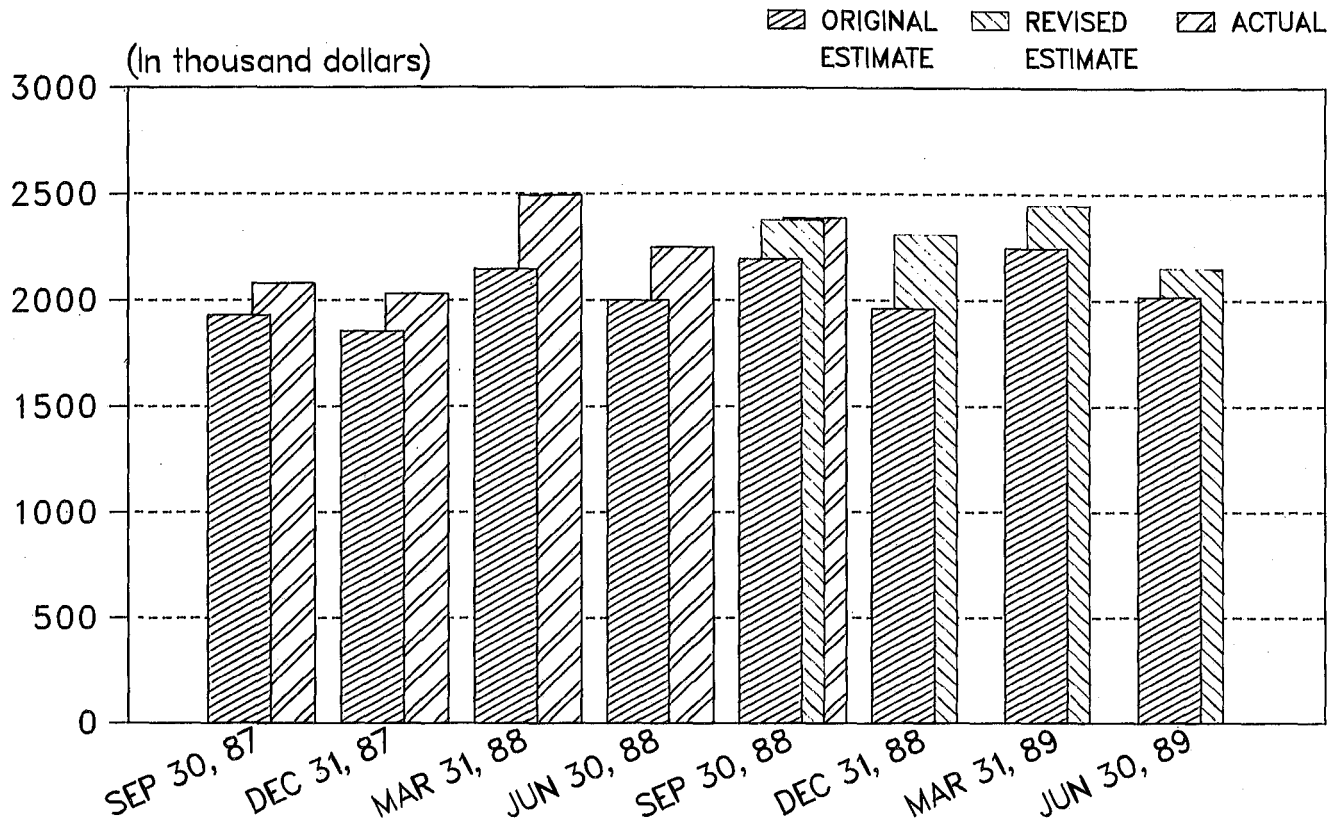
GENERAL FUND OIL EXTRACTION TAX REVENUE COLLECTIONS FOR THE 1987-89 BIENNIUM



GENERAL FUND COAL SEVERANCE TAX REVENUE COLLECTIONS FOR THE 1987-89 BIENNIUM



GENERAL FUND COAL CONVERSION TAX REVENUE COLLECTIONS FOR THE 1987-89 BIENNIUM



BUDGET COMMITTEE ON GOVERNMENT ADMINISTRATION

The Budget Committee on Government Administration was assigned three studies. House Concurrent Resolution No. 3063 directed the committee to study the Job Service North Dakota advisory councils and monitor the unemployment insurance trust fund. House Concurrent Resolution No. 3077 directed a study of part-time employee benefits. Senate Concurrent Resolution No. 4016 directed a study of the use of comparable worth to determine the existence of wage-based sex discrimination.

Committee members were Representatives Scott B. Stofferahn (Chairman), Lynn W. Aas, Wesley R. Belter, Ralph C. Dotzenrod, Jayson Graba, David W. Kent, Larry A. Klundt, Dave Koland, Bill Oban, Alice Olson, Kit Scherber, John T. Schneider, Janet Wentz, and Wade Williams and Senators Jack Ingstad, Jerry Meyer, Larry W. Schoenwald, and Jens Tennefos.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

UNEMPLOYMENT-RELATED STUDIES

House Concurrent Resolution No. 3063 directed the Legislative Council to study the makeup of the advisory councils appointed under the North Dakota unemployment insurance law, to monitor the status of the unemployment insurance trust fund reserve during the interim, and to examine other approaches to the problem of unemployment.

Job Service North Dakota Advisory Councils

Background

When the Legislative Assembly established the North Dakota unemployment compensation law in 1937, it also established a State Advisory Council and local advisory councils "composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representatives because of their vocation, employment, or affiliations, and of such members representing the general public as the bureau may designate." The councils were established to aid the unemployment bureau in formulating policies and discussing and solving problems related to the administration of the bureau in an impartial setting, free from political influence.

The 1937 Legislative Assembly intended that the bureau and the advisory councils take steps to stabilize employment by attempting to accomplish the following:

1. Reduce and prevent unemployment.
2. Encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance.
3. Investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment.

4. Promote the reemployment of unemployed workers throughout the state in every way that may be feasible.
5. Carry on and publish the results of investigations and research studies.

The members of the councils are reimbursed for expenses and receive additional compensation (currently \$75 per day), as provided for by bureau regulation.

Findings

The Job Service State Advisory Council has been functioning since 1965 under the following board objectives:

1. Place a main committee emphasis on Job Service North Dakota's total service responsiveness, rather than serving particular interest groups.
2. Become thoroughly acquainted with all of Job Service North Dakota's operations.
3. Function in an advisory capacity to the executive director of Job Service North Dakota.
4. Ensure that all members are made fully aware of the scope of their authority, functions, and responsibilities.
5. Serve as a communications link between the agency and the respective areas of interest of the individual members of the council.

Currently, the executive director of Job Service North Dakota, in consultation with the Governor, appoints members to the State Advisory Council. One of the members, who represents the public, is designated as the council's chairperson. The members' terms are for four years, but are staggered to provide for a continuity in membership.

Local advisory councils, as provided for under North Dakota Century Code Section 52-02-07, have never been established. Local Job Service offices have, however, established Governor's Employment and Training Forums and other employer committees.

The committee found that although the surrounding states of Minnesota, South Dakota, and Montana do not have state advisory councils, they have established private industry councils and job training coordinating councils, as required under federal law, which also function in an advisory capacity.

The federal government requires each service delivery area under the Job Training Partnership Act to establish a Private Industry Council comprised primarily of employers, which, as in North Dakota, may also be the State Job Training Coordinating Council if the service delivery area is a state. Federal law further directs the Secretary of Labor to encourage the states to organize state advisory councils which equally represent employers and employees for reviewing the federal-state unemployment compensation program; and requires that such councils be organized "for the purpose of formulating policies and discussing problems relating to employment and insuring impartiality, neutrality, and freedom from political influence in the solution

of such problems." Although nothing prohibits the State Job Training Coordinating Council from adopting these advisory functions, North Dakota's Job Training Coordinating Council, as combined with its Private Industry Council, does not give equal representation to employers and employees.

Recommendations

The committee recommends Senate Bill Nos. 2032 and 2033 each amending North Dakota Century Code Section 52-02-07, regarding the establishment of state and local advisory councils, to give Job Service North Dakota the option to appoint local advisory councils, but to no longer require that it do so. Senate Bill No. 2033 also adds two legislative members, jointly appointed by the President of the Senate and the Speaker of the House from each of the two major political parties represented in the Legislative Assembly, to the Job Service State Advisory Council.

UNEMPLOYMENT TRUST FUND

Background

Established in 1937, as a special fund separate and apart from all public moneys, the unemployment trust fund consists primarily of employer contributions, any interest collected on late contributions, fines and penalties, money received from the Federal Unemployment Account as an advance for the payment of compensation, and all other money received for the fund from any other source.

An individual is eligible to receive unemployment benefits if it can be found that the individual has made a claim for benefits; has registered for work in an employment office; is able to work, is available for work, and is actually seeking work; and has been unemployed for a waiting period of one week.

North Dakota's unemployment trust fund reserve had a June 30, 1987, deficit balance of \$6 million due to the large increase in benefits paid out as a result of the national recession and, more specifically, the declines experienced by the energy industry, the construction industry, and the farm economy. An analysis of the fund from October 1, 1985, to June 30, 1987, is:

	(Millions)
Reserve Balance, October 1, 1985	<u>\$ 1.6</u>
Taxes collected	41.5
Benefits paid	<u>(49.6)</u>
Reserve Balance, September 30, 1986	<u>\$ (6.5)</u>
Taxes collected	\$ 34.9
Benefits paid	34.4
Reserve Balance, June 30, 1987	<u>\$ (6.0)</u>

The 1987 Legislative Assembly, through passage of House Bill No. 1359, decreased the benefit amount payable to unemployed individuals by reducing the maximum weekly benefit amount from \$200 (67 percent of the average weekly wage) to \$179 (60 percent of the average weekly wage), changing the calculation of the weekly benefit amount, and

changing the eligibility duration. The fiscal impact of this bill was anticipated to be a reduction in benefits paid of \$7.2 million annually.

The 1987 Legislative Assembly also instituted a requirement that Job Service North Dakota establish a tax rate that will pay benefits and maintain a balance in the fund that as of October 1 (beginning in 1989) is equal to 25 percent of the total benefits paid during the previous 12 months.

Findings

The committee found that although the changes made by the 50th Legislative Assembly had a positive impact on the fund balance, they did not have as great an impact as the decline in the number of persons drawing benefit payments. Job Service North Dakota reported job insurance and interest income of \$47.9 million for fiscal year 1988 (October 1, 1987—September 30, 1988) as compared to \$52.7 million for fiscal year 1987 and job insurance benefit payments for fiscal year 1988 of \$28.8 million, as compared to \$39.2 million and \$49.5 million for fiscal years 1987 and 1986, respectively. The balance in the unemployment trust fund on September 30, 1988, was approximately \$27,590,000.

Conclusion

The committee made no recommendation as a result of monitoring the unemployment trust fund during the interim.

OTHER APPROACHES TO THE UNEMPLOYMENT PROBLEM

Background

The study resolution passed by the 1987 Legislative Assembly states that while methods of increasing taxes and restricting benefits to increase the fund balance should be explored, more attention should be given to retraining, workfare programs, day care centers, adult learning centers, and other job training employment services to decrease the number of individuals who are unemployed, thereby decreasing the draw on the unemployment trust fund.

As has North Dakota, the surrounding states of Minnesota, South Dakota, and Montana have either increased tax rates, increased the wage base, tightened eligibility requirements, or decreased benefits paid in an effort to stabilize their unemployment trust funds. Although these and other states have begun to place more emphasis on alternative solutions to the unemployment problem, they have not used those solutions in a concentrated effort to stabilize their unemployment trust funds.

Findings

The committee learned that many states are searching for ways to revise the unemployment insurance system so that unemployment moneys can be used to fund new programs such as:

1. Allowing individuals with viable business plans to continue to receive unemployment benefits for a specific period.
2. Allowing employees to use their unemployment compensation to buy shares of a business in an effort to keep companies from shutting down and displacing workers.

3. Allowing self-employed individuals to receive a portion of their unemployment compensation, the amount by which their unemployment benefits exceeds their net income, for the first 90 days of operating a new business.
4. Allowing individuals to use their unemployment compensation to obtain matching grants for entrepreneurial projects.
5. Creating training funds by using unemployment insurance tax gathering authority in the following new ways:
 - a. Reducing the unemployment tax and instituting an unemployment training tax at the same level.
 - b. Enacting a new tax, to be paid by employers, to fund training programs for displaced workers.
 - c. Restructuring a federal penalty tax enacted to help repay a federal loan, when it is no longer necessary, to establish an unemployment training fund.

Thus, these unemployment agencies are able to offer individualized job placement services to the unemployed while they receive benefits and companies that participate in programs designed to train unemployed individuals receive funds for doing so provided they give those individuals jobs at the end of the training period.

Representatives of Job Service North Dakota indicated that its State Advisory Council is considering recommending legislation to the 1989 Legislative Assembly which would amend North Dakota statutes to allow Job Service North Dakota to establish a second employer tax on employees' wages to be retained in the state in a separate fund to be used to establish new unemployment programs in the state. The current unemployment tax rate would be decreased to provide for this new tax; thus employers' overall contribution will remain the same.

Conclusion

The committee made no recommendation as a result of studying other approaches to the unemployment problem.

PARTTIME EMPLOYEE STUDY

Background

House Concurrent Resolution No. 3077 directed a study of the differences in the employee benefits between part-time and full-time employment in the private sector. The Legislative Assembly chose to conduct this study because an increasing portion of available work in the private sector involves part-time employment, thereby denying the worker access to important employee benefits, such as health and accident insurance, sick leave, paid vacation, holiday pay, and other benefits.

North Dakota permanent state employees are eligible to receive sick leave, annual leave, retirement, uniform group insurance, and holidays. A permanent status employee is an employee whose services are not limited in duration, is employed 20 hours or more per week and more than five months of the year, has completed a satisfactory probationary period, and who is filling an approved and funded classified position.

Central Personnel Division policies provide that permanent, temporary, and part-time employees are eligible to receive employee assistance program benefits, funeral leave, military leave, and jury and witness leave. All state employees are protected by workers' compensation against accidental injury in the performance of their official duties. State employees are also eligible for unemployment compensation upon involuntary termination of their employment.

A survey of state agencies and institutions as of December 30, 1987, revealed that of the 13,155 state employees, 11,701 (5,611 female—6,090 male) work full time, 578 (468 female—110 male) work part time, and 876 (560 female—316 male) fill temporary positions. The average hourly wage was estimated to be \$7.91 per hour for female employees and \$7.94 per hour for male employees.

The North Dakota Commissioner of Labor has reported that over 60 percent of the part-time jobs in North Dakota are held by women and that 40 percent of the working women have part-time jobs while only about 20 percent of the working men have part-time jobs.

The two major areas in which North Dakota law relates to employee fringe benefits are unemployment compensation and workers' compensation. Individuals who work part time are often included in the groups for which coverage is exempt or optional. Some of the individuals for whom coverage is exempt or optional are:

1. The employee is under 18 and in the employ of a parent.
2. The employee is an agricultural worker.
3. The employee is a volunteer worker.
4. The employee performs a domestic service.

Statistics from the National Federation of Independent Business (NFIB) indicate that only 16.9 percent of its members make benefits available to part-time workers. The 1988 North Dakota NFIB state ballot survey of small businesses (15 percent of the 3,500 surveyed responded) indicates that 13 percent of the part-time employees have access to health insurance as compared to 85 percent of the full-time employees.

Findings

The committee asked the North Dakota Retail Association (a 600-member organization representing the state's retail industry), North Dakota Hospital Association (a 34-hospital, 17-nursing home member organization representing the hospital industry), North Dakota Health Care Association (a 21-nursing home member organization representing the health care industry), and North Dakota Hospitality Association (a 300-member organization representing the hospitality industry) to survey their members on the fringe benefits available to part-time employees in each industry using questions compiled by the committee. The results of those surveys from the members that responded are:

- North Dakota Retail Association—approximately 24 percent of the membership responded (113 stores with fewer than 50 employees and 31 stores with more than 50

employees)—more women (69 percent) than men work part time—the average hourly wage is \$4.35 for female employees and \$4.78 for male employees—35 percent of the employees who work part time in stores with more than 50 employees receive health insurance, as compared to 12 percent of those who work part time in stores with fewer than 50 employees.

- North Dakota Hospital Association—approximately 70 percent of the membership responded—there are 4.7 full-time female employees to every male employee—there are 18.5 part-time female employees to every male employee—the average hourly wage is \$8.07 for female employees and \$8.05 for male employees—part-time workers age 19 and over receive vacation leave (97 percent), sick leave (90 percent), health insurance (87 percent), retirement benefits (86 percent), and dental insurance (55 percent).
- North Dakota Health Care Association—100 percent member participation—92 percent of the full-time employees are female, 94 percent of the part-time employees are female—the average hourly wage is \$4.87 for female employees and \$5.11 for male employees—most employees receive sick leave and vacation leave benefits—facilities usually do not pay health insurance, dental insurance, life insurance, or retirement benefits unless the employee works more than 24 hours a week.
- North Dakota Hospitality Association—approximately 10 percent of the members responded—most employees average 29 hours of work per week—benefits include uniforms, tips, and meals—average hourly wage \$4.25 (\$3.50 without tips)—turnover as high as 70 percent.

A survey of 510 individuals conducted by the Bureau of Governmental Affairs for the Maternal Health Division of the Department of Health and

Consolidated Laboratories found that 456 (89.4 percent) have some form of health insurance and 54 (10.6 percent) are not insured. The survey revealed the following characteristics:

- The more hours an individual works per week the more likely an employer sponsors the health plan.
- Employer-sponsored health plans are broader than nonemployer-sponsored health plans.
- The older a person is the more likely the person is to have health insurance.
- Higher proportions of ranchers, farmers, and unskilled workers are uninsured than individuals in other occupations.
- The more hours worked per week the more likely the individual is to be insured.
- The higher the annual income (at least up to \$40,000) the more likely the individual is to be insured.
- Nearly 15 percent of those individuals with no education beyond high school are not insured.
- Twenty-nine percent of the people who are single and have never been married are uninsured.
- A higher portion of males (12.5 percent) than females (8.7 percent) are uninsured.
- Of the people surveyed, 13.7 percent in the southwest region, 12.5 percent in the northeast region, 10.5 percent in the south central region, 10.3 percent in the northwest region, and 8.4 percent in the southeast region reported not having health insurance.
- Nearly 75 percent of those surveyed who do not have health insurance are working.

A schedule prepared for the committee based on information obtained from the Health Resources Section of the North Dakota State Department of Health and Consolidated Laboratories prior to the survey by the Bureau of Governmental Affairs revealed:

NUMBER OF NORTH DAKOTANS WITHOUT HEALTH INSURANCE OR ACCESS TO HEALTH SERVICES

North Dakota population (1980 census)	652,717	100%
Number of North Dakotans with some form of health insurance:		
Public assistance programs, Aid to Families with Dependent Children, and Medicaid	33,000	
Private health insurance other than Blue Cross/Bue Shield	150,000	
North Dakota Blue Cross/Blue Shield	228,489	
HMOs	26,894	
Medicare	79,445	
Private business self-insured	10,000	
Population on reservations	11,154	
Military personnel and their dependents	33,000	
Comprehensive Health Association of North Dakota (CHAND)	1,200	
Total	573,182	88%
Estimated number uninsured or without access to health services ^{1 2}	79,535	12%

- 1 A 1986 survey conducted by Blue Cross/Blue Shield showed that 87,000 North Dakotans (13.3 percent) were without health insurance. The national estimates state that 8.8 percent to 13.2 percent of the population (1980 census) is uninsured.
- 2 The North Dakota Insurance Department indicates that the health insurance companies in North Dakota cannot limit the coverage of part-time employees. The health insurance benefits each employee receives are determined by their employer.

Recommendation

The committee recommends House Bill No. 1036 giving part-time employees access to their employer's commercially insured group health insurance plans. The bill also entitles part-time employees of the state or any political subdivision of the state access to any self-insured plan of the state or political subdivision. In both instances, the employer would be allowed to decide how those benefits are paid for, i.e., whether by the part-time employee or the employer, or on some pro rata or cost sharing basis. A part-time employee is defined as any employee who regularly works at least one-half of the weekly hours of a full-time employee in the employee group, but who works at least 20 hours per week and more than five months each year.

COMPARABLE WORTH/PAY EQUITY STUDY

Background

Senate Concurrent Resolution No. 4016 directed a study of the use of comparable worth to determine the existence of wage-based sex discrimination. By Legislative Council directive, this study was limited to state government. "Comparable worth" represents the concept that men, women, minorities, and whites should receive equal pay for work that is of equal value or the provision of similar salaries for positions that require or impose similar responsibilities, judgments, knowledge, skills, and working conditions.

North Dakota Century Code Section 34-06.1-03 prohibits discrimination "between employees in the same establishment on the basis of sex, by paying wages to one employee in any occupation in this state at a rate less than the rate at which he pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility, but not to physical strength." Therefore, an employer may discriminate on the basis of physical strength, provided that the employer can prove that physical strength is a necessary job attribute.

The Central Personnel Division, created in 1975, is charged by statute to establish a unified system of personnel administration to include position classification, pay administration, and employee transfer without regard to sex, race, color, national origin, age, religion, or political opinion. Developed in 1982 with this purpose in mind, the North Dakota Class Evaluation System (NDCES) was designed to measure the knowledge, skills, complexity, and accountability which distinguishes one class from another; to determine the relative worth of a

particular class; and to establish equitable pay relationships among all classes. The NDCES is made up of the two following components:

1. Point factor method—a means to compare all classes in the system by using consistent numbering patterns.
2. Appropriate levels of pay—a means of using the points assigned to a class to determine specific pay grades.

Eight to nine elements are used in the class evaluation process, eight of these elements are grouped into three factors:

1. Knowledge and skills—includes technical knowledge, managerial breadth, and interpersonal skills.
2. Complexity—includes guidelines and mental challenge.
3. Accountability—includes independence of action, effect on decisions, and control of budgeted dollars.

The ninth element, special working condition, is an add-on factor, assigned when an individual in a particular class is exposed to hazardous workplace conditions. The special working condition add-on factor includes the elements of severity of hazard and frequency of exposure in relation to the carrying of a firearm. In comparing the NDCES to the classification systems used in Minnesota, South Dakota, and Washington, it was noted that the systems, although similar, differ most visibly in this area because the NDCES factor is not used in all job classifications and because the factor does not contain a subfactor for "physical effort."

There are approximately 13,000 state employees of which approximately 10,000 are filling classified positions. Among those positions exempted from the classified service by North Dakota Century Code Section 54-55.3-20 are elected officials, employees of the legislative and judicial branches, and faculty at the institutions of higher education.

Findings

The committee learned that since 1982 only 50 percent of the 963 classes, consisting of 60 percent of all classified employees, have been factored and implemented, thus 40 percent of the state's 10,000 classified employees are working in classes that have not been formally factored using the NDCES. The classified system includes approximately 6,500 employees in 344 classes at grade 20 (salary range of \$1,336 to \$2,023 per month) or below and approximately 3,500 employees in 619 classes at grade 21 or above. Of the 37 pay grades currently used within the NDCES, 27 show a higher average salary for male employees and six show an average higher salary for female employees. The other four grades include all male or female incumbents. Actual salaries are not only affected by job responsibility but also by performance, time with employer, time in job, and other influencing factors.

The committee also learned that only 12 of the state's 963 classes receive points for the working conditions "hazard" factor and that 182 of the 192 incumbents in those 12 classes are male. There are also 86 (four female dominated, 35 male dominated,

and 47 nondominated—a class must consist of at least five incumbents and be 70 percent female or male to be dominated) which have been designated as payline exceptions and are paid above the salary range for that particular class. These classes are directly market driven, the majority of which are the skills-trade classes.

The committee also received testimony from representatives of the North Dakota Public Employees Association, American Federation of State, County, and Municipal Employees, Minnesota Employee Relations Department, and state agencies and institutions who expressed the following:

1. Factors in female-dominated jobs (motor skills, dealing with the public, distraction, concentration) have been overlooked.
2. The “hazards” factors should be expanded to award additional points to those employees who work with the AIDS virus and those who work with violent people.
3. The National Conference of State Legislatures, at its May 1987 meeting, adopted a pay equity policy resolution urging the implementation of pay equity in federal, state, and local governments and encouraging voluntary compliance by private employers.
4. It is taking too long to bring all classified employees under the NDCES.
5. Private industry dictates the salary level of certain professions through the market causing recruiting and retention problems.
6. Pay equity is intended to alleviate the historical patterns of intentional low pay for female-dominated jobs which was established when sex-based discrimination was legal.
7. The state should make a good faith effort to assess its present system to determine if there is any bias and if it is found that inequities do exist, the state may avoid lawsuits if it can show that it is attempting to achieve equitable relationships.

The Central Personnel Division’s review of pay equity identified both strengths and weaknesses in NDCES, resulting in the following recommendations being made by the division:

1. Implement the equity points and equity grades of all the classes that have been administratively factored. Base reclassification requests on newly assigned equity grades to accelerate the process of full implementation and statewide pay equity compliance.
2. Expand and specifically define the “hazard” aspect of the “working conditions” factor. Survey all agencies to identify classes that could possibly receive compensable “add-on” points.

3. Develop a policy and procedure for collecting appropriate data on all classes identified as payline exceptions. Evaluate this information every two years to determine if the market has changed and if a payline exception status is still appropriate. Adjust pay ranges for payline exceptions to reflect any major change in the market.
4. Prioritize the process of full computerization of the NDCES by authorizing the additional staff necessary to achieve this goal.

Booz Allen and Hamilton, Inc.

The committee hired Booz Allen and Hamilton, Inc., of Bethesda, Maryland, to conduct a study of the NDCES. The firm conducted its study in January and February 1988 through interviews with managers and employees and quantitative and qualitative analyses of the state’s paysetting policies and procedures and their impacts on them. The firm found no evidence of overt bias in the NDCES or its implementation, but did make some recommendations for improving the system based on:

1. Physical effort and working condition “surroundings” factors were not included in the NDCES because it was felt that they favor male-dominated classes.
2. The classes selected for the labor market survey do not represent the occupations in the state (32.7 percent of the benchmark classes are female dominated, whereas only 11.2 percent of all state classes are female dominated and the payline exception classes are not surveyed) resulting in a lower state equity payline.
3. The state does not provide a sufficient payroll budget to position its employees near the midpoint of the salary range as is its objective (34 percent of the female-dominated and 18 percent of the male-dominated classes receive salaries that are below 90 percent of the market and two percent of the female-dominated and seven percent of the male-dominated classes receive salaries that are 110 percent of the market).
4. No criteria appear to exist that describe the situation necessary to enact a payline exception and there is no procedure to review whether the exception should continue.
5. Many perceptions of inequity are based on a lack of understanding of the objective and procedures of the NDCES.

The recommendations made by Booz Allen and Hamilton, Inc., are as follows:

	Without Reducing Any Salaries, Assign Salaries to the Minimum of the New Salary Range	Without Reducing Any Salaries, Maintain Equivalent Relationships Within the New Salary Range
1. Implement the administratively factored classes. The state should have a consistent approach to paysetting to be equitable.	\$168,000/biennium	\$2,184,000/biennium (The Central Personnel Division estimates this recommendation may cost \$2,970,000.)
2. Redefine the special working conditions (hazards) factor. The factor should be expanded to allow consideration of other hazards, such as caustic chemicals, hazardous materials, heights, infectious diseases, physical threats, etc.	\$1,752,000/biennium	\$9,888,000/biennium (The Central Personnel Division estimates this recommendation may cost \$8,775,000.)
3. Include physical effort and working conditions as compensable factors. The factors can be defined to include examples of physical effort and unpleasant working conditions from a wide variety of state jobs, including female-dominated classes.	\$2,208,000/biennium	\$16,512,000/biennium
4. Be more responsive to labor market conditions by more accurate positioning against the labor market.	*	*
5. Establish guidelines for the selection of payline exceptions.	*	*
6. Communicate paysetting philosophy and procedures more clearly. Specific training for managers, communications directed toward employees, and class specifications containing occupation-specific information would help the understanding of the system.	*	*
7. Consider redefining the role of the Central Personnel Division. The authority for classification decisions could be delegated to trained personnel officers to relieve the workload of the Central Personnel Division and to move the decision into the hands of people who can observe the jobs being performed. The Central Personnel Division should retain responsibility for designing the system and for auditing agency classification.	*	*
Total	\$4,128,000	\$28,584,000

* Although it is not known how much these recommendations will cost, Booz Allen and Hamilton estimates that total implementation will result in costs of one to five percent of

classified payroll. The total biennial payroll for state employees is approximately \$700 million including fringe benefits and according to the Central Personnel Division, the biennial payroll

for classified employees is approximately \$357 million net of fringe benefits. Booz Allen and Hamilton also recognizes that there may be additional costs involved for those positions that are exempt from the classified system.

For more information, including the detailed work supporting the information contained in this report, copies of the Booz Allen and Hamilton, Inc. final report are available in the Legislative Council office.

Recommendations

The committee recommends three bills for consideration.

House Bill No. 1033 provides for uniform compensation, classification, and salary administration plans, developed by the Central Personnel Division in cooperation with the state agencies and institutions, for the state's classified employees. The bill requires that these procedures be developed, notwithstanding the provisions of any other law, to ensure the salaries of employees in the state classified service are paid in a consistent manner.

House Bill No. 1034 directs the Central Personnel Division to establish a classification plan recognizing certain compensable factors required in the performance of work for all positions in the classified service, recognize certain job hazards as being compensable (cost estimate by the Central Personnel Division of \$8,775,000), develop guidelines for allowing exceptions to classification and compensation plans, conduct labor market surveys that are representative of the state's classified service occupations, and communicate classification and compensation policies to managers and employees in the state classified service. The bill would not go into effect until July 1, 1991, at which time all employees in the state classified service must be under one compensation plan (cost estimate by the Central Personnel Division of \$2,970,000). The bill also includes a \$337,416 appropriation during the 1989-91 biennium to the Office of Management and Budget for six additional positions (five personnel analysts

and one clerical support position) in the Central Personnel Division to be used in preparing for the implementation of the provisions contained in the bill.

House Bill No. 1035, which also would not take effect until July 1, 1991, contains a state policy regarding compensation relationships, requires that the Central Personnel Division establish a seven-member pay equity implementation committee composed of one representative of the Central Personnel Division; one member appointed by the executive director of the North Dakota Public Employees Association; one member appointed by the executive board of the North Dakota Chapter of the American Federation of State, County, and Municipal Employees; two members of the Legislative Assembly chosen by the Legislative Council, one from each of the two major political parties represented in the Legislative Assembly; and two classified employees, one appointed by the Board of Higher Education and one appointed by the Governor. The bill requires the committee to meet at least once each quarter to supervise and approve the Central Personnel Division's work and proposed changes to the classification and compensation plans as directed by the Legislative Assembly. The bill requires the Central Personnel Division to report its findings and recommendations during the 1989-91 biennium to a committee designated by the Legislative Council. The bill also provides for the establishment of a pay equity implementation fund consisting of appropriations to the fund by the Legislative Assembly for the purpose of establishing equitable compensation relationships among all positions and classes within the state's classification plan. The Director of the Office of Management and Budget, upon the request of the implementation committee, is to transfer the appropriation authority to receive equity adjustments to the agencies and institutions designated by the committee to receive these funds. The bill also contains an expiration date of June 30, 1993, for all sections except the one relating to the state's compensation policy.

BUDGET COMMITTEE ON GOVERNMENT FINANCE

The Budget Committee on Government Finance was assigned two study resolutions. Senate Concurrent Resolution No. 4058 directed a study of alternative methods available for establishing a state capital construction fund. Senate Concurrent Resolution No. 4053 directed a study of the policy of appropriating special funds, the extent to which exceptions have been made to the practice of appropriating special funds, and the need to continue reporting special fund appropriations.

The committee was also assigned responsibility to monitor the status of state agency and institution appropriations and to receive the state retirement funds' actuarial evaluation reports. The chairman of the Legislative Council assigned the committee the responsibility to receive the actuarial evaluation reports of the Teachers' Fund for Retirement and the Highway Patrolmen's Retirement System and to review the joint financing of projects by counties.

Committee members were Senators Corliss Mushik (Chairman), Evan E. Lips, Pete Naaden, Chester Reiten, Bryce Streibel, Floyd Stromme, Jerry Waldera, and Stan Wright and Representatives Curt Almlie, Jack Dalrymple, Steve Gorman, Ronald E. Gunsch, Mike Hamerlik, Roy Hausauer, Charles Linderman, Jim Peterson, W. C. Skjerven, Kenneth N. Thompson, and Gerry L. Wilkie.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

CAPITAL CONSTRUCTION FINANCING Background

Senate Concurrent Resolution No. 4058 directed a study of the need, feasibility, and alternatives available for establishment of a state capital construction fund.

The committee reviewed other states' methods of financing capital construction which include using current appropriations, earmarking a portion of the sales or cigarette tax, issuing revenue bonds, using lease-purchase arrangements, using lottery funds, and using a statewide dedicated property tax.

The committee surveyed North Dakota institutions to determine their projected major capital improvement needs for the 1989-91 biennium and the 1991-2001 decade. The survey results are summarized as follows:

	1989-91 Biennium Projects	1991-2001 Projects	Total
Institutions of higher education including the main and branch experiment stations	\$ 83,134,367	\$ 92,685,100	\$175,819,467
Charitable and penal institutions/Capitol grounds/State Fair Association	23,606,615	20,175,500	43,782,115
Total	\$106,740,982	\$112,860,600	\$219,601,582

The 1989-91 agency budget requests include \$61,363,523 for capital improvements at the institutions of higher education and the experiment stations and \$22,378,400 for the charitable and penal institutions, Capitol grounds, and State Fair Association.

Capital Construction Budget Guidelines

The committee reviewed the capital construction budget recommendations of the 1975-76 Budget "C" Committee and the National Conference of State Legislatures' report entitled "Capital Budgeting and Finance: The Legislative Role." The Budget "C" Committee developed the basic elements involved in a statewide capital construction budget that included:

1. The executive budget include a major section on capital construction.
2. The executive budget capital construction recommendations be for a two-year period.
3. Agency budget requests for capital improvements be separate from agency operating budget requests and the executive recommendation be contained in one bill.
4. Agencies and institutions advise the Executive Budget Office and the Legislative Assembly of long-range capital construction plans.

The 1987-89 executive budget included major capital construction projects in each agency's regular appropriation bill rather than in a single capital improvements bill and the executive budget did not advise the Legislative Assembly of long-range capital construction plans.

The National Conference of State Legislatures' report entitled "Capital Budgeting and Finance: The Legislative Role" recommends state legislatures:

1. Obtain comprehensive information on the state's existing buildings and future requirements.
2. Develop guidelines for reviewing and evaluating capital budget requests.
3. Require comprehensive fiscal notes on all legislation involving capital projects.
4. Require a long-range capital plan for the next five to 10 years.
5. Develop standards for determining building maintenance needs.
6. Require the executive budget to present a single capital budget including capital requests by priority across agencies.
7. Consider setting up independent capital advisory groups.
8. Closely monitor capital projects that are funded.

Capital Construction Budget Guidelines— Recommendations

The committee recommends the following revisions to the 1975-76 Budget "C" Committee guidelines and procedures for a state capital construction budget with the changes underscored and recommends the Executive Budget Office follow the guidelines in preparing the executive budget:

1. The executive budget recommended should include a section on major capital construction.

2. The capital construction recommendations submitted in the executive budget should be for a two-year period.
3. The capital construction budget should include recommended general fund appropriations as well as any special fund appropriations and issuances of indebtedness that are used for major capital construction or land purchases for all state agencies and institutions, including the institutions of higher education.
4. The Executive Budget Office's recommended appropriations for major capital construction and land purchases should be submitted separately from the agencies' regular operating budgets. The recommended appropriations should be presented in one bill.
5. The Executive Budget Office should advise the legislature of those requests from agencies and institutions for major capital construction or land purchases which were not included in the executive recommendation.
6. General fund moneys authorized for construction or land purchases should be paid from the general fund in accordance with law and in such manner as deemed appropriate by the director of the Office of Management and Budget.
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 should advise the Executive Budget Office and the legislature of long-range capital construction plans beyond the two-year biennium and provide justification for those projects.
8. The recommended capital construction budget should include any additional general fund moneys recommended to complete previously authorized major capital construction projects or land purchases.
9. Agencies and institutions should submit separate budget requests for major capital construction or land purchases. The Executive Budget Office should develop the instructions and forms for these requests and use its discretion in defining major capital construction projects for inclusion in the request. In addition, the budget request should include information on the need for, importance and costs of, alternatives to, maintenance and operating costs associated with and different methods of financing proposed capital projects as well as the long-range capital construction plans of the agencies and institutions.
10. The Executive Budget Office should develop guidelines to be used for reviewing and evaluating capital budget requests that include the following criteria:
 - a. The project must be completed to be in compliance with a court order.
 - b. The health and safety of employees and/or students, the environment of the state, or the delivery of medical or educational services would be improved by the project.
 - c. Operating efficiency would be improved or consolidation of state services provided.
 - d. Obsolete facilities would be replaced or renovated.
 - e. The project contributes directly to economic development.
11. The Executive Budget Office should provide the Legislative Assembly comprehensive information about the state's existing capital facilities and future capital requirements. This information should include a complete inventory of all state facilities, an up-to-date assessment of their condition, and a long-range capital plan that shows the state's needs for the next five to 10 years and indicates how and where the current capital budget request fits into the long-term capital plan.

Unit Trust Financing Method

The committee considered an alternate method of financing capital improvements at the institutions of higher education referred to as the unit trust with charitable remainder financing concept and received information from Dr. Thomas Clifford, President, University of North Dakota, regarding the concept. The concept would provide for the use of donated moneys held in trust for a set time period to pay off bonds issued for capital improvements. The Legislative Assembly would need to authorize the bond issues for capital projects and appropriate funds for bond interest payments. The following is a summary of the proposal:

1. A donor would provide a certain amount of money or other assets as a gift to the North Dakota Board of Higher Education Foundation.
2. The donor would receive in return annual tax-exempt payments based upon an agreed interest rate and term.
3. Also, the donor would receive a charitable tax deduction based on the actuarial value of the gift and avoid capital gains taxation that would have occurred on the sale of the capital asset(s).
4. The Bank of North Dakota would act as trustee of the funds and would make annual payments to the donor from the trust fund.
5. The Legislative Assembly would authorize the issuance of bonds, which would be purchased by the Bank of North Dakota with the donated funds and held as an asset of the trust. The Legislative Assembly would make an appropriation for the interest due to the trust on the bonds.
6. The proceeds of the bond issue would be used by the State Building Authority to finance the capital improvements.
7. At the completion of the trust term the state of North Dakota would have title to the buildings and the bond issue would be offset by the original donation.

Unit Trust Financing Method—Recommendation

The committee recommends the use of the unit trust with charitable remainder concept as a method of financing capital improvements at the institutions of higher education. The concept can be implemented without legislation, but would require the Legislative Assembly to approve the issuance of bonds for the projects and the appropriation of funds for payment of the interest owed the donor. At the completion of the trust term the original gift would be used to offset the bonds issued.

Privitization

The committee received information on privitization or the private development of facilities on state land for use by state government or to be used jointly with private business. The committee found that the majority of undeveloped land at the institutions of higher education is at North Dakota State University, University of North Dakota, Bismarck State College, and State College of Science. It also learned the institutions and the State Board of Higher Education are supportive of private development of capital facilities on state campuses if the facilities benefit the institutions.

The committee found that, regarding lands under control of the State Board of Higher Education, the constitution and Legislative Assembly appear to have given sufficient authority to the State Board of Higher Education to enter into agreements that would allow for the lease of land to a private company for development. Existing law provides that buildings funded by revenue bonds and agricultural land may be leased from state institutions for a term not exceeding 10 years, and these statutory provisions will require legislative change if longer leases are desired. Also for other university property, the State Board of Higher Education has adopted a policy limiting the terms of leases from the State Board of Higher Education or institutions under its control to no more than 20 years.

The committee also reviewed the property tax effects and income tax treatment of bond interest relating to privitization. The constitution allows the Legislative Assembly to exempt any or all classes of personal property from taxation. North Dakota Century Code (NDCC) Section 57-02-08(34) provides that any building located on land owned by the state, if the building is used at least in part for academic or research purposes by the students and faculty of a state institution of higher education, is exempt from property taxation. If a tax exemption is desired for a venture involving private business that does not clearly fall within the exemptions, new legislation would be necessary because NDCC Section 57-02-03 provides that all property is subject to taxation unless expressly exempted by law.

Regarding income tax treatment of interest on bonds issued to finance private development of facilities on state land, the committee learned that interest earned on bonds issued by a state or political subdivision is not subject to federal taxation. For a bond issue to be tax-exempt it must also be used to finance an activity that qualifies for tax-free treatment which may not include professional sports, convention, trade show, parking, or pollution facilities.

Privitization—Recommendation

The committee recommends the use of privitization as a method of financing capital improvements at state institutions.

State Building Authority

North Dakota Century Code Chapter 54-17.2 creates the North Dakota Building Authority consisting of the members of the State Industrial Commission and provides them authority to issue evidences of indebtedness for capital projects approved by the Legislative Assembly. Pursuant to this authority, bonds were issued by the authority for \$14.8 million of capital projects approved by the 1985 Legislative Assembly and for \$8.8 million of projects approved by the 1987 Legislative Assembly.

State Building Authority—Recommendation

The committee's review of the National Conference of State Legislatures' report entitled "Capital Budgeting and Finance: The Legislative Role," discussed earlier in this report, highlighted the need for comprehensive information on the state's existing buildings and future requirements, the need for long-range planning with legislative involvement, and the need for a review of costs and other impacts of proposed capital improvements.

The committee recommends Senate Bill No. 2036 expanding the duties and membership of the State Building Authority. The bill would add to the authority's current membership of the Governor, the Attorney General, and the Agriculture Commissioner, four members of the Legislative Assembly, with one member chosen from each party of each house. The bill also provides that the Office of Management and Budget will provide staff services for the State Building Authority and the authority would be required to:

1. Develop and maintain long-range capital construction plans for state government with consideration of the Capitol grounds master plan and in consultation with the Capitol Grounds Planning Commission, when necessary.
2. Make recommendations to the Office of Management and Budget on capital construction plans that include assessments of need and economic impact, consideration of the condition of existing facilities, and recommendations for financing proposed construction, with copies of the recommendations furnished to the Budget Section.

Capital Construction Fund—Consideration and Recommendation

The committee considered two bill drafts relating to capital construction financing. One bill draft provided for a separate and additional one-quarter of one percent sales and use tax, with the proceeds to be deposited in a special fund known as a state capital improvements fund, and would have provided approximately \$20 million per biennium for this purpose based on the original revenue forecast for the 1987-89 biennium. That concept is not recommended

by the committee. House Bill No. 1037, which is recommended by the committee, allocates a portion of the sales, use, and motor vehicle excise taxes, equal to 40 percent of the equivalent of a one percent sales, use, and motor vehicle tax, based on the total of these tax collections, to a capital construction fund. The bill would provide approximately \$32 million per biennium. Revenue in this fund may be used only for capital construction projects, subject to legislative appropriations.

SPECIAL FUNDS STUDY

Senate Concurrent Resolution No. 4053 directed a study of the policy of appropriating special funds, the extent to which exceptions have been made to the practice of appropriating special funds, and the need to continue reporting special fund appropriations. The resolution cites as reasons for the study North Dakota constitutional requirements that all public moneys be deposited in the state treasury and with certain exceptions can only be paid out and disbursed pursuant to an appropriation by the Legislative Assembly and requirements that for an appropriation to be valid it must be a definite sum for a specific time period. The resolution states that legislative reports to the public on expenditures approved are based on amounts appropriated and are less accurate when special funds are not appropriated and that agencies often desire more flexibility in the appropriation process.

Background

The 1987 Legislative Assembly appropriated \$1.439 billion in special fund appropriations for state government for the 1987-89 biennium. In addition, the 1987 Legislative Assembly provided language in appropriation bills for the appropriation of additional income and other special funds, without a specific amount, that may become available to state agencies and institutions during the 1987-89 biennium. Those sections included the appropriation of additional moneys from federal grants at the institutions of higher education, the appropriation of any additional income not appropriated at the institutions of higher education, the Extension Division and the experiment stations, and the appropriation of additional federal funds for Job Service North Dakota, the Housing Finance Agency, and Geological Survey.

The Legislative Assembly has historically encouraged the appropriation of special funds. In 1967 the Legislative Assembly added the appropriation of special funds for the State Highway Department and the University of North Dakota Medical Center. The appropriation of federal funds received by the Social Service Board, the Department of Public Instruction, and Job Service North Dakota began in 1977, and the appropriation of funds from the state tuition fund began in 1979.

The committee learned that, according to a National Conference of State Legislatures' report, 37 states make specific appropriation of federal funds while seven states make automatic or open-ended appropriation of federal funds. The remaining six states did not appropriate federal funds. The committee learned that several states have recently

strengthened their role in the area of special fund appropriation by requiring federal funds to be appropriated by state legislatures.

Emergency Commission Responsibilities

The committee reviewed the North Dakota Emergency Commission's statutory responsibilities. North Dakota law provides that no state agency or institution may spend more moneys than appropriated without approval of the Emergency Commission, the Emergency Commission may not authorize the expenditure of federal funds for new programs that the Legislative Assembly has indicated an intent to reject, and the Emergency Commission has the authority to approve expenditures of moneys appropriated from the state contingency fund, for which \$700,000 was appropriated for the 1987-89 biennium.

Special Fund Continuing Appropriations

The committee reviewed sections of law containing continuing appropriations. Continuing appropriations language allows the appropriation of funds without limitations on the amount or the time within which they can be spent. Seventy-eight sections of the North Dakota Century Code and 31 sections of the Session Laws of North Dakota were identified as containing continuing appropriation language. Sections involving moneys received and spent in connection with state licensing boards were excluded. The review included a survey of state agencies administering continuing appropriations pertaining to personnel costs, operating expenses, or general operations to determine the appropriateness and use of these sections.

The following is a summary of the results of the survey for fiscal year 1987:

A. Expenditures by agencies and institutions not included within the limits of specific amount appropriations:

State Fair Association	\$ 1,925,576
Board of Higher Education	3,340,083
Job Service North Dakota	5,819,425
Emergency Commission	21,152,547
authorizations	
Others	<u>877,883</u>
Total	<u>\$33,115,514</u>

B. Expenditures by agencies not receiving specific amount appropriations:

Soybean Council	\$ 296,000
Dairy Promotion Commission	1,106,872
Beef Commission	<u>626,604</u>
Total	<u>\$ 2,029,476</u>

The report identified 13 sections of North Dakota law that could be discontinued, amended, or repealed

due to either the agency not using the section of law or the funds are currently appropriated.

Recommendations

The committee recommends Senate Bill No. 2035 amending or repealing current law to remove the following continuing appropriation provisions that are no longer needed:

1. The Bank of North Dakota's authority to spend interest earned on the reserve fund of the fuel production facility loan program that was never implemented.
2. The Department of Health and Consolidated Laboratories' authority to spend funds arising from analytical and inspection work for the costs incurred in providing the services. The bill requires that the funds received from contract services be deposited in the department's operating fund and be spent pursuant to legislative appropriation. These funds are included in the agency's appropriation.
3. The Game and Fish Department's authority to spend funds received from the disposal of undesirable fish to pay fish removal costs. The bill requires that all funds received from the disposal of undesirable fish be deposited in the game and fish fund and spent pursuant to legislative appropriation. These funds are included in the agency's appropriation.
4. The National Guard's authority to spend funds received from the United States and from armory rentals for the maintenance and operation of the National Guard. These moneys are currently included in the department's appropriation bill. North Dakota Century Code Section 37-03-13 also provides for the expenditure of funds received from armory rentals.
5. The Department of Human Services' authority to spend funds received to carry out the provisions of the alcohol and drug abuse program. These funds are included in the agency's appropriation bill.
6. The Department of Banking and Financial Institutions' authority to dispose of unclaimed dividends or other moneys received from the

receiver of an insolvent bank, and the Office of Management and Budget's authority to spend funds deposited into the unemployment compensation claims fund.

In addition, the committee developed the following policy statement regarding continuing appropriations:

The committee recommends that the state continue the current practice of discouraging the use of continuing appropriations and that continuing appropriations be used only when necessary.

STATE RETIREMENT FUNDS' ACTUARIAL VALUATION REPORTS

Background

North Dakota Century Code Section 54-52-06 requires that the Public Employees Retirement System submit to each session of the Legislative Assembly, or such committee as may be designated by the Legislative Council, a report of the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness. The committee was assigned the responsibility to receive the Public Employees Retirement System actuarial valuation report. In addition, the chairman of the Legislative Council assigned the committee the responsibility to receive the Teachers' Fund for Retirement and Highway Patrolmen's Retirement System's actuarial valuation reports. At the committee's March 21-22, 1988, meeting the actuarial valuation reports for the Public Employees Retirement System, the Highway Patrolmen's retirement fund, and the Teachers' Fund for Retirement as of July 1, 1987, were presented.

Actuarial Valuation Reports

The actuarial valuation reports show the percentage of employee compensation necessary to be deposited in the fund to meet the fund's objectives for the fiscal year. For fiscal year 1988, the percentage of employee compensation necessary to meet the Public Employees Retirement System, Highway Patrolmen's retirement fund, and Teachers' Fund for Retirement objectives and the actual percentage of compensation paid to the Public Employees Retirement System, Highway Patrolmen's retirement fund, and Teachers' Fund for Retirement funds are:

<u>For Fiscal Year 1988</u>	<u>Public Employees Retirement System</u>	<u>Highway Patrolmen's Retirement Fund</u>	<u>Teachers' Fund for Retirement</u>
Total percentage compensation necessary to fund objectives	6.56%	24.1%	11.6%
Membership assessment (paid by state for state employees)	4.00	10.3	6.23
Employer contribution requirement	<u>2.56%</u>	<u>13.8%</u>	<u>5.37%</u>
Actual employer contribution	5.12%	17.7%	6.22%
Excess of actual contribution over required	2.56%	3.9%	0.85%

The retirement funds' actuarial valuation reports dated July 1, 1988, projecting the actuarial assumptions and costs for fiscal year 1989 were not available to present to the committee at its last meeting.

Conclusion

The excess of actual contributions over the actuarially required amounts indicate the systems have funds in excess of the amounts required for fiscal year 1988 to meet payment requirements. Because this represents an estimate based on fund conditions for only fiscal year 1988, and may, because of the fluctuation of stock and bond values, change during fiscal year 1989 and subsequent years, and because the excess funds may be used to enhance the retirement program, the committee makes no recommendation to reduce future employer contributions or to use excess funds for other purposes.

MONITORING STATUS OF APPROPRIATIONS

Background

Since the 1975-76 interim, a Legislative Council interim committee has monitored the status of major state agency and institution appropriations. The Budget Committee on Government Finance was assigned this responsibility for the 1987-88 interim. The committee's review focused on expenditures of major state agencies including the institutions of higher education and the charitable and penal institutions, the appropriations for the foundation aid program, and the appropriations to the Department of Human Services for aid to families with dependent children and medical assistance. The committee also heard a Legislative Council report on agency compliance with legislative intent for the 1987-89 biennium.

Status of Appropriations of Major Agencies

To assist the committee in fulfilling its responsibility of monitoring the status of major appropriations, the Legislative Council staff prepared the following reports:

1. Overview of total expenditures and revenues at the higher education and charitable and penal institutions.
2. Overview of utility expenditures at the higher education and charitable and penal institutions.
3. Number of residents and personnel at the charitable and penal institutions.
4. Foundation aid program.
5. Aid to families with dependent children and medical assistance payments.

For the 1987-89 biennium, Governor Sinner requested that state agencies reduce their general

fund spending amounts by two percent effective August 1988. Also, state agency appropriations were reduced by the effect of the referral of the cable television sales tax which totaled \$3.2 million. The expenditures and distributions included in the reports are compared to the 1987 Legislative Assembly appropriation amounts except where noted.

At the September 1988 meeting, the staff presented reports on these areas for the period July 1, 1987, through June 30, 1988, or the first year of the 1987-89 biennium. The reports include:

1. Total expenditures at the charitable and penal institutions for the first year of the 1987-89 biennium were \$69.2 million or \$2.3 million less than an estimated \$71.5 million. Total revenues for the same period were \$40.4 million or \$1.6 million more than an estimated \$38.8 million. For the period, the possible state general fund fiscal impact was a positive \$3.9 million.
2. Total expenditures at the institutions of higher education for the first year of the biennium were \$155.9 or \$1.6 million less than an estimated \$157.5 million. Total revenues for the same period were \$56.8 million or \$700,000 more than an estimated \$56.1 million. For the period, although the total impact of savings and additional revenue was \$2.3 million for all funds, the possible state general fund fiscal impact was a positive \$3 million.
3. Total utility expenditures for all the charitable and penal institutions for the first year of the biennium were \$2.1 million or \$200,000 less than an estimated \$2.3 million. Total utility expenditures at the institutions of higher education for the first year of the biennium were \$8.4 million or \$200,000 less than an estimated \$8.6 million.
4. Average student, resident, and inmate populations at the charitable and penal institutions totaled 1,523 persons or 123 persons fewer than an estimated 1,646. The average monthly full-time equivalent positions for the same institutions totaled 2,120 or 147 positions fewer than the authorized total of 2,267.
5. The 1987 Legislative Assembly appropriated \$354.6 million from the general fund for foundation aid program payments. In response to the Governor's request for a two percent general fund spending reduction and the referral of the cable television sales tax, the revised amount of general fund foundation aid program payments is \$347.1 million. The following schedule details the legislative appropriation, revised foundation aid payments, and reductions made to date:

	<u>Appropriated Amount</u>	<u>Revised Estimated Payments</u>	<u>Increase (Reduction)</u>
Per-pupil payments	\$355,570,464	\$348,258,945	\$(7,311,519)
Less 20-mill district levy	<u>(39,070,442)</u>	<u>(38,730,554)</u>	<u>(339,888)</u>
Total per-pupil payments	\$316,500,022	\$309,528,391	\$(6,971,631)
Transportation payments	<u>38,109,386</u>	<u>37,569,889</u>	<u>(539,497)</u>
Total general fund - foundation aid program	<u>\$354,609,408</u>	<u>\$347,098,280</u>	<u>\$(7,511,128)</u>
Total tuition fund distributions	<u>\$ 43,100,000</u>	<u>\$ 47,350,000</u>	<u>\$ 4,250,000</u>
Total payments	<u>\$397,709,408</u>	<u>\$394,448,280</u>	<u>\$(3,261,128)</u>

For the first year of the 1987-89 biennium, foundation aid payments were \$175.3 million or \$1.1 million less than an estimated \$176.4 million. The appropriation balance of foundation aid available for fiscal year 1989 is \$171.8 million compared to original estimates of \$178.2 million. For the first year of the biennium, distributions from the state tuition fund were \$25.8 million or \$4.25 million more than an estimated \$21.55 million.

The estimates made during the 1987 Legislative Assembly for per-pupil payments and tuition fund payments for each year of the biennium, the actual amounts for fiscal year 1988, and the revised estimated amounts for fiscal year 1989 are:

million compared to an original estimate of \$315.1 million.

In summary, although savings were realized by state institutions during fiscal year 1988, those savings were due in part to a mild winter. Those savings and other savings as a result of additional income and other expenditure reductions will be used to meet the two percent budget reduction and may also be offset by costs relating to a more seasonable winter. It is not anticipated that the savings will result in a significant general fund turnback.

Status of the General Fund

The Budget Committee on Government Finance and the Budget Section heard reports by the Office of Management and Budget regarding the status of the

	<u>Original Estimates for 1987-88</u>	<u>Actual 1987-88 Payments</u>	<u>Original Estimates for 1988-89</u>	<u>Revised Estimates for 1988-89</u>
Per-pupil payments	\$1,400	\$1,400	\$1,412	\$1,364
Tuition fund payments	<u>177</u>	<u>215</u>	<u>177</u>	<u>177</u>
Total	\$1,577	\$1,615	\$1,589	\$1,541

Actual weighted units for 1987-88 were 126,211 compared to 126,322 weighted units estimated during the 1987 Legislative Assembly. The revised estimate for weighted units for 1988-89 is 126,526 compared to the original estimate of 126,572.

- Aid to families with dependent children payments for the first 11 months of the 1987-89 biennium totaled \$19.4 million or \$1.1 million less than an estimate of \$20.5 million. Actual medical assistance expenditures for that period totaled \$130.1 million or \$1.3 million less than the appropriation of \$131.4 million. The amount of general fund expenditures for the period totaled \$47.8 million or \$5.2 million less than the appropriation of \$53.0 million. Total aid to families with dependent children expenditures for the biennium are estimated to be \$47.2 million. Total medical assistance payments for the biennium are now estimated to be \$324.8

state general fund. Please refer to the Budget Section report for a summary of the Office of Management and Budget's reports.

Agency Compliance With Legislative Intent

The Legislative Council staff prepared a report on state agency compliance with legislative intent based on a Legislative Council staff analysis including visitations with agency administrators regarding compliance with legislative intent included in the agencies' 1987-89 appropriations. The report also included significant changes to agency operations made since the beginning of the 1987-89 biennium as noted by the staff and information on additional federal funds received by state agencies. The committee was informed of the creation of a Juvenile Services Division in the Director of Institutions' office. The Emergency Commission approved the transfer of \$501,000 in federal funds from the Department of

Human Services for juvenile supervision and a "tracking system" for youth placed in the custody of the division.

TOUR GROUPS

The committee conducted budget tours of North Dakota State University, Mayville State University, and the University of North Dakota and participated in the Budget Section's western tour group in Minot at Minot State University, the state fairgrounds, the North Central Human Service Center, and the North Central Experiment Station. At these tours the committee heard of institutional needs for capital improvements and any problems institutions or other facilities may be encountering during the interim.

The tour group minutes are available in the Legislative Council office and will be provided in report form to the Appropriations Committees during the 1989 legislative session.

OTHER COMMITTEE ACTION

State Payments to Political Subdivisions

The committee considered the feasibility of receiving information on state payments to political subdivisions. The Office of Management and Budget reported that the state's accounting system can allocate general, federal, and special funds paid to counties, cities, school districts, and fire districts but it is limited in that expenditures for salaries and wages and travel are not able to be allocated by this system.

Recommendation

The committee encourages, to the extent possible

within the limits of available resources, the Office of Management and Budget's preparation of information summarizing and categorizing state payments by source of funds made to each political subdivision.

It is understood by the committee that although budget limitations do not allow the Office of Management and Budget to implement, at this time, the financial reporting system necessary to provide the information on payments to political subdivisions, the consideration of developing this system is encouraged when, because of other system changes, this type of reporting becomes feasible within the limits of moneys available for accounting system changes.

County Improvement Financing

The Association of Counties asked the committee to consider changes to North Dakota law to allow counties to combine for the purpose of issuing bonds to finance capital improvements. The association identified 14 counties that had been allocated federal highway funds for road improvement projects and needed to issue bonds for matching requirements. The association said changes in law would allow for the economical issuance of bonds to finance these improvements. The committee received permission from the Legislative Council to review this area.

Recommendation

The committee recommends Senate Bill No. 2034 amending North Dakota law to allow two or more counties or cities to issue bonds jointly for the purpose of acquiring equipment or constructing roads, bridges, and road and bridge improvements.

BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned four studies. House Concurrent Resolution No. 3080 directed a study of the role and function of the State Hospital in the provision of services to the mentally ill and chemically dependent. House Concurrent Resolution No. 3084 directed a study of the Department of Human Services' establishment of a prospective Medicaid case mix reimbursement system for long-term care facilities. House Concurrent Resolution No. 3008 directed a study of the reimbursement system for community-based care provided by the Department of Human Services for the developmentally disabled, chronically mentally ill, aged and infirm, and other persons. Senate Concurrent Resolution No. 4003 directed the monitoring of the Department of Human Services' implementation of changes to the human service delivery system.

Committee members were Representatives Tish Kelly (Chairman), Ronald A. Anderson, Jim Brokaw, Jack Dalrymple, Judy L. DeMers, Gereld F. Gerntholz, William G. Goetz, Orlin Hanson, Brynhild Haugland, Rod Larson, Bruce Laughlin, Dagne B. Olsen, Verdine D. Rice, W. C. Skjerven, Beth Smette, and Brent Winkelman and Senators Tim Mathern, Jerry Meyer, Wayne Stenehjem, and Russell T. Thane.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

STATE HOSPITAL STUDY

House Concurrent Resolution No. 3080 states that the State Hospital serves as the only public institution in North Dakota for the care and treatment of the mentally ill and chemically dependent; the resident population at the State Hospital has decreased in the past two decades as a result of deinstitutionalization efforts; and approximately 60 percent of all admissions and readmissions to the State Hospital are chemically dependency patients. Also, North Dakota has been developing community-based services for the mentally ill and chemically dependent which have impacted the resident population of the State Hospital and a state plan does not currently exist providing direction for the future role and function of the State Hospital and its place in the state mental health delivery system.

Background

The 1985-86 Legislative Council's Budget Committee on Human Services recommended Senate Bill No. 2036, passed by the 1987 Legislative Assembly, that directs the Department of Human Services to establish a continuum of services for the chronically mentally ill that may consist of an array of services provided by private mental health professionals, private agencies, county social service agencies, human service centers, community-based residential care and treatment facilities, and private and public inpatient psychiatric hospitals. The bill also provides that to the extent feasible access to the continuum must be through the human service centers.

The North Dakota Commission on Mental Health Services reviewed the present mental health service system and provided recommendations to the Governor in November 1986. The commission recommended the State Hospital be a residential treatment facility for specialized populations of the mentally ill, including the chemically dependent, and serve as one component of the mental health delivery system and that further deinstitutionalization of the State Hospital be carried out gradually and in an orderly manner with psychiatric patients at the hospital categorized according to the most appropriate placement needs. The report also stated that additional community services be developed corresponding to the identified placement needs of the patients at the hospital and whenever community services are adequately developed both patients and funds should be transferred to the community according to a plan developed by the Department of Human Services.

In addition, the commission recommended that adequate funding be provided, and the distribution of funding and personnel between community-based mental health services and the State Hospital be prioritized and administratively allocated. Also, appropriate state officials should seek changes in federal law to permit full payment for community mental health services under Titles XVIII and XIX of the Social Security Act.

State Hospital Information

The following schedule compares North Dakota State Hospital funding, staffing, and residents:

	<u>1983-85</u> <u>Biennium</u>	<u>1985-87</u> <u>Biennium</u>	<u>1987-89</u> <u>Biennium</u>
State Hospital funding:			
Total all funds	\$40,492,674	\$43,900,845	\$45,068,477
Less estimated income	<u>11,103,903</u>	<u>13,393,107</u>	<u>13,432,617</u>
Total general fund	<u>\$29,388,771</u>	<u>\$30,507,738</u>	<u>\$31,635,860</u>
State Hospital staff	805	809.5	776.1
State Hospital residents	526	451	436

The number of individuals admitted to the State Hospital for the year ending May 30, 1987, was 2,736, including 1,813 to the chemical dependency unit and 673 into the acute care unit.

Community Mental Health Services

North Dakota community mental health services are provided by the eight regional human service centers. The following is a comparison of North Dakota residential facilities available for the chronically mentally ill for the 1985-87 and 1987-89 bienniums:

	1985-87 <u>Biennium</u>	Projected 1987-89 <u>Biennium</u>
Transitional living facilities	58 beds	64 beds
Supportive apartments	50 beds	50 beds
Long-term care facilities	4	12 beds
Facilities for emotionally disturbed children and adolescents	0	20 beds

The following is a comparison of North Dakota mental health funding for the 1985-87 and 1987-89 bienniums:

	1985-87 <u>Biennium</u>	1987-89 <u>Biennium</u>
Mental health office	\$ 642,573	\$ 568,545
Human service centers ¹	6,294,657	6,264,798
1987-89 CMI	0	1,999,864 ²
community funding enhancement ²		
Children's diagnostic and treatment program ³	0	433,562 ³
Total-Community Services	\$ 6,937,230	\$ 9,266,769
Plus: State Hospital funding	43,900,845	45,068,477
Total state mental health funding	\$50,838,075	\$54,335,246
Less: Estimated income	15,429,934	16,528,373
General fund	\$35,408,141	\$37,806,873

¹ Includes funding for continuation of case management, aftercare, partial care, and transitional and supportive living arrangements.

² Includes funds for 29 FTE to staff the additional facilities.

³ Includes funds for six FTE and related expenses for a children's diagnostic and treatment program.

State Hospital Budget Tour

The Budget Committee on Human Services functioned as a budget tour group and visited the State Hospital in Jamestown to hear institutional needs for major improvements and any problems the institution may be encountering during the interim.

The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 1989 legislative session.

While at the State Hospital, the committee found that the chemical dependency units have deficiencies noted by the Joint Commission on Accreditation of Health Care Organizations including inadequate fire escapes, a lack of air conditioning, and other structural remodeling needs to meet fire and safety standards. The necessary renovations to the chemical dependency units would cost approximately \$4 million.

The committee learned that Medicare and the Joint Commission on Accreditation of Health Care Organizations have recognized advances made in psychiatric treatment and are demanding the upgrading of treatment and the incorporation of new methods into treatment plans of individuals at psychiatric hospitals. The standard of care required has changed from the humane treatment of patients to active psychiatric treatment. The committee found that the State Hospital needs to upgrade the quality and number of staff in spite of shortages of adult psychiatrists, child psychiatrists, and registered nurses in North Dakota.

The committee learned that one of the major problems affecting the hospital's chemical dependency unit is the "revolving door" situation—those patients who are admitted to the hospital on numerous occasions during a year or a lifetime for a limited time. Currently, patients are admitted for three days for evaluation and detoxification and then are often released at the patient's request. A lack of halfway houses for chemically dependent people contributes significantly to this problem.

Mental Health Consultants

The committee applied for and received technical assistance in the form of consultants from the National Conference of State Legislatures' Mental Health Project.

Ms. LaVonne Daniels, Consultant, Stratford, Connecticut, and Ms. Martha King, National Conference of State Legislatures, toured the State Hospital with the committee in September 1987. Ms. Daniels and Dr. Stephen Leff, Consultant, Cambridge, Massachusetts, met with mental health officials in Bismarck in December 1987 and provided an analysis of North Dakota's mental health system and recommendations to the committee at that time.

The committee learned North Dakota ranked 12th in total per capita state mental health expenditures for fiscal year 1985, 14th in State Hospital expenditures, and 12th in community services expenditures. Also during a two-year period there were approximately 5,500 patients admitted to the State Hospital compared to approximately 17,000 clients served at the human service centers.

Ms. Daniels identified the following strengths of North Dakota's mental health system:

1. The physical plant at the State Hospital is in good condition, except for deficiencies in the chemical dependency unit.
2. The staffing and programs at the State Hospital are adequate.
3. The State Hospital superintendent views the State Hospital as one part of a continuum of services.
4. The state has shown a willingness to accept responsibility for providing community mental health services.
5. There is a surprising evenness of community mental health program development across the state.
6. There is a good range of services available in all regions of the state.
7. The mental health services are collocated with other human services and administered under one director.

In addition, Ms. Daniels identified the following weaknesses:

1. There is a high rate of readmissions, especially in the chemical dependency area, to the State Hospital.
2. There are constraints on the treatment programs for the chemically dependent at the State Hospital, including legal limitations that make it difficult for the State Hospital to hold some patients after they are detoxified. In addition, community placements for the chemically dependent are difficult.
3. The length of stays at the State Hospital are longer than they should be, especially in the psycho-social unit, where the average stay is six months. Community programs with adequate housing could serve this population.
4. Many clients are admitted to the State Hospital without local screening to determine if placement is proper.
5. It appears a need exists to increase short-term medical stabilization emergency services in the regions.
6. Regarding case management, the coordination between the State Hospital and community services needs to be improved. She suggested a study of a sample of clients to review the services provided them by the community and the State Hospital.

The following is a summary of the consultant's recommendations:

1. Different plans need to be developed for the various types of clients at the State Hospital including forensic, adolescent, chemically dependent, and chronically mentally ill.
2. Separate plans should be developed for urban and for rural areas.
3. Plan development should include institutional input as well as discussions with family members and clients.
4. The plans should be client-focused rather than program-focused to ensure that services are developed to meet client needs.
5. A system should be developed to disburse funds

in a fair manner.

6. A pilot program strategy should be used to demonstrate integrated, comprehensive systems of care at the local level, including a review of the cost, effectiveness, and satisfaction of the programming.
7. A complete client assessment should be done of clients at the State Hospital and in the community.
8. An assessment of services currently existing to meet the needs of the clients must be completed to avoid duplication and to target the resources appropriately. However, as community services are improved, it can be expected that the demand for services will increase. Currently, approximately 3,000 chronically mentally ill are being served in North Dakota. Based on the experience of other states, it can be expected that there are an additional 3,000 to 6,000 mentally ill persons in communities who are currently not receiving service.
9. Plan development must address costs over at least a four-year period.
10. A determination should be made of what services are to be provided, where the services are to be available, and what is currently in place. The state may need to provide fiscal incentives to get the clients to the services, which may include prospective payments that provide community programs a fixed amount per client and allows them to keep any excess over actual cost. Reimbursement or capitation should be coupled with quality assurance mechanisms to ensure that clients are not underserved.
11. The plan for the State Hospital should address what will be done with existing staff, buildings, and land as the population is reduced at the State Hospital.
12. Legislators need to review the plan and be actively involved in monitoring the implementation of the plan.

The committee received comments from the Superintendent of the State Hospital on the report of the National Conference of State Legislatures' consultants. The committee learned that staffing and programs at the State Hospital are not adequate to provide the required higher level of professional care. The hospital's 1987 Medicare review identified deficiencies requiring the hospital to reduce the number of Medicare-certified beds. In addition, the State Hospital has significant problems recruiting an adequate number of physicians, psychiatrists, and nurses due in part to a national shortage and difficulties in recruiting to the Jamestown area.

The superintendent disagreed with the consultants' statement that a lack of coordination between staff of the State Hospital and the community programs has resulted in clients "falling through the cracks" and contributes to the hospital's high readmission rate. The high rate of readmissions to the State Hospital was attributed to a lack of available community services and to many patients' dual diagnosis of dependency and mental illness. The superintendent said a reorganization of the Department of Human Services, which places the

State Hospital and the community mental health program under a director of field services and program development, should assist in the coordination and integration of community and institutional mental health services. The committee was informed the patients at the State Hospital are the more difficult to treat and would also be expensive to treat in the community. The superintendent agreed the state must have a coordinated plan for mental health services for a period longer than the next biennium and community programs are able to provide some services on a more cost-effective basis than the State Hospital.

Mental Health Association Testimony

Representatives of the North Dakota Mental Health Association testified on the future role and function of the State Hospital and provided the following recommendations:

1. The State Hospital should be a residential treatment facility for specialized populations of the mentally ill.
2. Deinstitutionalization should be carried out gradually and in an orderly manner with community services adequately developed according to a Department of Human Services plan.
3. The Department of Human Services should develop alternative treatment services for the mentally ill between the ages of 18 and 65 in private or public facilities for which Title XIX reimbursement is available.
4. A gatekeeper program should be developed to limit admissions to the State Hospital to those who would be appropriately served there.
5. Community-based substance abuse services should be developed to provide services to the people in the community wherever possible.
6. Consideration should be given to renaming the Jamestown State Hospital to the Dakota Psychiatric and Addiction Resource Center.

Department of Human Services' Testimony

The directors of the regional human service centers testified on the needs in the regions for services for the mentally ill. That testimony is summarized as follows:

1. Additional inpatient hospital and psychiatric services are needed.
2. Regional intervention services are necessary to reduce inappropriate admissions to the State Hospital.
3. Additional funds are needed for emergency services.
4. Additional residential services need to be developed.

Representatives of the Department of Human Services provided committee members with copies of a report entitled "New Horizons for the Mentally Ill," a plan developed by the Mental Health Division for treatment of the mentally ill for the period July 1, 1987, to June 30, 1993. The report identifies the following goals and objectives of the Department of Human Services for the mental health system in North Dakota:

1. Increase the quality and responsiveness of mental health services to acutely mentally ill persons, with special emphasis on children and adolescents, the elderly, minorities, and victims and perpetrators of family violence.
2. Increase the quality and responsiveness of services to the chronically mentally ill.
3. Promote and encourage mental health prevention activities and promote mental health.
4. Ensure efficiency of operation, accountability, and quality assurance of mental health services.
5. Provide an adequate supply of appropriately trained mental health personnel in all regions of the state.

The committee learned the Department of Human Services established a regional intervention services program at the West Central Human Services Center in Bismarck during the 1987-89 biennium to provide services to individuals in the community and to address inappropriate admissions to the State Hospital. The regional intervention services program consists of an assessment of the individual's condition and treatment needs, and an identification of available community services to allow the individual to remain in the community whenever possible. For the program to be effective in reducing the number of inappropriate admissions to the State Hospital, additional community services need to be developed including residential facilities, crisis homes, day treatment programs, and emergency psychiatric and detoxification services. To allow the human service center to serve as the single portal of entry to mental health and addiction services in an effective manner, admissions currently made directly to the State Hospital should be made to the Department of Human Services to screen those individuals and serve them in community programs where possible.

The committee learned that the Department of Human Services plans to request funding for the regional intervention services program during the 1989-91 biennium at four regional human service centers in Bismarck, Fargo, Williston, and Jamestown. The total amount requested for this program for the 1989-91 biennium is \$3,045,733 from the general fund detailed as follows:

<u>Date</u>	<u>Center</u>	<u>Budget Request</u>
July 1, 1989	Bismarck	\$1,159,631
July 1, 1989	Fargo	1,008,992
January 1, 1990	Williston	476,688
January 1, 1991	Jamestown	<u>400,422</u>
Total		\$3,045,733

In addition, representatives of the Department of Human Services presented information on the proposed expansion of community-based addiction treatment services. The staff of the department recommends that additional community services be developed in each of the regions including

development of social detoxification centers, intensive day treatment programs, adequate residential care, and long-term care facilities. The estimated cost of the proposal for the 1989-91 biennium is \$1.5 to \$2 million from the general fund.

Emergency Mental Health Commitments

The committee surveyed the regional human service centers to determine their handling of emergency mental health detentions. North Dakota's law provides for the emergency detentions up to 72 hours prior to a preliminary court hearing of persons who are, based on reasonable cause, believed to be suffering from mental illness, alcoholism, or drug addiction. The law provides that detention is to be in a treatment facility and not in a jail unless no other secure facility is available. The survey indicated that the regional needs include secured detention treatment facilities, treatment centers for adolescents, and inpatient psychiatric and detoxification facilities.

As a result of testimony provided by the regional human service center directors, the committee asked the Attorney General's office to survey six jail facilities in North Dakota to determine the frequency with which jail facilities are holding people prior to their mental health commitment hearings. At the last meeting of the committee, representatives of the Attorney General's office reported the results of their survey. Facilities in Bottineau, Burleigh, McKenzie, Mercer, Mountrail, and Richland Counties were surveyed for the year ending June 30, 1988, and reported on the number of individuals held prior to their mental health commitment hearings, the length of detention, and the availability of alternative detention facilities. The report indicated that five of the six facilities held a total of 46 persons during the year, of which 20 were held for less than two hours, 12 were held from two to five hours, and 14 were held between six and 23 hours. The representatives of the Attorney General's office concluded that the survey indicates that many persons are being held in local jails prior to their mental health commitment hearings, that the length of detention for most of these persons is under five hours, and persons are held in jails in cities where treatment facilities are also located but the facilities may not be able or willing to accept patients in some situations.

Committee members expressed concerns regarding the holding of persons in jail facilities prior to their mental health commitment hearings. Representatives of the Attorney General's office indicated that they, in the process of training jail facility operators, do provide information on the handling of mentally ill individuals as provided for by state law. The superintendent of the State Hospital also objected to the holding of individuals in jail facilities who are waiting for a mental health commitment hearing as those individuals may be dangerous to themselves.

Protection and Advocacy Services

The committee received a report from the director of the Protection and Advocacy Project regarding the services available for the chronically mentally ill. The 1987 Legislative Assembly appropriated approximately \$250,000 for the 1987-89 biennium in

federal funds to protect the rights of the chronically mentally ill and to investigate abuse and neglect of these individuals. The director reported an advisory committee has been established and has identified the investigation of abuse and neglect of the mentally ill as the top priority of the program. Individuals eligible for the services provided by the program include those with a significant mental illness who are residents of a treatment facility or who have been recently discharged from a facility.

Indian Health Services

The committee found that approximately 20 percent of admissions to the adolescent psychiatric unit, 30 percent of admissions to the chemical dependency units, and 12 percent of the State Hospital's population are Indians. Indian Health Services does not currently pay for the cost of treatment of these individuals in North Dakota, although it does pay for treatment under certain circumstances in some states. The chairman of the Legislative Council, at the committee's request, sent correspondence to the director of Indian Health Services in December 1987, with copies to North Dakota's Congressional Delegation, urging the agency to make payments to the State Hospital for the cost of care and treatment provided Indian patients. At the committee's March 1988 meeting the committee was informed that Dr. Everett Rhodes, Assistant Director, Indian Health Services, in correspondence to Representative Dorgan, indicated that the director of the Aberdeen Area Indian Health Services has been asked to clarify with state officials the circumstances under which Indian Health Services will pay for the care of Indian patients at the hospital. Dr. Rhodes' letter indicates that the Indian Health Services will work with the State Hospital to implement a contract to provide inpatient mental health services for a specifically identified Indian population. As of the committee's last meeting an agreement had not been reached on the payment of the cost of care and treatment of Indian patients at the State Hospital.

Recommendations and Considerations

The committee recommends two resolutions; House Concurrent Resolution No. 3001 urges the Department of Human Services as it implements its plan for expansion of community mental health services, including regional intervention services, children and adolescents' services, and residential services, during the 1989-91 biennium, to present information, along with the State Hospital, to the Legislative Council on the implementation of additional community services and the effect those community services will have on the future services to be provided by the State Hospital. A committee of the Legislative Council is to continue reviewing the implementation of the plan and to develop recommendations regarding the future role of the State Hospital to be considered by the 1991 Legislative Assembly during the 1991-93 and future bienniums.

In addition, the committee recommends House Concurrent Resolution No. 3002 urging the Department of Human Services, in its development

of a continuum of services for the chronically mentally ill and chemically dependent, to conduct pilot projects during the 1989-91 interim, as recommended by the consultants, for new programs developed to be reviewed by the 1991 Legislative Assembly in its consideration of expanding the programs for the 1991-93 biennium. The resolution also urges the department to develop and use regional intervention services to control access to the mental health system.

The committee considered but does not recommend a bill draft that would have limited admissions to the State Hospital to those individuals who had previously failed in community chemical dependency programs.

To assist in reducing the number of inappropriate admissions to the State Hospital, the committee recommends House Bill No. 1038 that changes North Dakota law to provide for commitments of mentally ill and chemically dependent individuals to the Department of Human Services rather than the State Hospital. The bill provides that both voluntary and involuntary admissions for mentally ill and chemically dependent persons would be to the Department of Human Services which would allow for the provision of the necessary treatment in the least restrictive environment. The development of regional intervention services and this bill will assist in reducing inappropriate admissions to the State Hospital. In regions without the necessary community services the State Hospital will continue to provide the services required. Also, the bill identifies the State Hospital as one component of the mental health delivery system serving as a resource to community-based treatment programs as an institution for mental diseases serving specialized populations of the mentally ill.

The committee also considered but does not recommend a bill draft that would have changed the name of the State Hospital to the Dakota Mental Illness and Addiction Resource Center and resolutions urging the Department of Human Services to assist in development of a facility to provide temporary housing for transient persons and to limit remodeling of the chemical dependency buildings at the State Hospital.

CASE MIX NURSING CARE REIMBURSEMENT

House Concurrent Resolution No. 3084 directed a study of the Department of Human Services' establishment of a prospective case mix Medicaid reimbursement system for long-term care facilities which includes the setting of rates based on the condition and needs of the residents and as a condition of participation prohibits long-term care facilities from charging private pay residents rates that exceed those approved by the Department of Human Services for medical assistance recipients. The 1987 Legislative Assembly passed House Bill No. 1448, which requires the department to establish this system for rate years beginning on or after January 1, 1990. The resolution states the Department of Human Services will be conducting research and developing the system during the 1987-88 interim as

required by House Bill No. 1448, which will have a fiscal impact on the state of North Dakota for the 1989-91 and subsequent bienniums.

The resolution also states that statutory changes may be necessary, as a result of the department's research and system development and the committee's study, relating to House Bill No. 1448.

Department of Human Services' Case Mix Steering Committee

To provide for the establishment of a case mix nursing care reimbursement system pursuant to House Bill No. 1448, the Department of Human Services established a 15-member case mix steering committee consisting of state and human services personnel, persons knowledgeable in reimbursement systems, long-term care industry representatives, and consumer representatives. In addition, three task forces were formed consisting of administrators, nurses, social workers, dietitians, state personnel, auditors, and accountants with the following responsibilities:

1. Establish the case mix to be used in classifying residents into defined payment classifications and to establish a mechanism to assess quality of care and equitable payments.
2. Establish a methodology for identifying and integrating costs into a case mix index that will allow payment for resources utilized.
3. Establish peer groupings, incentives, cost controls, and limits for the case mix system.

The department hired Lewin and Associates, Washington, D.C., to assist in the development of the case mix reimbursement system. Representatives of the Department of Human Services, the case mix steering committee, and Lewin and Associates presented progress reports to the committee during the interim including the case mix system proposal at the committee's last meeting.

Case Mix System Proposal

The case mix reimbursement system as proposed has been established based on a time study of North Dakota long-term care facilities' residents, development of a unique North Dakota resident assessment form, an assessment of all North Dakota long-term care residents for the purpose of estimating costs and impact on reimbursement options, and the development of a classification and weighting system based on time study and assessment data.

The following is a summary of the case mix reimbursement system proposal:

1. Classification and weighting system.
 - a. Provides 16 resident classifications based on resident service needs.
 - b. Assigns and changes classifications based on a resident assessment completed by the facility when the resident enters a facility, 30 days after admission, and six months after an annual Department of Human Services' assessment of the facility's residents.
 - c. Assigns relative weights to each classification, based upon the time study of North Dakota facilities, to provide a

measure of the relative cost of care an individual requires.

- d. Sets rates annually, by the Department of Human Services, on January 1 (beginning on January 1, 1990) which will be unique to each facility for each of the 16 classifications.
2. Rate determination.
 - a. Limits rates for private patients (except private rooms) to the Medicaid rate for a similar classification of residents at the same facility.
 - b. Changes rates for individuals each January 1 and when the resident is reassessed, if the resident's classification changes.
 - c. Influences facility revenues throughout the year by the classification of newly admitted patients and by reclassifications of existing patients based on their service needs.
 - d. Does not distinguish between the type of facility, facility size or location, or whether a facility is hospital-based or freestanding in determining the rates.
 - e. Continues reimbursement for property costs as done currently and provides that all 16 classifications at each facility will include the same property rate.
 - f. Limits the indirect care reimbursement component of the facility's rates (administration, housekeeping, medical records, and plant operations) to the 75th percentile for all facilities' expenditures. Facilities above the 75th percentile will be limited to that indirect cost reimbursement level while facilities below the level will be reimbursed for their actual costs plus an efficiency incentive of 75 percent of the difference up to \$2.60 per resident per day.
 - g. Provides that the direct care reimbursement component will include two parts—case mix costs (nursing and therapy) and other direct care costs (laundry, activities, social work, and food). For each of these cost categories limits will be set at the 90th percentile of facilities' costs. Facilities above the 90th percentile will be reimbursed at that level while those below the limit will receive their actual costs. For the case mix costs an additional three percent will be added to assist facilities with legitimate but "unallowable" costs. All 16 rates at a facility will include the same component for other direct care costs but will have a unique case mix component.

The committee learned under the proposed system seven of 21 hospital-based facilities will have profits and average margins of 2.9 percent compared to the current system that provides eight of 21 facilities with profits and average margins of 6.6 percent. Also, under the proposed system 70 of 73 freestanding facilities

will have profits with average margins of 5.8 percent compared to the current system of 47 of 73 facilities with profits and average margins of 10.5 percent.

The committee found that the estimated cost to the Medicaid program of the equalization of Medicaid and private nursing care rates is approximately \$6.5 million per year, of which approximately 35 percent will be from the general fund. Private patients' costs will decrease by approximately \$7.1 million per year. The proposed cost of equalization includes \$1.4 million for the estimated cost of the first year of a four-year phase-in of the effects of the rate limitations on facility reimbursement. The funds would be paid to assist the 17 facilities which are projected to have costs in excess of patient payments as a result of the reimbursement limitations. The phase-in provides that 75 percent of a facility's costs in excess of the limits would be recovered the first year, 50 percent the second year, and 25 percent the third year.

The committee was informed the Department of Human Services' 1989-91 biennial budget request for the long-term care Medicaid program totals \$133.3 million from all funds, of which approximately 35 percent is from the state general fund, which is an increase of \$26.4 million from the 1987-89 appropriation. The \$26.4 million increase includes approximately \$9.1 million for rate equalization, \$5.7 million for increased costs relating to facilities being upgraded from intermediate to skilled nursing care facilities as a result of changes in federal law, and \$10.7 million for inflation and increased Medicaid utilization.

Conclusion

The committee does not recommend any changes to House Bill No. 1448 passed by the 1987 Legislative Assembly requiring nursing care rate equalization and the establishment of a case mix reimbursement system effective January 1, 1990.

The following is a summary of the concerns expressed to the committee regarding the implementation of the case mix reimbursement system and rate equalization:

1. House Bill No. 1448 should not be changed until the case mix system has been developed and become operational, its effectiveness reviewed, and problem areas, if any, have been properly identified.
2. Adequate time was not provided for the development of the nursing home resident assessment form, and the form as developed may have overlooked critical items regarding the prevention of illnesses to long-term care patients.
3. The property cost component of long-term care reimbursement was not addressed in the case mix system development, and it is a critical part of adequate reimbursement for the long-term care facilities.
4. An adequate appeals process should be developed to respond to appeals resulting from client assessments.
5. Due to budget constraints, the state of North Dakota may not be able to fund the costs of the rate equalization during the 1989-91 biennium.
6. Changes in federal law requiring that

intermediate care facilities be upgraded to meet the staffing and physical plant requirements of skilled nursing care facilities will require additional state funding and will be impacted by a nurse shortage.

7. Nursing home administrators may have not been adequately informed about the impact of the proposed case mix system on their facilities' operation, including the assessment requirements.
8. The proposed system was based on client assessments during January 1988, and costs will need to be adjusted to reflect actual client conditions after the case mix system has been established.
9. The requirements on staff time and facility resources relating to the completion of the assessment forms, as well as other requirements including preadmission screening required by the 1987 Legislative Assembly, have not been adequately addressed in the reimbursement system.

At the committee's last meeting the Department of Human Services informed the committee it plans to introduce a bill that will provide a mechanism for appealing nursing home resident payment classifications. In addition, the Department of Human Services suggested that the Legislative Council study the property cost component of the case mix reimbursement system during the 1989-90 interim. The property cost component of the case mix reimbursement system is being reimbursed for as provided for under the existing system. Due to the complexities involved in reviewing the property cost

developmentally disabled, chronically mentally ill, aged and infirm, and other persons including the process of reimbursement for providers of such services.

The resolution cites as reasons for the study the confusion existing regarding reimbursement for providers of services to developmentally disabled persons and the variation in administration of community-based care as purchased by the state. The resolution states adverse relationships are developing between providers and the department as a result of changes in reimbursement rules, auditing procedures, and perceived inconsistencies in the administration of programs.

Background

The committee reviewed the Department of Human Services' reimbursement systems including the family foster care, foster care group homes and residential care facilities, developmental disabilities, vocational development, vocational evaluation, supported employment program—vocational rehabilitation, and medical assistance for skilled and intermediate nursing care programs. The committee received information on the average number of clients served per month, the current reimbursement process, the rate establishment mechanism, rate audit mechanisms, the rationale for the reimbursement method, the authority for rate methodology, state and federal laws affecting the rate methodology, the types of providers, and the 1987-89 budget for the programs.

The following is a schedule of the 1987-89 appropriation for each program reviewed by the committee:

Program	1987-89 Appropriation		
	Total	General Fund	Other Funds
1. Family foster care	\$ 3,306,897	\$ 1,686,283	\$ 11,620,614
2. Foster care group homes	5,690,794	3,316,471	2,374,323
3. Developmental disabilities	55,297,990	26,798,332	28,499,658
4. Vocational development	1,500,000		1,500,000
5. Vocational evaluation	378,000		378,000
6. Supported employment	1,957,660	912,000	1,045,660
7. Medical assistance-nursing care	<u>106,935,274</u>	<u>32,850,341</u>	<u>74,084,933</u>
Total	\$175,066,615	\$65,563,427	\$109,503,188

component the department did not address that in the development of the case mix reimbursement system. The committee does not make a recommendation regarding the department's bill draft or proposed resolution.

REIMBURSEMENT SYSTEM FOR COMMUNITY-BASED CARE STUDY

House Concurrent Resolution No. 3008 directed a study of the system of community-based care provided by the Department of Human Services for the

Testimony

The Department of Human Services reported that reimbursement systems are developed based on the following factors:

1. Applicable federal laws and regulations.
2. The volume involved and the numbers of clients to be served.
3. The number of providers available and the uniqueness of the service to be delivered.
4. Whether the service to be purchased represents a new or an established service.

5. Whether the entity is a public or private entity.
6. The degree of accountability expected by the Legislative Assembly, the Governor, and the department.
7. Whether the service is individualized or of a homogeneous nature.
8. The ease and cost of administering the program, including the cost incurred in connection with assured accountability.
9. The maturity and sophistication of providers and prior experience in service provision.

A representative of the Association for Retarded Citizens testified on the Department of Human Services' developmental disabilities reimbursement system. The association is concerned that there is no uniformity within the reimbursement system and that the current system may encourage clients to be retained in a more restrictive environment resulting in more expenses for the state. The association objects to the Department of Human Services' requirement for a 95 percent occupancy in intermediate care facilities for the developmentally disabled, inadequate reimbursement for providers resulting in low salaries and high turnover at the facilities, and delays in reimbursement by the department.

A representative of the Association for Retarded Citizens suggested the following changes:

1. The Department of Human Services conduct more frequent audits and base the reimbursement system on client needs.
2. The department involve more outside representatives in the reimbursement process including the Association for Retarded Citizens and community providers.
3. The department minimize inconsistencies in reimbursement among the providers.
4. A consultant be hired to review the budgeting, auditing, and management of the reimbursement system for developmentally disabled providers.

Representatives of the North Dakota Association of Community Facilities, an organization of development disability providers, testified on the department's reimbursement systems. The representatives asked for an independent review of the reimbursement process to assist in settling differences between the providers and the Department of Human Services.

Recommendation

The committee recommends House Concurrent Resolution No. 3003 directing the Legislative Council to study the budgeting, auditing, and management of the reimbursement system for the Department of Human Services' developmental disabilities program during the 1989-90 interim. In addition, the resolution states that the Appropriations Committees of the 1989 Legislative Assembly should consider the budget concerns of the developmental disabilities providers, including differentials in rates between private and state-operated facilities, facility staff salary differences, and the department's reimbursement penalty for facilities with less than 95 percent occupancy, in the development of the Department of Human Services' 1989-91 appropriation.

The committee, as a result of the complexity of the reimbursement issue and the amount of time devoted by the committee to its other responsibilities, was not able to conduct a detailed review of the budgeting, auditing, and management of the reimbursement system for the developmental disabilities program during the interim. The committee has identified several concerns the providers have, which are addressed in the recommended resolution.

HUMAN SERVICE DELIVERY SYSTEM

Senate Concurrent Resolution No. 4003 urges the Department of Human Services to implement changes to the human service delivery system in North Dakota and requires the department to report the progress made in implementing those changes to an interim committee of the Legislative Council. The Budget Committee on Human Services was assigned that responsibility.

1985-86 Study

The Legislative Council's 1985-86 Budget Committee on Human Services studied the services provided by the Department of Human Services; the relationship between the Department of Human Services, the county social service boards, and mental health services; and the services provided by the regional human service centers and the responsiveness of the centers to the court system and other referral agencies.

The 1985-86 Budget Committee on Human Services hired a consultant to survey employees of the Department of Human Services, regional human service centers, and county social service boards; to survey clients and referral sources; and to analyze the survey results and make recommendations regarding the human service delivery system. The consultants' report stated the opinion of the people surveyed lacked a general consensus regarding the effectiveness of the human service delivery system but did identify a tremendous amount of unmet human service needs.

The report detailed the strengths and weaknesses of the current human service delivery system in North Dakota as follows:

Strengths	Weaknesses
Organizational structure	Lack of coordination
Physical facilities	Administrative structure
Working conditions	Ineffective leadership
Comprehensive services	Political climate/control
Lack of duplication	Lack of goals and priorities
Dedicated staff	Closed decisionmaking
Competent staff	Limited planning
Quality services	Poor needs assessment
Supportive community service philosophy	Lack of training
	Lack of evaluation of programs
	Underutilized programs
	High caseloads
	Lack of outreach services
	Lack of public awareness

That committee conducted tours and received testimony in each city containing a regional human service center and recommended 1987 Senate Concurrent Resolution No. 4003 which urged the Department of Human Services to make changes in the delivery of human services in North Dakota.

Status Report

The Department of Human Services made progress reports to the committee regarding the status of implementing the proposed recommendations contained in Senate Concurrent Resolution No. 4003. Also, representatives of the department reported on a departmental reorganization intended to:

1. Enhance integrated service delivery.
2. Rationalize departmental structure so it is more clearly understandable.
3. Reduce the executive director's span of supervisory responsibility.
4. Strengthen communications with counties and providers.

At the committee's March 1988 meeting the executive director of the Department of Human Services provided the committee with information on the reorganization of the administration of the Department of Human Services. Under the reorganization plan the directors of five offices would report directly to the executive director. Those offices are the Office of Vocational Rehabilitation, Office of Field Services and Program Development, Office of Economic Assistance, Office of Managerial Support, and Office of Quality Assurance. The Department of Human Services plans to complete the implementation of the proposed reorganization when the Grafton State School is transferred to the department on July 1, 1989.

The executive director of the Department of Human Services reported the department has implemented or is in the process of implementing the

recommendations contained in Senate Concurrent Resolution No. 4003, except for the recommendations requiring a greater emphasis on evaluated research and development of an information system to assist staff in planning, needs assessment, and program evaluation and the development of career development plans for all staff and related staff development opportunities. The executive director reported that available resources of the department are not sufficient to implement fully these recommendations at this time, and will require additional funding during the 1989-91 biennium to be implemented.

OTHER COMMITTEE CONSIDERATION

Representatives of county social services and regional child support enforcement units testified before the committee objecting to the Department of Human Services' proposal to change the allocation of federal child support enforcement incentives. During the 1985-87 biennium, 100 percent of the federal incentives totaling \$595,162 were provided to county social services. For the 1987-89 biennium the Department of Human Services planned to allocate 50 percent of the federal incentives to county social services and 50 percent to fund the cost of administering the program in the Department of Human Services. Based on the objections of the county social services the department delayed implementation of the change in the allocation of the child support enforcement incentives funds to the 1989-91 biennium.

BUDGET COMMITTEE ON INSTITUTIONAL SERVICES

The Budget Committee on Institutional Services was assigned three studies. House Concurrent Resolution Nos. 3073 and 3074 directed an examination of the educational and rehabilitative services available to the state's hearing and visually impaired. Senate Concurrent Resolution No. 4021 directed a study of the North Dakota emergency medical services system. The chairman of the Legislative Council designated the committee as the entity to receive a report on studies conducted regarding residential child treatment facilities as directed by House Concurrent Resolution No. 3057. The chairman of the Legislative Council also designated the committee to conduct the interim budget tours of the North Dakota School for the Deaf, North Dakota School for the Blind, University of North Dakota-Lake Region, Camp Grafton, Lake Region Human Service Center, and Grafton State School. The tour group minutes are available in the Legislative Council office and will be submitted to the Appropriations Committees during the 1989 legislative session.

Committee members were Representatives Olaf Opedahl (Chairman), Jayson Graba, Brynhild Haugland, Harley Kingsbury, Gary Knell, Rod Larson, Charles F. Mertens, Carolyn C. Nelson, Dagne B. Olsen, Bob O'Shea, and Cathy Rydell and Senators Jerome Kelsh, Evan E. Lips, Bryce Streibel, Malcolm S. Tweten, and Jim Yockim.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

SERVICES AVAILABLE TO THE STATE'S DEAF AND BLIND

Background

House Concurrent Resolution Nos. 3073 and 3074 directed a study of the services available to the deaf and hearing impaired and the blind and visually impaired respectively, including an examination of the role of the North Dakota School for the Deaf and the North Dakota School for the Blind in the provision of educational and rehabilitative services to determine if there are alternative methods of educating and rehabilitating the deaf and blind in communities throughout the state.

Article IX, Section 12, of the Constitution of North Dakota and North Dakota Century Code Section 25-07-01 provide for a State School for the Deaf in Devils Lake. The North Dakota School for the Deaf began educating deaf children on September 10, 1890. According to North Dakota Century Code Section 25-07-04, the school is an educational institution for the education of children whose hearing is impaired to a degree that they are unable to progress satisfactorily in public schools. The superintendent has established a requirement that a child must be between the ages of zero and 21 to attend the School for the Deaf. The child must be a resident of the state of North Dakota to be eligible for enrollment in the School for the Deaf at the expense of the state. The

School for the Deaf must provide for the transportation of the student once admitted to the school. The School for the Deaf is accredited by the Department of Public Instruction. The enrollment at the School for the Deaf, the FTE positions and the funds appropriated to the school for the past four bienniums, and the FTE positions and the funds requested in the school's 1989-91 budget request are:

<u>Biennium</u>	Average		<u>General Fund Appropriation</u>	<u>Total Appropriation</u>
	<u>Number of Students</u>	<u>Staff Positions</u>		
1981-83	80	59.6	\$2,984,995	\$3,510,727
1983-85	80	59.6	2,917,676	3,425,664
1985-87	68	55.6	3,579,185	4,131,595
1987-89	56	52.3	3,468,913	3,882,253
1989-91	60	52.3	3,722,363	4,173,598

The School for the Deaf had 44 students as of September 1988 and was assisting 18 students through its parent/infant program.

The School for the Blind (Article IX, Section 13, of the Constitution of North Dakota) was established in 1908. North Dakota Century Code Section 25-06-01 provides that the School for the Blind shall be maintained at Grand Forks. North Dakota Century Code Section 25-06-02 provides that the school "... shall receive and educate blind and partially blind children who are residents of this state and who, because of this handicap, are not able to receive their education in the public schools of this state." According to its statement of philosophy, the North Dakota School for the Blind is also a residential school for multihandicapped visually impaired school age children. North Dakota Century Code Section 25-06-04 states that the School for the Blind must provide for the transportation of its students. The School for the Blind is accredited by the Department of Public Instruction. The enrollment at the School for the Blind, the FTE positions and the funds appropriated to the school for the past four bienniums, and the FTE positions and the funds requested in the school's 1989-91 budget request are

<u>Biennium</u>	Average		<u>General Fund Appropriation</u>	<u>Total Appropriation</u>
	<u>Number of Students</u>	<u>Staff Positions</u>		
1981-83	45	35.93	\$1,884,852	\$2,228,493
1983-85	40	35.93	1,539,683	1,920,756
1985-87	47	43.93	2,255,492	2,670,381
1987-89	32	41.93	2,169,457	2,527,885
1989-91	34	43.18	2,718,603	3,138,913

There were 32 students, including four deaf-blind adults, at the School for the Blind as of September 1988. The School for the Blind also serves 58 students through its parent/infant program.

The Department of Public Instruction indicated that approximately 103 hearing impaired and 43 visually impaired students are served in the public schools.

State special education payments for the hearing and visually impaired students in the local school districts for the 1986-87 school year, not including foundation aid payments, were \$158,844 and total special education expenditures for the hearing and visually impaired including federal payments (\$212,702) and local and foundation aid payments (\$427,444) were \$798,990. If a hearing or visually impaired student is sent to the School for the Deaf or the School for the Blind, it costs the local school district nothing (state funded through the general fund); however, if the local school educates the hearing or visually impaired student, the costs above what it receives in foundation aid and special education payments must be absorbed by the local school district.

Department of Public Instruction Report

The committee asked the Department of Public Instruction what role the School for the Deaf and the School for the Blind have in its plan for providing special education services to the state's hearing and visually impaired students.

The department's plan stresses educating children in the least restrictive environment (as required by the federal Education for Handicapped Act of 1975) and provides for both academic and social mainstreaming by coordinating an individual education program for each student, training special education teachers to help classroom teachers, and offering only short-term or special topic training at the residential schools for all but the most severely impaired. The department's plan requires:

1. An increase in special education funding to provide the necessary staff and equipment in each school district.
2. Assignment of school districts into regions or service areas if, because of economic necessity, education service is regionalized or made mobile.
3. Reduction in enrollment at both the School for the Deaf and the School for the Blind as those students with other than multiple or severe impairments are educated at the local level. Also some students with hearing and visual impairments currently placed out of state may be placed at the schools.
4. Development of the School for the Deaf and the School for the Blind as the state's resource and reference centers for the hearing and visually impaired.
5. Establishment of short-term and special topic training at the School for the Deaf and the School for the Blind for students educated in the local school districts who need intensive training in a specific area.

Findings

The committee toured the School for the Deaf (September 1987) and the School for the Blind (April 1988) and received testimony from the administration, faculty, staff, parents, and students of the institutions. The committee found that the North Dakota School for the Deaf and the North Dakota School for the Blind are, in most instances, providing services to the state's multiple or most severely impaired students. The schools also provide educational and

rehabilitative services to those students who do not have access to similar services at the local level. The committee also found that the schools are both already functioning in the capacity as the state's resource and reference centers by providing parent/infant programs, early screening programs, support programs, and other outreach activities. The schools have also established special topic training courses (summer camp programs) and serve some students on a short-term basis (usually one year) until they are prepared to attend their local school.

The administration, faculty, and staff at the institutions made the following points:

- Hearing and visually impaired students who are educated in the local schools often become isolated from other children because they are different.
- Hearing and visually impaired students who are educated in the local schools are not always able to develop socialization, health, independent living, and language skills, or participate in athletic events.
- Hearing and visually impaired students who are educated in the local school districts sometimes do not keep up with their peers because the local district cannot afford to hire special education teachers specifically trained in these areas.
- Students who receive their education in the local school districts often do not have access to the services of speech, physical, and occupational therapists within the school system.
- The School for the Deaf is participating in a mainstream and reverse mainstream program with the Devils Lake middle school children. The School for the Blind mainstreams some of its students in the Grand Forks school system. The School for the Blind also participates in an integrated preschool program with the University of North Dakota.
- Because the School for the Blind has begun to accept visually impaired children with multiple impairments who do not qualify for admittance at the Grafton State School, the school must become accredited by the Accreditation Council of the Developmentally Disabled (ACDD) to meet the requirements of the ARC lawsuit. The School for the Blind indicated that it will cost approximately \$45,000 this year and \$130,000 next biennium to meet ACDD standards.

The parents of students and the students attending the School for the Deaf and the School for the Blind expressed the following concerns:

- Services equal to those offered at the School for the Deaf and the School for the Blind are not always offered in the local community. This is especially true for the multihandicapped children at the School for the Blind who need a variety of consolidated services.
- Mainstreaming is not good for all children, as evidenced by the fact that some of the children at the School for the Deaf and the School for the Blind were originally placed in the special education programs at the local school district and did not profit from the experience; therefore,

there should be an alternative when mainstreaming does not work.

Representatives of the special education and integrated preschool programs at the University of North Dakota indicated that the university uses the School for the Blind as a training facility for 70 to 75 percent of their students. Area high school health occupations students also come to the School for the Blind for their practical experience in the health occupation field. It was also noted that the School for the Blind and the Northeast Human Service Center have many clients in common, making the School for the Blind a vital resource for the developmentally disabled clients who are visually impaired.

The committee also toured the hearing and visually impaired unit of the Bismarck Public School District and heard testimony from the administration, faculty, and students in those programs. The hearing impaired program assists approximately 25 students, most of whom are able to hear within the speech level with auditory trainers. There are currently two blind students, 21 visually impaired students from within the district, and eight visually impaired students from outside the district served by the school district's vision program. The committee learned that a majority of the public school systems teach under the auditory-oral (no sign language) method which emphasizes speech and speech reading, and that the School for the Deaf uses a total communication approach that utilizes all types of communication including sign language, speech, speech reading, writing, mime, and gestures.

A representative of the Souris Valley Special Education Unit, Minot, which serves 35 school districts in six counties, informed the committee that there are 26 full-time and 15 part-time hearing impaired students and seven full-time visually impaired students enrolled at the unit. The major difference between educating children at the unit or at one of the residential schools is that the children are boarded in homes and are educated with regular children. The transportation costs of these children are not paid by the state. To facilitate more cooperation between the school districts, it was recommended that state laws on special education be changed to require that school districts and counties coordinate their special education services.

Recommendations

Based on its study, the committee recommends the following policies regarding the future role for the School for the Deaf and the School for the Blind in providing educational and rehabilitative services to the state's hearing and visually impaired:

1. Educate students with multiple or severe impairments at the School for the Deaf and the School for the Blind if the services are not available locally.
2. Continue to educate students with other than multiple or severe impairments at the School for the Deaf and the School for the Blind if the services are not available locally.
3. Enhance state resource and reference centers for the hearing and visually impaired at the School for the Deaf and the School for the Blind to assist

local school districts and the state's hearing and visually impaired adults.

4. Develop short-term and special topic courses at the School for the Deaf and the School for the Blind for the students educated in the local school districts who need intensive training in a specific area.
5. Expand services to provide for the educational needs of some hearing and visually impaired students currently educated out of state.
6. Encourage local school districts to establish services for the hearing and visually impaired.

With the exception of the following, the School for the Deaf and the School for the Blind indicated that they are already providing the services outlined above and could continue to do so with only inflationary increases in their current programs:

The School for the Deaf indicated that it would cost approximately \$219,800 a year in salaries and wages alone to serve nine students with multiple handicaps whose primary handicapping condition is deafness and an additional \$271,800 a year in salaries and wages alone to serve nine students with multiple handicaps whose primary handicapping condition is not deafness if all services are to be provided at the School for the Deaf.

EMERGENCY MEDICAL SERVICES STUDY

Background

Senate Concurrent Resolution No. 4021 directed a study of the problems faced by and the funding of the North Dakota emergency medical services system, in particular volunteer ambulance services and the Division of Emergency Health Services of the State Department of Health and Consolidated Laboratories.

Emergency medical services include ground ambulance services, rescue squads, quick response units, air ambulance services, and the Division of Emergency Health Services of the Department of Health and Consolidated Laboratories. Of the 133 ground ambulance services in North Dakota, 118 are staffed by full-time volunteers. Recruiting and retaining qualified volunteer personnel has become difficult because of the lack of funding, liability issues, and sparsely populated rural areas. The Division of Emergency Health Services used to provide training, testing, and materials to the ambulance services free of charge when federal funds were not so restricted. These costs, in addition to equipment replacement costs, are now borne by the service or the volunteers.

Findings

The committee received testimony from representatives of the Division of Emergency Health Services; the Emergency Medical Services Task Force; the medical profession; and Bismarck-Mandan, Grand Forks, and Grafton area ambulance services and individuals whose lives have been saved because of emergency medical services, who all indicated that the morale of the ambulance service volunteers is low because the individuals who volunteer to provide emergency medical services in a particular area are also often required to pay for their training and related travel expenses and to raise funds to purchase

or replace equipment. The Emergency Medical Services Task Force was established in April 1986 through a resolution passed by the Association of Emergency Medical Technicians and Emergency Care Technicians to work with the Legislative Assembly to establish a more secure funding source for emergency medical services because of the decline in federal (highway safety) funds.

Representatives of the Division of Emergency Health Services and the Emergency Medical Services Task Force indicated:

- Volunteer emergency medical services persons contribute approximately \$13 million annually to the state in volunteer time, services, and training.
- In 1986, 24.4 percent of all emergency patients transported to a hospital by ambulance had an address different from that of the ambulance service and 36.2 percent of all patients involved in an automobile crash had an address different from that of the ambulance service.

Ambulance service representatives said there is a danger that some services may go out of business because:

- Volunteers, especially the younger ones, do not have the money to pay for the training that is required of them (\$150 to \$200 per year) and are therefore unwilling to volunteer.
- In some communities the five-mill levy to fund ambulance services does not provide sufficient funding. Also, many services are hesitant to establish a mill levy because they believe that the residents would then be hesitant to contribute to other fundraising activities (memorials, donations, bake sales, etc.).

Representatives of the medical profession expressed the following concerns:

- There will be more fatalities if some of the volunteer ambulance services go out of business because the response time to the scene of an accident will increase.
- Due to being required to pay for most of their own training costs, many volunteers are limiting their training and thus, the level of emergency medical care has decreased. In 1980, 79 percent of the providers had received training as emergency medical technicians (EMT), emergency care technicians (ECT), or in advanced first aid, as compared to only 71 percent in 1986, while the number of providers who were trained in only cardiopulmonary resuscitation (CPR) or who were drivers only increased from 16 percent to 26 percent. Currently, six percent of the ambulance services in the state operate with no emergency medical technicians.
- It is unfair to place the fundraising and accounting burden on the person who volunteers to provide emergency medical care.

A Division of Emergency Health Services' survey of the state's ambulance services revealed that of the 84 (63 percent) reporting, 80 have an average annual income of \$36,462 and an average annual expense of \$37,010 for an average yearly net loss of \$548. Also only 24 of those responding allow for vehicle

depreciation and of those 24, only seven claim an amount of \$5,000 per year (the recommended amount) or more.

In an effort to assist the volunteer ambulance services, the Emergency Medical Services Task Force developed the following goals for enhancing emergency medical services (EMS) delivery and requested that they be funded by the state:

	Biennial Estimate
Maintain EMS standards at their current level (fund the Division of Emergency Health Services)	\$ 458,700
Provide for a training program enhancement	736,014
Improve ambulance response times	188,000
Provide for an ambulance replacement program	1,280,000
Provide for defibrillation equipment	37,800
Provide advance trauma life support and advanced cardiac life support physician training (includes one-time equipment expenditure of \$30,000)	165,200
Develop a trauma system plan	44,328
Provide for the upgrading of ambulance attendants to emergency medical technicians (no cost if the first two recommendations are funded)	0
Total	\$2,910,042

Because a majority of the state's volunteer ambulance services are operating at a net loss, the committee considered, in addition to a general fund appropriation, the following sources to provide state funding for emergency medical services training and equipment:

Funding Source	Amount of Annual Increase	Biennial Revenue Estimate
Insurance premium tax surcharge		
Life insurance	1%	\$2,182,612
Accident and health insurance	1%	4,266,832
Property and casualty insurance	1%	2,977,368
Telephone access line surcharge		
All telephone lines	\$3	\$1,881,102
All nongovernmental lines	\$3	1,776,540
Motor vehicle registration surcharge¹	\$1	\$1,375,000
Motor vehicle operator license surcharge¹		
Renewal licenses	\$1	\$ 220,000
Duplicate licenses	\$1	50,000
New licenses	\$1	42,000
Moving traffic violation surcharge²		
Fiscal year 1986 - 78,422 ²	\$1	\$ 158,000
Fiscal year 1987 - 79,916 ²		

- 1 The revenue from these fees is dedicated (Article X, Section 11, of the Constitution of North Dakota) “. . . solely for construction, reconstruction, repair and maintenance of public highways . . .” A constitutional amendment may be necessary in order to use this revenue source to fund state emergency medical services.
- 2 This information, received from the Highway Department, is based on convictions only.

The committee asked for a memorandum on the use of a surcharge on moving traffic violations to fund emergency medical services. Moving traffic violations do not include speeding violations and criminal offenses, such as driving under the influence (DUI). The committee found that while Article IX, Section 2, of the Constitution of North Dakota provides in part that the “net proceeds of all fines for violations of state laws and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the common schools of the state . . .” Case law and analysis appear to indicate that a surcharge added to statutory fees or bond forfeitures for moving traffic violations would not be considered a fine and therefore would not be governed by Section 2 of Article IX.

The committee also found that although North Dakota Century Code Section 23-27-04.1 provides that no officer, employee, or agent of any ambulance service licensed to operate in the state who is a volunteer, who in good faith renders emergency care or services, is liable to the recipient of the care or services for any civil damages resulting from any acts or omissions by the person in rendering the care or services provided the person is properly trained according to law, it protects only those volunteers who are unpaid volunteers. Thus, the law in its current form does not protect those volunteers who are reimbursed for training and related travel or who receive reasonable benefits or a nominal fee for their services. The committee considered two bill drafts to amend this law, one defining a volunteer as an individual who receives compensation of less than \$500 per year to perform the services for which the individual volunteered and one defining a volunteer as an individual who is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered.

At one of its meetings, the committee had a guided tour of an emergency medical services vehicle and learned that a state-of-the-art ambulance vehicle is valued at approximately \$33,000 with no equipment. Basic life support equipment costs approximately \$9,415, making a basic life support vehicle worth \$42,415 and advanced life support equipment costs approximately \$28,635, making an advanced life support vehicle worth \$61,635.

Recommendations

The committee recommends House Bill No. 1039 amending North Dakota Century Code Section 23-27-04.1 to provide a definition of a volunteer as “an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination thereof to perform the services for which the individual volunteered.”

The committee also recommends House Bill No. 1040 imposing a 25-cent-per-month excise tax on telephone access lines to provide financial assistance to licensed ambulance services during the 1989-91 biennium for training and to provide funds for equipment on a matching basis. An ambulance service could receive up to a 100 percent match, based on the number of ambulance runs it made during the preceding calendar year for the purpose of rendering medical care and the amount of matching funds, from all local sources, certified as available for identified equipment acquisitions. The bill requires that the telephone companies collect the tax for their subscribers and, net of actual administrative costs, submit the moneys to the Tax Commissioner for deposit into the emergency medical services fund to be used within the limits of legislative appropriation to support emergency medical services. The bill contains a \$3 million appropriation from the emergency medical services fund for the following:

Salaries and wages	\$ 236,000*
Operating expenses	189,000*
Data processing	25,000*
Equipment	10,000*
Grants—equipment	1,804,000
Grants—training	736,000
Total	\$3,000,000

* These amounts, totaling \$460,000, are for the Division of Emergency Health Services. The salary and wages line item includes funding for six FTE positions, two more than the 1987-89 authorized level of four FTE positions. The two new positions, which are needed to administer the training and equipment grants, are a training program coordinator and a clerical position. The division's 1989-91 budget request of \$442,340, filed with the Office of Management and Budget, contains \$228,000 in pass-through funds from the Department of Transportation.

At the time the committee first considered the 25-cent-per-month excise tax on all telephone access lines, it was estimated that revenue of \$2.4 million would be generated during the 1989-91 biennium. These estimates have been revised to \$1,881,102, based on 313,517 telephone access lines as reported in the North Dakota Telephone Cooperative's survey, September 1988, of all telephone companies in North Dakota. If the 17,427 (of the 313,517) governmental lines are to be exempted from the tax, the above amount would be reduced to \$1,776,540. An excise tax of approximately 40 cents per month on all 313,517 access lines would be needed to generate \$3 million, or an excise tax of approximately 43 cents per month would be necessary should the government access lines be exempt.

OUT-OF-STATE PLACEMENTS

Background

The chairman of the Legislative Council designated the committee as the entity to receive a report from the Department of Public Instruction and the Department of Human Services on studies conducted by them of the need for and the development of residential child treatment facilities for foster care or

educational placements as directed by House Concurrent Resolution No. 3057.

There were 61 handicapped North Dakota students attending out-of-state institutions as of June 1987, 17 of which were at the Archdeacon Gilfillan Center at Bemidji, Minnesota, and nine of which were at the Bar-None Residential Treatment Center in Anoka, Minnesota. The state of North Dakota spends approximately \$2 million each year transporting out-of-state handicapped students. Most of the students who are educated out of state receive special services, not available in the state, designed specifically for the emotionally disturbed, learning disabled, behaviorally disturbed, abused, autistic, chemical dependent, orthopedically/neurologically handicapped, speech impaired, socially maladjusted, brain damaged, or developmentally disabled student.

Agency Reports

The Department of Public Instruction and the Department of Human Services addressed the issues in the resolution by conducting a needs study, reviewing rules for licensure of group and residential child care facilities, and examining reimbursement for facilities.

The departments contracted with the Child Welfare League of America, Inc., to study the residential facilities utilized by the state of North Dakota, assessing the individual needs of the children placed outside the state and the appropriateness of the particular placements. Seventeen agencies (10 in North Dakota and seven in Minnesota) were visited by members of the project steering committee.

The preliminary findings of the Child Welfare League of America indicated:

1. Out-of-state placements are appropriate because facilities that can treat these particular children do not exist in North Dakota.

2. Agencies receiving the highest ratings are providing residential care and treatment facilities to more disturbed children and youth; thus, it appears as though agencies are recognizing their limitations in meeting the needs of these children.
3. Education is the most common element linking the higher ranked facilities out of state.
4. North Dakota needs to strengthen its residential programs to be able to provide suitable programs for the children currently placed out of state.
5. Increased participation of the placing agency in discharge planning and implementation is encouraged.
6. The Department of Public Instruction and the Department of Human Services should continue in their cooperative efforts to develop services to meet the needs of youth needing out-of-home placements.

Two residential services for the emotionally disturbed, ages six to 18, will soon be opening in North Dakota. The Bismarck site plans to have a teacher at the facility, and the Grand Forks site plans to have educational services available locally.

Conclusion

Although the committee makes no specific recommendation regarding child care facilities, it does, in its policy statement regarding the state's role for the North Dakota School for the Deaf and the North Dakota School for the Blind, recommend that services at the institutions be expanded to provide for the educational needs of some hearing and visually impaired students currently educated out of state. As of July 19, 1988, there were no hearing or vision impaired students whose primary handicap was a hearing or vision impairment being educated out of state.

BUSINESS COMMITTEE

The Business Committee was assigned three studies. House Concurrent Resolution No. 3021 directed a study of charitable solicitation statutes. House Concurrent Resolution No. 3099 directed a study of real estate licensure provisions to determine the feasibility and desirability of subjecting property managers to or excepting them from real estate licensure provisions. Senate Concurrent Resolution No. 4067 directed a study of the present relationship between railroads and their tenants under North Dakota Century Code (NDCC) Chapter 60-06 and the similarities between that relationship and the relationship between railroads and their tenants along other rights of way not governed by that chapter, including a consideration of whether rights concerning establishment of tenancies should include railroad rights of ways in cities.

Committee members were Senators Gary J. Nelson (Chairman), E. Gene Hilken, Joe Keller, Clayton A. Lodoen, Dean J. Meyer, Harvey D. Tallackson, and Art Todd and Representatives Rick Berg, John Dorso, June Y. Enget, Moine R. Gates, Jack Murphy, Dick Tokach, Ben Tollefson, Francis J. Wald, and Joseph R. Whalen.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

CHARITABLE SOLICITATION LAWS STUDY North Dakota Law

The first charitable solicitation law in North Dakota was passed in 1903. That law was designed to regulate organizations soliciting for contributions to orphan asylums, children's homes, hospitals, or similar institutions. Licenses under the law were to be issued by the public welfare boards and a solicitor was required to carry and display a solicitation license. That law remained in effect in substantially the same form until 1961. Under the 1961 law, codified as NDCC Chapter 50-22, licenses were to be obtained from the Secretary of State's office. The 1961 law required more explicit information on license applications, including name and address, purposes of solicitation, the names of officers having custody and distribution responsibility for moneys collected, the time frame of soliciting, and the methods of soliciting. Under the 1961 law Boy Scout and Girl Scout organizations, institutions of higher learning, and churches operating and having a place of worship in the state were exempted from registration requirements.

The next substantial revision of charitable solicitation laws occurred in 1975, with amendments of the 1961 law. The 1975 amendments defined solicitation and added licensing requirements for professional fundraisers and professional solicitors. The exemption from registration by Boy Scout and Girl Scout organizations was removed. Significant provisions were that no charitable organization could agree to pay professional solicitors any amount in excess of 15 percent of the gross collections from solicitation campaigns and no charitable organization could incur fundraising expenses, including payments

to solicitors, in excess of 35 percent of gross collections from solicitation campaigns. The 1975 amendments were in response to a national trend of enacting state laws limiting payments to professional solicitors and limiting the expenses that could be deducted from gross receipts before devoting the remaining collections to charitable purposes.

Soon after states enacted limitations on expenses and payments to professional solicitors, challenges to these limitations began to be made in the courts. In 1980 the United States Supreme Court in Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, held unconstitutional a village ordinance that prohibited solicitation by organizations that did not use at least 75 percent of gross receipts for charitable purposes. The court found that such a limitation was an improper infringement upon the right of free speech under the United States Constitution. In 1982 the North Dakota Supreme Court in State ex rel. Olson v. W.R.G. Enterprises, 314 N.W.2d 842, held that the 15 percent limitation on payments to professional solicitors improperly infringed upon the right of free speech under the United States Constitution. After this decision, the 1983 Legislative Assembly amended the limitation to provide that any cost of solicitation in excess of 20 percent of the amount collected would be deemed unreasonable unless special facts were presented showing that a cost above 20 percent is not unreasonable under the circumstances. In 1984 the United States Supreme Court in Secretary of State of Maryland v. J. H. Munson Company, 104 S.Ct. 2839, examined a Maryland statute similar to the 1983 North Dakota law and found that even an "escape valve" allowing an organization to show that exceeding the limitation could be reasonable is an unconstitutional infringement upon the right of free speech. After this decision, the 1985 Legislative Assembly repealed the limitations on expenses or payments to fundraisers. Legislation in 1985 prohibited fraudulent acts in connection with solicitations and required contracts between professional fundraisers and charitable organizations to be filed with the Secretary of State.

After the United States Supreme Court had struck down limitations on expenses and payments to professional solicitors, the National Association of Attorneys General studied charitable solicitation regulation and in December 1986 recommended the model Charitable Solicitations Act.

Model Charitable Solicitations Act

The model Charitable Solicitations Act (model Act) recommended by the National Association of Attorneys General contains extensive provisions governing charitable solicitation registration and regulation. Many provisions of the model Act are left blank to allow each state to insert dollar amounts for fees and to insert the names of state officers who will administer the law.

The model Act requires any person or organization employing an appeal that suggests there is a charitable purpose to a solicitation to file a

registration statement with the state. The statement must be filed annually by the 15th day of the fifth calendar month after the close of the organization's fiscal year. The statement must contain the name and purpose of the organization, the address and telephone number of every office of the organization in the state, the name and address of every officer of the organization, an annual financial report for the most recent fiscal year, a listing of every governmental authority that has authorized the organization to solicit contributions, a statement of any action against the registration of the organization by any other governmental authority, the purposes for which contributions to be solicited are to be used, the name under which the organization intends to solicit contributions, the name of the person within the organization who has responsibility for custody and distribution of contributions, and any other information the state requires. With the initial registration, a charitable organization is also required to file a copy of the organization's organizational instrument and bylaws and a statement showing the place and date of establishment of the organization, the form of organization, and the tax-exempt status of the organization. The model Act exempts from registration religious organizations, political parties, candidates for public office, political action committees, and organizations that do not raise gross revenue from charitable solicitations in excess of a certain amount.

A charitable organization that is required to register with the state is also required to file an annual financial report. The annual report must include a balance sheet; a statement of support, revenue, expenses, and changes in fund balance; a statement of functional expenses at least broken into program, management and general, and fundraising; and any other information the state requires. In addition, the annual financial report of every charitable organization that received more than a certain amount in gross revenue from charitable contributions must be accompanied by an audited financial statement that has been examined for the purpose of an opinion by an independent certified public accountant.

A fundraising counsel (a person who for compensation manages solicitation of contributions for a charitable organization but who does not actually solicit contributions and who does not hire anyone to solicit contributions) must register with the state, pay a registration fee, and obtain and file with the state a written contract with any charitable organization by which the fundraising counsel is employed. A fundraising counsel must file a bond payable to the state and any person who may have a cause of action against the fundraising counsel for liability arising under the model Act. A fundraising counsel must provide a written account of a charitable solicitation campaign to the charitable organization and the charitable organization must retain the accounting for three years. A fundraising counsel must deposit any contributions in the counsel's possession in an account at a financial institution within five days of receipt. The account must be in the name of the charitable organization and the

charitable organization must have sole control of all withdrawals from the account. A fundraising counsel must retain all records for every solicitation campaign for a period of three years, including a record of each donor's name and address and the date and amount of each contribution.

A paid solicitor (a person who is employed by a charitable organization to solicit contributions or who directly or indirectly employs others to solicit contributions) must register with the state, pay a registration fee, obtain a written contract from any charitable organization by which the paid solicitor is employed, and file a copy of the contract with the state. A paid solicitor must file a bond with the state payable to the state and any person who may have a cause of action against the paid solicitor for liability resulting from activities subject to the model Act. Before each solicitation campaign a paid solicitor must file a solicitation notice providing dates when soliciting will begin and end, the location and telephone number from where the campaign will be conducted, the name and address of each person responsible for directing the campaign, a statement of whether the paid solicitor will at any time have custody of contributions, and a description of the charitable program for which the campaign will be conducted. The charitable organization must certify that the solicitation notice is true and complete. The written contract between a paid solicitor and a charitable organization must state the obligations of the parties, including the amount of gross revenue from the solicitation campaign that the charitable organization will receive. The amount of gross revenue the paid solicitor will receive is required to be expressed as a fixed percentage or as a reasonable estimate and if a reasonable estimate is used, the contract must provide that the paid solicitor will not receive more than 10 percent more of the gross revenue than the estimated amount. At the time of making a request for a contribution, a paid solicitor is required to disclose that the solicitor is a paid solicitor, that the solicitor is under contract with the charitable organization to conduct a solicitation, and the percentage of gross revenue that the contract provides will be received by the charitable organization. A written confirmation must be sent within five days by the paid solicitor to each person who has contributed or pledged to contribute. Representations that tickets to events will be donated for use by others are prohibited unless the paid solicitor has written commitments from charitable organizations stating the number of tickets they will accept. The paid solicitor and the charitable organization must file a joint financial report with the state at the conclusion or anniversary date of each solicitation campaign. A paid solicitor must deposit each contribution within five days in an account at a financial institution. The account must be in the name of the charitable organization and the charitable organization must have sole control of all withdrawals from the account.

Notice of a charitable sales promotion (an advertising or sales campaign conducted by a for-profit business which represents that the purchase of goods or services from the business will benefit a charitable organization or purpose) must be filed with the state

prior to the beginning of a charitable sales promotion. The notice must contain the names of the organization and the business and the date the promotion is expected to begin. A written agreement is required between the business and the charitable organization. The agreement must include the goods or services to be offered, the place and time when the offering will be made, the manner in which the charitable organization's name will be used, the maximum dollar amount that will benefit the charitable organization, the estimated number of units of goods or services to be sold, provision for a final accounting on a per-unit basis to be given by the business to the charitable organization, and the date and manner in which the benefit will be conferred on the charitable organization. The final accounting must be kept by the business for three years. The business is required to disclose in each advertisement for the promotion the percentage of proceeds which will be given to the charitable organization.

Point of solicitation disclosure of certain information from all charitable organizations, including those that are not required to register with the state, is required. The disclosure required includes the name, address, and telephone number of the organization; a full description of the program for which the solicitation campaign is being conducted; and that a financial statement disclosing assets, liabilities, fund balances, revenue, and expenses of the charitable organization for the preceding year will be provided upon request.

State officers are allowed to examine books, records, and witnesses with regard to charitable solicitations. The state officers are authorized to take testimony under oath, examine any documentary material, and require attendance and testimony under oath of any person having knowledge of the documentary material. A person is allowed to oppose service of notice for purposes of testimony or providing documents by filing a motion with the district court to modify or set aside the notice.

The model Act provides civil penalties but no criminal penalties for violations. Failure to appear, evasion, or falsifying documents in connection with an investigation by the state is subject to a civil penalty of up to \$5,000. Engaging in deceptive acts or violating substantive provisions of the model Act subjects the violator to a civil penalty of up to \$1,000 for each act and an additional penalty of up to \$25 for each day during which the act continues. Court awards under civil actions prosecuted by the state may result in injunction, restitution, attorneys' fees, costs of investigation and litigation, plus civil penalties of up to \$10,000 for each violation. Violation of registration, reporting, recordkeeping, or bonding requirements is subject to a court-ordered civil penalty of up to \$10 for each day of violation, up to a total penalty of \$5,000. Violation of an injunction or other court order, in addition to all other remedies, is to be assessed a civil penalty of not more than \$10,000 for each violation and each day of continuing violation is a separate offense. A charitable organization may not indemnify an officer or employee for civil penalties assessed by a court unless the individual is determined by the court to have acted in good faith. In lieu of instituting a civil action, the state may

accept a written assurance of discontinuance of any violation from any person alleged to have been engaged in the violation.

Riley Decision

During the committee's study the United States Supreme Court examined the charitable solicitation laws of North Carolina in its decision in Riley v. National Federation of the Blind of North Carolina, 487 U.S.____, 101 L.Ed.2d 669 (decided June 29, 1988). Riley involved challenges to three portions of North Carolina charitable solicitation laws. North Carolina law provided (1) a fee exceeding 35 percent of gross revenue for a professional fundraiser would be presumed unreasonable but the fundraiser could rebut the presumption by showing that the fee was necessary; (2) professional fundraisers could not solicit without an approved license while volunteer fundraisers could solicit immediately upon submitting a license application; (3) a professional fundraiser would have to disclose to potential donors the average percentage of gross receipts actually turned over to charities by the fundraiser for all charitable solicitations conducted within the previous 12 months. The Supreme Court found these provisions to be unconstitutional violations of the right of free speech. Most significant of these findings to the model Act was the finding that it is unconstitutional to require a professional fundraiser to make point of solicitation disclosure of the percentage of gross receipts that would go to charity.

Testimony and Committee Considerations

A representative of the Secretary of State's office said his office has educated charitable organizations and improved public awareness of charitable solicitation requirements. The registrations of charitable organizations under NDCC Chapter 50-22 have increased from 132 in 1983 to 362 in 1988. Of the 362 current registrations, 109 are for out-of-state organizations. Seventeen current registrations are on file for professional fundraisers. National organizations are not required to obtain separate licenses for each local chapter in North Dakota. In filing annual financial information, national organizations file only their national fundraising information and do not provide a breakdown of fundraising totals for local chapters. Testimony indicated that registration of charitable organizations is becoming increasingly more subject to investigation and it was suggested that both aspects of charitable solicitation laws, registration and enforcement, should be administered by the Attorney General.

Representatives of the Attorney General said the interest of the state in regulation of charitable solicitations is to protect citizens from mistruth. Most organizations in North Dakota do not use professional fundraisers so the majority of proceeds collected go for charitable purposes. It was suggested that when professional fundraisers are used by charitable organizations, the proceeds that go to charitable uses are reduced and the opportunities for personal profit are increased. This was given as the reason for the model Act focusing so much attention on professional solicitors. The biggest enforcement problem under charitable solicitation laws was said to be with transient professional fundraisers who contract with

local charitable organizations to allow the use of the organization's name but who do the fundraising mostly for personal profit and without supervision or input from the local charity. The difficulty described with enforcement is that transient fundraisers leave the jurisdiction, change names frequently, and keep no records or other documentation, which makes apprehension and prosecution very difficult. The Attorney General recommended leaving the registration of charitable organizations with the Secretary of State's office and retaining involvement of the Attorney General's office only in investigation and prosecution under charitable solicitation laws.

The committee considered a bill draft based upon the model Act with adjustments to conform to existing North Dakota law and to recognize the impact of Riley. The model Act was promoted by the National Association of Attorneys General as assuring that potential donors would be informed of the nature of a charitable solicitation through the point of solicitation disclosure of the percentage of proceeds that would go to the charitable organization. In the wake of Riley, it appears that these disclosure provisions of the model Act are unconstitutional. Disclosure of the percentage of proceeds going to charity was omitted from the bill draft, but the other disclosures required by the model Act were retained in the bill draft. The bill draft incorporated provisions of North Dakota law that religious organizations must have a place of worship within North Dakota to be exempt from registration requirements and that an agency or instrumentality of the state or a political subdivision or any organization soliciting funds for an institution of higher education is exempt from registration. The bill draft was patterned after North Dakota law in giving the Secretary of State the responsibility for registration of charitable organizations and fundraisers and in giving the Attorney General authority to investigate and prosecute offenses.

The committee received testimony from representatives of several charitable fundraising organizations. All of the charitable organization representatives opposed adoption of the bill draft. Reasons given for opposition included greatly increased paperwork and reporting requirements, increased costs associated with recordkeeping and reporting, and the generally increased burden on those organizations that conduct fundraising in compliance with law. It was pointed out that although the goal of the bill draft would have been to assure that the charitable contributions that actually go to charitable purposes are maximized, the bill draft would have increased administrative costs and, therefore, actually reduced the amount of charitable contributions that go to charitable purposes. Representatives of charitable organizations said although they would favor some provisions of the model Act, they oppose the model Act as a whole. Provisions of the model Act that received favorable comments included bonding requirements for paid solicitors and fundraising counsel and the restrictions that apply only to paid solicitors.

Conclusion

The committee makes no recommendation regarding adoption of the Model Charitable Solicitations Act recommended by the National Association of Attorneys General. The committee determined that adoption of the model Act in its entirety would place too great a burden on charitable organizations that do a good job of collecting charitable contributions and distributing the proceeds to charitable purposes.

REAL ESTATE LICENSING FOR PROPERTY MANAGERS

Background

The North Dakota Real Estate Commission was established by the creation in 1957 of NDCC Chapter 43-23. That chapter provides for regulation, supervision, and licensing of real estate brokers and salesmen. North Dakota Century Code Chapter 43-23 originally provided specifically that the terms "real estate broker" and "real estate salesman" did not include property owners or lessees or their employees and did not include acts performed as an incident of the management of property or investment in property.

Legislation passed in 1977 added a definition of "real estate broker" that would include various activities incident to leases. It was generally assumed until 1986 that property managers did not need real estate licenses in North Dakota. Property managers have received increased attention from realtors in recent years as services of property managers have expanded to compete with services of realtors. Complaints to the North Dakota Real Estate Commission resulted in a request for the Attorney General to clarify the status of property management under the Real Estate Commission. The Attorney General issued a letter on September 23, 1986, saying that ". . . anyone who advertises or holds themselves (sic) out as available for employment by others in the listing, selling, or purchasing of leasehold interests or in rental or property management must be required to be licensed as a North Dakota real estate broker or salesman." The letter went on to point out that if such people were employed by only one apartment owner they would not have to be licensed.

The Attorney General's letter led to the introduction of two bills in the 1987 Legislative Assembly. House Bill No. 1403 (1987) would have required a property manager to obtain a real estate license. Property manager was defined to include any person engaging in acts relating to negotiation for leasing of real estate, advertising or holding out as being engaged in the business of leasing real estate, or assisting in the procuring of prospects calculated to result in the leasing of real estate. The bill would have provided an exclusion for any person engaged exclusively in the business of leasing real estate if that person is employed by no more than one owner of leasehold interests. After a committee hearing, the bill was withdrawn from further consideration. House Bill No. 1450 (1987) was enacted and amended North Dakota Century Code Section 43-23-07 to provide that a real estate license need not be obtained by a person who accepts or markets leasehold interests in residential or agricultural property.

Testimony and Committee Considerations

The committee received testimony from representatives of the North Dakota Real Estate Commission, North Dakota Association of Realtors, and North Dakota Apartment Association. Representatives of all three groups initially testified that they would support limited real estate licensure of property managers to the extent the managers handle marketing of leasehold interests. Twenty-six states require licensure of property managers. Reasons for licensure include accountability and proper handling of money, bonding, examination and education to assure minimum levels of competency, and sanctions for improper actions. It was suggested that exemption from licensure be provided for custodians, on-site property managers, property managers employed by no more than one owner of property, and property managers under contract with political subdivisions.

Committee members debated the question of licensure of managers of agricultural property. In situations where a neighbor or relative arranges for leasing of agricultural property for a retired or vacationing farmer, it was suggested that property manager licensure should not be required. However, no consensus was reached on where the line should be drawn to require licensure in these situations.

Committee members questioned whether abuses by property managers have become apparent. Committee members pointed out that landlord-tenant laws provide substantial protection to tenants. Representatives of the three groups representing realtors and property managers could not provide examples of abuses by property managers that would be rectified by providing for property manager licensure.

Before the final meeting of the committee, the Real Estate Commission, Association of Realtors, and Apartment Association representatives met to discuss a bill draft for committee consideration. Representatives of the three groups agreed that property manager licensure is not needed at this time. They agreed that, because no abuses have become apparent, licensure of property managers should be deferred until some future time. They made that recommendation to the committee.

Conclusion

The committee makes no recommendation for change in present law, which requires no license for property manager marketing of leasehold interests in residential or agricultural property.

RAILROAD RIGHT-OF-WAY TENANTS STUDY

Background

There are more than 4,000 miles of railroad in North Dakota, the majority of which is branch line railroad. A railroad is laid on right of way that is generally of a width of 200 feet, but may be 100 to 300 feet wide. Railroad companies have acquired right-of-way property in North Dakota through federal charter, state charter, condemnation, or purchase. Because North Dakota cities developed and grew along railroads and the railroad is often in or near the center of cities, railroad company right-of-way property in

cities has developed commercial value apart from its location near the railroad tracks.

North Dakota Century Code Chapter 60-06, originally enacted in 1890, provides that any person, firm, or corporation may erect and operate a warehouse or elevator for handling or storing grain on railroad right of way upon compliance with the chapter. The person must tender payment to the railroad and is immediately entitled to erect the warehouse or elevator. In case the amount tendered in payment is not accepted, either a district court determines the proper payment or the Public Service Commission arbitrates the dispute. The right to elect to use the right of way under Chapter 60-06 also applies to renewal of leases. Legislation enacted in 1987 expanded Chapter 60-06 to include the right to erect a warehouse for handling or storing potatoes.

The apparent intent of the proponents of this study was to cause examination of the relations of railroads and their tenants in situations other than warehousing of grain and potatoes. Concerns apparently included lease length and cost, development of the property, and complications in lessees obtaining credit due to lease terms.

Testimony

Representatives of the Soo Line Railroad and the Burlington Northern Railroad opposed any expansion of NDCC Chapter 60-06 beyond coverage of businesses handling grain or potatoes. They said grain and potato businesses require railroad access but in other commercial ventures the need for railroad access does not exist. It was pointed out that legal considerations involving the freedom to make contracts, prohibition of laws impairing the obligation of contracts, the right to equal protection of the laws, prohibition of unreasonable restrictions on the use of private property, the exercise of the police power in regulation of business, prohibition of impairment of vested rights of corporate stockholders, the right to due process, and the right to compensation under eminent domain laws are all potential legal arguments that could be made against granting increased rights to tenants on railroad right-of-way property. They said they have not pressed these claims against existing law but further intrusion of state law into the railroad and tenant relationship may force them to make a legal challenge against Chapter 60-06.

A representative of an association of railroad right-of-way tenants informed the committee that his association had urged passage of the resolution calling for this study, but the association was negotiating for purchase of railroad property at the time the study began and he requested the committee to make no recommendation. He said the association preferred not to raise controversy regarding railroad right-of-way leases during the sensitive period of negotiation for purchase of railroad right-of-way property.

Conclusion

The committee makes no recommendation regarding the relationship between railroads and their tenants on railroad right-of-way property.

DICKINSON STATE ADDITION COMMITTEE

Representative Charles F. Mertens, Legislative Council Chairman, at the request of the Budget Section, created a special committee of the Legislative Council to study the problems relating to the title transfer of the Dickinson State Addition property to the Board of University and School Lands from the Board of Higher Education.

Committee members selected were Senators Harvey D. Tallackson (Chairman), Evan E. Lips, and Jerry Waldera and Representatives Robert Nowatzki and Francis J. Wald.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

BACKGROUND

The 1985 Legislative Assembly directed the Board of Higher Education to transfer title for the old Dickinson Experiment Station property to the Board of University and School Lands. In March 1988 the Budget Section heard a status report on the title transfer. The report indicated that the Board of Higher Education had attempted to transfer the property to the Board of University and School Lands, but the Board of University and School Lands refused to accept the title and indicated that it did not intend to accept the title. The Budget Section determined that unless further study was conducted this matter would not be resolved before the 1989 Legislative Assembly; therefore, the Budget Section recommended that the Legislative Council chairman appoint a special Legislative Council committee. The history and legislative action relating to the Dickinson State Addition property is presented below.

1977

The 1977 Legislative Assembly passed Senate Bill No. 2384, which authorized the Board of Higher Education to sell the property used by the Dickinson Experiment Station and to borrow up to \$1.5 million from the Bank of North Dakota to develop a new Dickinson Experiment Station.

Senate Bill No. 2384 was referred to the voters as Referred Measure No. 1 on the September 1978 primary election ballot. The measure passed 41,368 votes to 32,498 votes. Although the voters approved 1977 Senate Bill No. 2384, the Board of Higher Education did not take any action regarding the property until after the 1979 session.

1979

The 1979 Legislative Assembly passed Senate Bill No. 2327, which required the Board of Higher Education to purchase property capable of supporting an improved experiment station at Dickinson. The bill authorized the Board of Higher Education to borrow \$2,265,000 from the Board of University and School Lands common schools permanent trust fund for the purchase of the new unit and for costs involved in the sale of the old property. The bill provided that 42 acres of the old property were to be transferred to Dickinson State College and the remaining 544 acres were to

be held for sale to receive the best possible return. In addition, the bill provided that the land for sale could be subdivided and could have streets, water, sewer, curb, gutter, and other utilities installed.

1981

The 1981 Legislative Assembly passed Senate Bill No. 2412, which allowed the Board of Higher Education to borrow an additional \$1 million from the common schools permanent trust fund to develop the old Dickinson Experiment Station property for sale.

By 1982 the Board of Higher Education, out of funds borrowed from the common schools permanent trust fund, had installed natural gas and water and sewer on the State Addition property at a cost of approximately \$775,000. In addition, the city of Dickinson had levied \$958,877 of special assessments against the property for storm sewer improvements. In February 1982 a public auction was held for 24 commercial lots, 20 multiple-family lots, and 17 single-family lots in the State Addition. Because the sale was for cash only and for the appraised value of the lots, no lots were sold.

1983

The 1983 Legislative Assembly passed House Bill No. 1004, which allowed the Board of Higher Education to borrow an additional \$1 million from the common schools permanent trust fund to develop the old Dickinson Experiment Station property for sale and for payment of interest on loans.

The 1983 Legislative Assembly also passed House Bill No. 1222, which allowed the Board of Higher Education to sell the property on such terms as it determined necessary to receive the best possible return.

By 1983 the city of Dickinson had levied an additional \$1,016,627 of special assessments against the State Addition property for curb, gutter, and street installation on the property.

1985

The 1985 Legislative Assembly passed Senate Bill No. 2138, which required the Board of Higher Education to transfer the property of the old Dickinson Experiment Station to the Board of University and School Lands and that the Board of University and School Lands should have control over the property and be substituted for the Board of Higher Education on all contracts and should assume all other existing obligations on the property. The bill allowed the Board of University and School Lands to sell the property on such terms as it determined necessary to receive the best possible return. Any proceeds from the sale or other disposition of the property were to be used to pay the expenses of any sale or disposition. Any excess was to be deposited in the common schools permanent trust fund to make principal and interest payments on the amount owed by the Board of Higher Education. Any additional proceeds received after total principal and interest were paid were to be deposited in the state general fund. The bill also appropriated \$644,284 from the

state general fund to the Board of University and School Lands for paying special assessments due to the city of Dickinson for 1985 and 1986.

As of June 30, 1985, the Board of Higher Education had borrowed a total of \$3,841,759 from the common schools permanent trust fund for the following:

Purchase of the new Dickinson Experiment Station	\$ 1,750,000
Costs related to State Addition	778,211
Payment of special assessment installments	353,122
Payments of interest to the common schools permanent trust fund	960,426
Total	\$ 3,841,759

Because of a "gentlemen's agreement" between the Board of Higher Education and the Board of

Experiment Station property at public auction to the highest bidder or bidders.

House Bill No. 1078 also passed in 1987. This bill authorized the Board of University and School Lands to sell and convey a portion of the old Dickinson Experiment Station property comprising approximately 170 acres to Stark County at a price agreeable to both parties but not less than fair market value. The property is to be used by Stark County for the development of a county fairgrounds.

Through the issuance of \$9,070,000 of bonds, which involved bond anticipation notes, the common schools permanent trust fund was paid in full for the loan made to the Board of Higher Education for the purchase of the new Dickinson Experiment Station and for developing the State Addition property and a portion of the amount owed the city of Dickinson for special assessments on State Addition improvements was paid. The following is a summary of the amounts owed, the use of the bond proceeds, and the amounts remaining due:

	<u>Amounts Owed</u>	<u>Amounts Paid</u>	<u>Amounts Remaining</u>
Common schools permanent trust fund	\$5,376,599.56	\$5,376,599.56	\$ 0
City of Dickinson - special assessments	<u>1,909,849.97</u>	<u>1,827,400.44</u>	<u>82,449.53</u>
Total	<u>\$7,286,449.53</u>	\$7,204,000.00	\$82,449.53
Penalty and interest on remaining special assessment balance - March 2, 1988 - June 30, 1989			<u>\$14,846.24</u>
Amount due to city of Dickinson - June 30, 1989 (amount due canceled - July 18, 1988)			<u><u>\$97,295.77</u></u>
Bond reserve fund		907,000.00	
Bond anticipation note interest, capitalized interest, and other bond issue costs		<u>959,000.00</u>	
Total bond issue		\$9,070,000.00	

University and School Lands not to transfer title to the property until it began to be sold, the Board of Higher Education did not attempt to transfer title of the Dickinson State Addition property to the Board of University and School Lands during the 1985-87 biennium.

1987

The 1987 Legislative Assembly passed House Bill No. 1019, which authorized the Industrial Commission to issue bonds in the amount of \$7,204,000 for the payment of the loans, accrued interest, and special assessments on the old Dickinson Experiment Station property and the working ranch unit. It is intended that funds will be appropriated biennially for the repayment of the bonds. Revenue received from the property and proceeds received from the sale of the property are also appropriated for the repayment of the bonds. In Section 6 of the bill, the Legislative Assembly urged the Board of University and School Lands to sell the old Dickinson

COMMITTEE FINDINGS

The committee met with representatives of the Board of Higher Education, the Board of University and School Lands, and the Attorney General's office. The committee was informed that the Board of Higher Education had attempted to transfer the old Dickinson Experiment Station property to the Board of University and School Lands; however, upon the advice of the Attorney General, the Board of University and School Lands refused to accept the property. The Attorney General's office indicated the following as reasons for advising the Board of University and School Lands not to accept the title for the property:

1. By accepting title to the property, the Board of University and School Lands would violate its fiduciary responsibilities because the Board of University and School Lands would be responsible for paying the special assessments remaining due on the property. Payment of the special assessments would not be in the best

interest of the trusts the Board of University and School Lands manages.

2. Managing the property will take staff time for which the Board of University and School Lands will not receive compensation. The Board of University and School Lands will need to be reimbursed for costs associated with managing the property.

During the time the committee was meeting, the Dickinson Board of City Commissioners voted to cancel the remaining \$82,449.53 special assessments due on the property along with penalty and interest charges.

The committee considered the requirements relating to the method by which the property should be sold. Senate Bill No. 2138 enacted in 1985 provides that the Board of University and School Lands may use its discretion in selling the property; however, 1987 House Bill No. 1019 contains a section of legislative intent that urges the Board of University and School Lands to sell the property at public auction.

COMMITTEE RECOMMENDATIONS

The committee recommends that the Legislative Council, and during the interim the Legislative

Council chairman, urge the Board of Higher Education and the Board of University and School Lands to transfer title of the old Dickinson Experiment Station property to the Board of University and School Lands.

The committee recommends that the Legislative Council, and during the interim the Legislative Council chairman, encourage the Board of University and School Lands within constitutional limitations to sell the old Dickinson Experiment Station property in a manner resulting in the highest possible return considering present economic conditions.

The committee recommends that once title is transferred to the Board of University and School Lands, the Board of University and School Lands should use its discretion in selling the property to receive a reasonable price without damaging the real estate market in Dickinson, but should not sell the property at public auction.

The Board of University and School Lands, at its August 1988 meeting, voted to accept the title for the old Dickinson Experiment Station property with the provision that any costs of selling the property be deducted from the sale proceeds before transferring the proceeds to the North Dakota Building Authority for repayment of the outstanding bonds.

EDUCATION COMMITTEE

The Education Committee was assigned three studies. House Concurrent Resolution No. 3025 recognized the importance of the knowledge of foreign languages and the potential benefits to be derived from the use of telecommunications to assist in teaching foreign languages in North Dakota schools. The resolution directed a study of the feasibility, cost, and benefits of utilizing current technology to enhance the educational opportunities of students. House Concurrent Resolution No. 3024 directed a study of the feasibility and desirability of establishing and providing assistance for educational programs in career guidance and development for children and adults. House Concurrent Resolution No. 3058 directed a study of the feasibility and desirability of implementing a program for competency testing of elementary and secondary students in the areas of mathematics, reading, and writing skills and of providing remedial programs to educationally deprived students. In addition, North Dakota Century Code (NDCC) Section 15-59-05.2 directs the Department of Public Instruction to report to the Legislative Council interim Education Committee on the status of interagency agreements for the provision of education and related services to handicapped students.

Committee members were Representatives Richard Kloubec (Chairman), Rick Berg, Gerald A. Halmrast, Julie A. Hill, Larry A. Klundt, Kenneth Knudson, Kevin Kolbo, Thomas Lautenschlager, Carolyn C. Nelson, Vince Olson, Bob O'Shea, Douglas G. Payne, Orville Schindler, and Clark Williams and Senators Ray David, Layton Freborg, Earl M. Kelly, and Malcolm S. Tweten.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

TELECOMMUNICATIONS STUDY

Background

The Legislative Assembly first enacted legislation relating to telecommunications in 1961. That legislation, codified as NDCC Section 15-47-36, authorizes the Superintendent of Public Instruction to contract with a nonprofit corporation to provide educational television services in elementary, secondary, and higher education; adult education; and other fields tending to promote cultural improvement. In 1969 the Legislative Assembly enacted legislation developing a comprehensive statutory framework for educational broadcasting. That legislation created the Educational Broadcasting Council for the purpose of encouraging and directing the creation of educational radio and television facilities. In 1977 the Educational Broadcasting Council was directed to contract with eligible applicants to build and operate public television stations in the state. The Educational Broadcasting Council contracted with Prairie Public Television, Inc., to construct an educational television network in the state. The network consists of six television stations that broadcast signals covering

North Dakota, northwestern Minnesota, parts of northern South Dakota, and cities in Manitoba and Saskatchewan. The development and operation of this network has been accomplished through funding from local, state, and federal sources. The funds provided by the state for construction were used to generate federal funds from the Public Telecommunications Facilities Program. In a similar manner, local support is necessary for Prairie Public Television, Inc., to be eligible for state support for operation as NDCC Section 15-65-03 stipulates that "[o]perational contracts shall not exceed the amount raised within the preceding fiscal year by the applicant from nontax sources in this state."

Telecommunications Projects in North Dakota

Some of the telecommunication tools available include electronic mail, electronic blackboards, computers, videotapes and video disks, satellite broadcasting, microwave relay systems, and instructional television fixed service broadcasting. These systems vary in their interactivity, which can range from data transfer to two-way audio and two-way video.

Throughout the interim, the committee received testimony from several entities regarding the development of various telecommunication projects in North Dakota over the past few years.

Telephone Industry

The telephone industry is placing fiber-optic cable systems throughout the state. These cable systems will eventually link most towns throughout the state and make it possible for schools to provide educational courses through the use of interactive television. An interactive television system allows a teacher from one school to teach students at several locations through the use of television sets in other schools. Because an interactive television system has two-way audio and two-way video, the students in all schools where the courses are broadcast can see and hear the teacher and the teacher can see and hear the students at all locations. Interactive television will make it possible for schools located in the smallest towns to offer foreign languages, advanced mathematics and sciences, and college preparatory classes for high school students as well as adult and community education.

Division of Independent Study

The Division of Independent Study at North Dakota State University provides supervised high school correspondence courses to North Dakota schools and students. Correspondence instruction is one of the oldest and most widely used forms of distance education. More than 3,700 students ranging in age from 11 to 84 are enrolled in approximately 5,000 courses offered through the division. The division's curriculum consists of 131 one-semester correspondence courses. New technological developments have expanded the potential of correspondence instruction. The division is inves-

tigating the integration of various delivery systems such as computers, computer modems, telelearning, telecourses, and video courses with the independent correspondence study program. This integration will increase learning effectiveness by adding audio, visual, and speedy feedback elements that are often lacking in correspondence education.

University of North Dakota

The University of North Dakota commissioned a six-month planning study that was completed in October 1987. The purpose of the study was to develop a model for a "campus of the future" and to recommend ways to improve telecommunication services throughout the state. The consultants who conducted the study concluded that improved telecommunication services will provide tools to enhance the quality of life in rural North Dakota, create greater equity in the distribution of educational resources, and raise the state's ability to compete for jobs in the nation's high technology economy. Based on trends in education, employment, and population migration, the study revealed that telecommunications would be important to preserving local schools and to strengthening rural economic prospects. The university is installing conduit and cable for its telecommunications facilities on campus and planning for a new telephone switching system. The university is studying the possibility of establishing a pilot program that would allow the medical school to enhance its ability to teach students in Fargo, Jamestown, Valley City, Bismarck, and Minot. The university is also seeking funds for installation of a satellite uplink on campus.

Office of Central Data Processing

The Office of Central Data Processing of the Office of Management and Budget has the responsibility for data processing and telecommunications for state agencies. Central Data Processing is responsible for the voice networks used by public agencies throughout the state. The state has a highway radio system, a law enforcement radio system, and six data networks for various agencies. North Dakota Century Code Section 54-44.2-02.1, enacted in 1987, requires the Office of Central Data Processing to plan, coordinate, develop, and implement modern systems of communications within the state. After enactment of this provision, Central Data Processing commissioned a consultant to conduct a needs assessment study and to develop a five-year telecommunications plan for state government. The study was completed in August 1988 and Central Data Processing intends to take action with respect to various recommendations made by the consultant.

Federal Star Schools Grants

Federal Star Schools legislation, enacted in 1987, appropriated \$19 million for the purpose of making grants to various partnerships for telecommunication projects. To be eligible for a grant, a partnership must be organized on a multistate or statewide basis. The Star Schools program was authorized for a five-year period with a total anticipated budget of \$100 million. A grant must be matched by a 25 percent local contribution. A first-time grant may not exceed \$10

million and no partnership may receive more than a total of \$20 million. The purpose of the program is to provide demonstration grants to eligible telecommunications partnerships to develop, construct, and acquire telecommunications audio and visual facilities and equipment; to develop and acquire instructional programming; and to obtain technical assistance in order to encourage improved instruction in mathematics, sciences, and foreign languages, as well as other subjects such as vocational education.

Several telecommunications partnerships involving North Dakota school districts have applied for grants under the Star Schools program. The Northstar Connection Project, consisting of 48 school districts and eight postsecondary institutions in western Minnesota, northeastern South Dakota, and eastern North Dakota, intends to demonstrate how the creation of a regional multistate cooperative interactive telecommunications network, utilizing interactive fiber-optics video technology, can increase options for learning and access to educational opportunities for the residents located within the boundaries of the project. Seven states, including North Dakota, comprise the Satellite Educational Resources Consortium and intend to participate in four pilot programs using satellite interconnections. The consortium will offer introduction to Japanese, secondary calculus, statistics and probabilities, and teacher inservice training. The Bismarck-McLean County Telelearning Network is participating through a Pennsylvania group that also involves seven states. Barrister Associates, Inc., a company from West Fargo that develops and sells computer software, the University of Mary, and the Mandaree Public School District intend, based on computer usage within schools, to link up with other schools in reservation areas from Mandaree, North Dakota, to southern Nebraska. The purpose of the program is to connect computers purchased for administrative purposes with interactive computer-based education for teaching purposes.

Superintendent of Public Instruction

1. State Grants

The 1987 Legislative Assembly appropriated \$50,000 from the general fund and \$400,000 from interest income on the school construction fund to the Superintendent of Public Instruction to make grants to school districts for electronic media equipment and installation costs. The grant guidelines adopted by the superintendent require applicants to demonstrate ways in which technology would improve educational opportunities in small and rural schools. Several grants have been made to school districts or consortiums of school districts under this program. Mayville State University received a \$62,000 grant to provide German to 167 students in 10 school districts. The West River Interactive Television Cooperative, consisting of five school districts, received a \$90,000 grant to purchase a fiber-optic network system. Once the system is in place, the cooperative plans to teach advanced academic courses, vocational education, adult education, and other courses through the use of interactive television. The Velva Public School District received a \$5,380 grant to purchase

a satellite dish and related equipment in order to offer a foreign language program. The Lake Region Special Education Unit received a \$68,000 grant to purchase computer equipment that will connect 21 schools for the purpose of developing regionwide special education services and shared curriculum for regular education in advanced maths and sciences. The Prairie School Television Consortium, consisting of over 100 school districts throughout North Dakota and part of Minnesota, received a \$23,000 grant to establish a video library service that will enable the consortium to broadcast large blocks of instructional film and will enable schools in the consortium to develop their own video library or course materials. The Alexander Public School District received an \$8,000 grant to purchase satellite equipment that will enable the school to utilize the Texas Instructional Network (TI-IN) program. The Milnor Public School District received a \$3,000 grant to purchase equipment that will assist it in utilizing the Division of Independent Study and Prairie Public Television programming more efficiently and easily. The Red River Valley Consortium, consisting of 10 schools, received a \$63,000 grant to purchase satellite receiving and related equipment in order to utilize the Oklahoma State "German by Satellite" Program. The Northwest Border Educational Cooperative, consisting of Divide County Public School District, Bowbells Public School District, and Columbus Public School District, received a \$12,500 grant to purchase equipment and programming to provide a Spanish course to several schools in the northwest part of the state. The course consists of videos and computer software. A teacher will work with the students by telephone and by traveling to each school. The Pembina Special Education Cooperative received a \$7,000 grant. Among other things, the cooperative will purchase an electronic bulletin board and a computer program for writing special education individual educational plans.

2. State Plan

The Superintendent of Public Instruction, in conjunction with the Mid-continent Regional Educational Laboratory, has developed a long-range statewide plan to coordinate and build on the various technologies currently in place. The Mid-continent Regional Educational Laboratory, funded by the Office of Educational Research and Improvement, United States Department of Education, is an educational laboratory that serves seven midwestern states. The goal of the plan is to improve educational opportunities for North Dakota residents through technology. In addition to identifying the need to improve high school and elementary curricular offerings, the plan identified other needs which could be addressed through technology such as adult education, inservice education for teachers, special education services to students with special needs and to the providers of those services, and better recordkeeping for school districts. The plan identified the following objectives that will be carried out by the Superintendent of Public Instruction—to encourage involvement in the development and implementation of the plan; to increase the ability of the Prairie Public

Television system to become an integral part of enhancing North Dakota's public education; to expand the capacity of the Division of Independent Study through technology; to mold existing technology components into a single system capable of linking every school district in the state with one another and with the Superintendent of Public Instruction to expand opportunities for students, teachers, and community members; to support local school districts and citizens in exploring technological systems to improve education; and to evaluate current technologies and their impact on students, teachers, schools, and communities.

Western Interstate Commission for Higher Education (WICHE)

The Western Interstate Commission for Higher Education is a regional compact of 15 western states. North Dakota has affiliate status with the commission. The commission is working with western states to establish a regional telecommunications cooperative for the delivery of educational programs. Most of the western states share a number of similar demographic and economic conditions and as a result are trying to solve many of the same problems. Telecommunications offers potential for stimulating economic progress by delivering continuing education and other services to professionals and for enhancing educational access by providing educational services to citizens spread over great distances. As states develop telecommunication systems, they could, with few additional resources, expand their networks to tap into other resources, expertise, and programs available in other states throughout the region. A regional telecommunications cooperative would enable western states to use telecommunications cooperatively to address common objectives. The purpose of the cooperative would be to facilitate the sharing of telecommunication technologies, programs, and resources, including faculty and technical experts, for educational and other purposes on an interstate basis. The benefits of cooperating would include the sharing of resources, the elimination of duplication among systems and offerings, and the broadening of participation in courses.

Prairie Public Television

Instructional television service is provided by the North Central Council for School Television through the broadcast facilities of Prairie Public Television. The council is a nonprofit organization controlled and funded by its member schools. The charge is \$2 per pupil in grades kindergarten through 12. Enrollment in member schools totals approximately 53,600 in North Dakota plus an additional 13,000 in Minnesota. School programs are broadcast 4.5 hours every schoolday and include 79 series in a variety of subjects including social studies, guidance and health, economics, history, arts and crafts, literature, mathematics, science, German, Spanish, music, language arts, emotional and social growth, grammar, skills essential to learning, and drug awareness. Prairie Public Television, in cooperation with the North Central Council for School Television, has broadcast instructional television programs for more than 20 years.

Mayville "German by Satellite" Program

In 1986 Mayville State University and several school districts received a grant from the Bremer Foundation to test the teaching of "German by Satellite." "German by Satellite" is a course developed by Oklahoma State University College of Arts and Sciences. The course is a 30-week program that combines two 45-minute live television programs each week with computer-assisted instruction. In addition, students study a college level textbook and receive a lab/workbook manual and German language cassettes. In the remaining three days of each school week, students work on four computer programs. The programs consist of a sound integrated vocabulary practice program, a dictation program, a comprehensive grammar program, and a voice recognition program. The voice recognition program reacts to a student's spoken input by checking correctness of grammar, content, and pronunciation in comparison to a previously stored statement by a native speaker. Live interaction can also take place during the satellite transmission via an audio bridge. A representative of the Superintendent of Public Instruction reported that the program has been popular and successful and that it will be expanded to several other schools in the future.

South Carolina Teleconference

The committee participated in a live teleconference with several representatives of the South Carolina Educational Television Network and of various South Carolina universities and colleges. The network broadcasts over 100 hours of instruction each day. Over 500,000 children are enrolled in 193 educational television series consisting of over 3,500 lessons or programs offered by the network. The network offers over 400 television programs and 70 radio programs dedicated to inservice needs of teachers and school administrators. In 1987 over 5,600 teachers participated in inservice training programs without leaving their classrooms. The network is used by several universities to deliver college courses through closed circuit systems. Nearly 4,000 students are enrolled in these courses. Many of them are adults in the workforce who are able to take the courses at centers near their homes. More engineering degrees are awarded through television courses than on campuses. Medical faculty at a medical university supply programs that are broadcast to health professionals, state agencies, and other universities across the state. The university provides access to all major satellite videoconferences sponsored by the American Medical Association, the American Hospital Association, and other associations. One of the universities disseminates information over the network to clients in industry and business, public schools, county extension offices, agricultural research stations, hospitals, technical schools, and other institutions of higher education. All of the services provided by the network cost approximately an amount equivalent to one percent of the state's education budget.

Teleconferencing is becoming more important as state agencies in South Carolina are becoming more cost conscience. Through teleconferences, agencies

have been conducting training, making surveys, and meeting management communication needs. The state saves per diem, mileage, lodging costs, training costs, lost time from the job, and wear and tear on vehicles by conducting meetings through teleconferencing. From 1985 through 1987, the network conducted 319 teleconferences for state agencies which provided training for 74,000 people. Teleconferencing saves the state \$1.2 million each election year in poll worker training. The use of the closed circuit network for teleconferences provided services that would have cost the state \$8 to \$9 million by traditional methods.

Committee Considerations

North Dakota, as a rural state, has a large number of schools that are small, have limited resources, and are often located great distances from neighboring schools. Rural and isolated schools often have difficulties attracting teachers or do not have the enrollments necessary to support hiring certain teachers, especially in subjects such as advanced mathematics and sciences and foreign languages. Opportunities for college-bound students in small rural schools are often limited. In addition, many of these schools have difficulties meeting state accreditation standards. These difficulties have been exacerbated in rural areas by the continued decline in enrollments. Additionally, North Dakota's depressed economy has caused many school districts to reduce expenditures through cutbacks in programs and staff. While consolidation of schools is often suggested as a means of increasing educational opportunities for students, it often comes slowly due to the desire to retain community identity. Consolidation often increases distances between schools, thus increasing travel time for students and for teachers who teach in more than one school. Many schools cooperate by sharing teachers or students. Cooperation has expanded educational opportunities for some students, but cooperative programs are restricted by distances, scheduling, and costs. Telecommunications can increase the level of cooperation among schools and is an alternative solution to the consolidation of schools to address the problems of rural schools. Through telecommunications students can take courses they would not otherwise have access to and schools can meet accreditation standards. Providing courses through telecommunications can help schools equalize educational opportunities regardless of where a child lives or the size of the school the child attends. Telecommunications can also provide staff development courses and inservice training for teachers and can help teachers and staff cut down on the long distance travel required to obtain training.

The committee recognized the importance of telecommunications to the education and business needs of the private sector and numerous components of state and local government as well as to all levels of education. Testimony indicated that telecommunication projects are being developed on an ad hoc basis throughout North Dakota and in other states. The committee generally agreed that coordination of telecommunication technologies in the

state and with other states could produce cost savings in the delivery of education, training, library resources, public information, and intergovernmental projects. The committee generally agreed that cooperation among the parties interested in telecommunications would allow the parties to utilize more fully scarce resources, achieve common goals in a cost-effective manner, and develop and use systems that are compatible with each other. As a result, the committee reviewed a bill draft establishing a comprehensive framework for the creation, development, and use of telecommunication programs and systems. The bill draft changed the name of the Educational Broadcasting Council to the Educational Telecommunications Council. It also changed the membership of the council to include, in addition to a representative of the Superintendent of Public Instruction and of higher education, representatives of the Department of Vocational Education, Prairie Public Broadcasting, the Cooperative Extension Service at North Dakota State University, the North Dakota Association of Telephone Cooperatives, US West Communications, and the Office of Central Data Processing of the Office of Management and Budget. The bill draft broadened the council's focus from television and radio to telecommunications and made the council responsible for coordinating telecommunication activities throughout the state and with other states.

The president of Prairie Public Broadcasting presented a six-year plan to implement telecommunications in North Dakota based on the expenditure of an amount equivalent to one percent of all appropriations for education, which amounts to an annual expenditure of \$3.1 million based on 1987-89 appropriations. Implementation of the plan would give direction to the state on the development and planning of telecommunications. Under the plan, the following would be established: closed circuit two-way video capability throughout the state, teleconference origination facilities, completion of statewide broadcast television coverage, satellite uplinking capability, school funding for educational technology, and operating and maintenance support. The system would have the capacity to interface with fiber-optic systems developed throughout the state and would provide rural schools in remote areas the opportunity to take advantage of the telecommunications system. More than 50 percent of the money expended would be used for direct instructional support. This support would include educational technology utilization training, production and broadcast of interactive courses in foreign languages and advanced mathematics and sciences, production of nursing education courses, production and broadcast of a North Dakota history series, production of teacher inservice education courses, and support for and expansion of instructional television. Based on this plan, the committee reviewed a bill draft which provided for an appropriation to the Educational Broadcasting Council to be used to coordinate, fund, and assist in the development of educational telecommunication programs and systems throughout the state. Although the bill draft did not appropriate an amount equal to one percent of all appropriations

for education, it did appropriate one percent of the amount appropriated for operating expenses for the institutions of higher education and one percent of the amount appropriated for foundation aid. Based on 1987-89 appropriations, it was estimated that the one percent would equal approximately \$2.1 million per year.

Toll charges relating to the use of fiber-optic cable to provide interactive television in schools are regulated by the Public Service Commission. The charges that apply to a regular telephone call would apply to the use of the cable for educational purposes in schools. A representative of the telephone industry testified that, unless the use of cable for educational purposes was exempt from those toll charges, the use of cable to provide interactive television would be too expensive for schools to use. As a result, the committee reviewed a bill draft exempting the use of telephone lines used for educational purposes from regulation by the Public Service Commission. With the exemption, the providers of the service would be able to set the fees charged to school districts.

Recommendations

The committee recommends House Bill No. 1041 to change the membership of the Educational Broadcasting Council, change the name of the Educational Broadcasting Council to the Educational Telecommunications Council, and broaden the council's focus from television and radio to telecommunications. Under the bill, the council would be responsible for coordinating statewide educational telecommunication programs and systems.

The committee recommends House Bill No. 1042 to exempt fiber-optic cable used for educational purposes from regulation by the Public Service Commission.

The committee recommends House Bill No. 1043 to appropriate an amount equal to one percent of the amount appropriated for operating expenses for the institutions of higher education and one percent of the amount appropriated for foundation aid. The appropriation is to the Educational Broadcasting Council to coordinate, fund, and assist in the development of educational telecommunication programs and systems throughout the state.

CAREER GUIDANCE AND DEVELOPMENT STUDY

House Concurrent Resolution No. 3024 directed a study of the feasibility and desirability of establishing and providing assistance for educational programs in career guidance and development for children and adults. The resolution notes that a serious need exists in this state to increase the effectiveness of career guidance and development to assist children and adults in making informed career plans and decisions and to assist educators, state planners, and policymakers in developing improved educational measures and counseling tools.

Career Guidance in North Dakota

Career guidance is not mandated in North Dakota. Under standards adopted by the Superintendent of Public Instruction, a school that is to become

accredited must meet all required standards and 85 percent of the optional standards. As part of the optional standards, a school may offer student personnel services, guidance, and counseling. The Superintendent of Public Instruction's Accreditation Handbook requires a student personnel service program to address the various needs of each student. The school is encouraged to use existing community services to aid in the delivery of student services. The school must provide appropriate diagnostic and prescriptive services for each student. The school may also utilize a combination of intermediate agencies to effectively provide for the student services.

Federal Law—The Carl D. Perkins Vocational Education Act

Career guidance and counseling is an integral component of vocational education in the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2301-2471.

Section 2381 authorizes the United States Secretary of Education to make grants to states to assist them in conducting career guidance and counseling programs. The grants must be used for programs organized and administered by certified counselors and designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students. The programs must be designed to assist individuals to acquire self-assessment, career planning, career decisionmaking, and employability skills; make the transition from education and training to work; maintain marketability of current job skills in established occupations; develop new skills to move away from declining occupational fields and enter new and emerging fields in high technology areas and fields experiencing skill shortages; develop mid-career job search skills and clarify career goals; and obtain and use information on financial assistance for postsecondary and vocational education and job training.

Under the federal Act, career guidance and counseling programs must encourage the elimination of bias based on sex, age, handicapping condition, and race; provide for community outreach; enlist the collaboration of the family, the community, business, industry, and labor; and be accessible to all segments of the population. The three types of programs authorized by Section 2382 of the Act must consist of:

1. Instructional activities and other services at all educational levels to help students with the skills described above.
2. Services and activities designed to ensure the quality and effectiveness of career guidance and counseling programs such as counselor education, training of support personnel, curriculum development, research and demonstration projects, and a range of other activities.
3. Projects that provide opportunities for counselors to obtain firsthand experience in business and industry, and projects that provide opportunities to acquaint students with business, industry, the labor market, and training opportunities.

Testimony and Committee Considerations

The State Occupational Information Coordinating Committee received a \$237,000 grant from the National Occupational Information Coordinating Committee to develop and publish guidelines for comprehensive career guidance standards that will be used in several states throughout the country. The state committee consists of the State Board of Vocational Education, Division of Vocational Rehabilitation Services of the Department of Human Services, Governor's Employment and Training Forum, Job Service North Dakota, Superintendent of Public Instruction, State Board of Higher Education, and Economic Development Commission. The state committee developed career guidance and development guidelines for the elementary school, middle school, secondary school, postsecondary school, and adult levels. These guidelines will be used by state and local educational agencies in developing career guidance and development programs. These guidelines are being tested through implementation in four states. North Dakota is implementing the elementary module in some of the public schools in Grand Forks. The other three states are implementing the middle school, secondary school, postsecondary school, and adult modules.

Representatives of the State Board of Vocational Education testified that vocational programs offer guidance services to students in rural and urban schools to make students aware of the options available to them educationally and occupationally; however, the demand for vocational guidance has dramatically increased. For example, the number of adults seeking career guidance doubled in 1987. Additional funding is necessary for career guidance in schools because many schools have been cutting guidance services as a result of the depressed economic conditions in the state. Concern was expressed that a number of students in small schools are not receiving career guidance services and therefore are not aware of the educational and occupational opportunities that are available. The state board has 24 programs that serve approximately 104 school districts and four postsecondary institutions. Approximately 44 percent of the students in the state in kindergarten through grade 12 are served by a professional guidance counselor. Seventy school districts in North Dakota do not have access to guidance services. Job Service North Dakota provides counseling services and job training services to youth and adults; however, a representative from Job Service North Dakota testified that Job Service does not have enough staff to assist the thousands of people who are poorly prepared to enter the world of work and who come to Job Service for assistance.

The committee reviewed a proposal submitted by the State Occupational Coordinating Committee. The purpose of the proposal would have been to provide support to local communities through school districts for career guidance and development programs to prepare children and adults to make knowledgeable career choices. Under the proposal, the Superintendent of Public Instruction would have been required to adopt guidelines for the implementation of career guidance and development programs. The

superintendent would have been required to consider the guidelines formulated by the state committee. The proposal contained a \$600,000 appropriation which would have been used to make grants to school districts to implement career guidance and development programs and to hire necessary staff. Representatives of agencies that provide career guidance testified that the proposal would not have duplicated, conflicted with, or replaced their agencies' efforts relating to career guidance and development.

Conclusion

Although the committee members generally agreed that the concept of career guidance is important, the committee makes no recommendation with respect to career guidance and development programs for adults and youth in light of the cost of the proposal. Committee members indicated that the proposal might receive legislative approval if it were sponsored by one or more of the agencies that are members of the State Occupational Coordinating Committee.

COMPETENCY TESTING STUDY

House Concurrent Resolution No. 3058 directed a study of the feasibility and desirability of implementing a program for competency testing of elementary and secondary students in the areas of mathematics, reading, and writing skills and of providing remedial programs to educationally deprived students. Students in North Dakota are being tested for competency; however, school districts have the option of choosing the tests they use. Because different tests are given at different times during the year, it is difficult to generalize the results and it is impossible to make valid district-by-district comparisons.

State Law

Under NDCC Section 15-21-09, the Superintendent of Public Instruction is charged with supervision of the examination of eighth grade and high school pupils and with the preparation of courses of study for the several classes of public schools. Section 15-21-04.1 authorizes the superintendent to adopt standards for the accreditation of public and private schools. To be accredited schools must meet certain required standards and a certain percentage of optional standards. One optional standard is to provide student evaluations. If a school chooses to provide student evaluations, the following criteria must be met:

1. Standardized achievement tests must be administered at any two grade levels in grades 9 through 12.
2. A nationally standardized group achievement test and a nationally standardized group mental ability test must be administered in either the seventh or the eighth grade.
3. A nationally standardized achievement test and a nationally standardized group mental ability test must be given to two grade levels each year in grades 1 through 6. The achievement and mental ability tests must be administered at the same grade levels to all students.
4. A standardized readiness screening test must be

administered in either kindergarten or first grade depending on which is the initial point of formal education.

5. A diagnostic criterion-referenced test must be administered in at least one subject area such as reading or math, annually in each grade from kindergarten through grade 8.

Federal Law

The Education Consolidation and Improvement Act of 1981 is codified as 20 U.S.C. 3801-3863. Sections 3801 through 3810, often referred to as the federal Chapter 1 program, provide financial assistance to meet the special educational needs of disadvantaged children. Sections 3811 through 3863, often referred to as the federal Chapter 2 program, consolidate the program authorizations contained in the Elementary and Secondary Education Act of 1965, the Alcohol and Drug Abuse Education Act, parts of the Higher Education Act of 1965, the Follow Through Act, the National Science Foundation Aid Act of 1950, and the Career Education Incentive Act into a single authorization of grants to states for the same purposes that are set forth in those Acts. The grants are to be used in accordance with the educational needs and priorities of state and local education agencies as determined by the agencies. The basic responsibility for the administration of funds made available under the federal Act is with state educational agencies.

Section 3812 appropriates such sums as may be necessary to carry out the provisions of the federal Act for fiscal years 1982 through 1987. Each state is entitled to an amount that bears the same ratio to the amount of money appropriated, less seven percent, as the school age population of the state bears to the school age population of all states except that no state may receive less than .5 percent of the amount appropriated less seven percent. The state must apply for the funds and allocate 80 percent of the funds to local educational agencies. State and local educational agencies may use part of the funds to develop and implement a comprehensive and coordinated program designed to improve elementary and secondary school instruction in the basic skills of reading, mathematics, and written and oral communication relating to basic skills improvement.

In planning for the utilization of funds under the basic skills development portion of the Act, local educational agencies are required to develop programs that include a systematic strategy for improving basic skills instruction for all children. The programs must include diagnostic assessment to identify the needs of all children in the school; establishment of learning goals and objectives for the children and for the schools; to the extent practical, preservice and inservice training and development programs for teachers, administrators, teachers' aides, and other support personnel, designed to improve instruction in the basic skills; activities designed to enlist the support and participation of parents to aid in the instruction of their children; and procedures for testing students and for evaluating the effectiveness of programs. The programs may include areawide or districtwide activities such as learning centers for students and parents, demonstration and training

programs for parents, and other activities designed to promote more effective instruction in the basic skills.

Minimum Competency Testing

A competency test is a standardized examination designed to demonstrate whether a student has reached a given level of proficiency in any one of several basic skills. It is different from an IQ test, which is designed to measure innate ability. According to a background paper prepared for the minimum competency workshops sponsored by the Education Commission of the States and the National Institute of Education in September 1977, minimum competency focuses attention upon the basic academic skills of reading, writing, and arithmetic; presumes that the state will set educational objectives; presumes that the local school district will conduct its programs so that the objectives will be achieved; emphasizes minimal objectives for grade-to-grade promotion and/or high school graduation; and supposes that objectives will be stated and will be explicit and that a statewide test will determine whether the objectives are obtained.

Advocates of minimum competency testing believe the existence of the test will cause schools to reorient themselves so that objectives will be attained. Advocates claim that testing will improve the class of high school graduates, make both students and teachers accountable for their actions, identify teachers who are not teaching well (which will inspire teachers to work harder), be an incentive for students to work harder, and, if used as part of the graduation requirements, add meaning to the diploma because only those who have mastered basic skills would pass the test and receive a diploma. Additionally, the test results could be used to identify students who need remedial help, identify structural problems in the system's educational program, and provide statewide uniformity of education among schools.

Opponents of the use of competency tests as a determinant in deciding whether to grant a diploma say that teachers will "teach-to-the-test," which will inhibit innovative and flexible curriculum decisions. In addition, the test might encourage marginal students to drop out of school rather than take the test and be branded as unintelligent. Finally, the test is used to place students in special classes or tracts based on ability, often resulting in racially segregated classrooms.

Legal Implications of Competency Testing

In the case of *Debra P. v. Turlington*, 474 F.Supp. 244 (M.D. Florida 1979), the students claimed that the minimum competency examination they were required to pass to receive a diploma discriminated against them in violation of the equal protection clause. Test results showed that 78 percent of the black students failed as compared to 25 percent of the white students. The United States district court in Florida found that the discriminatory impact was not enough to sustain the challenge. The court said there must be some evidence of discriminatory intent, e.g., after the discriminatory intent is shown to have been known, it must be further demonstrated that the

action was taken because of the impact it would have on a certain group rather than in spite of the impact. The students in *Debra P.* were unable to show that there was discriminatory intent.

The students also argued that the test violated equal protection because some of the students who took the test had spent the first few years of their education in segregated schools while white children had the benefits of superior schools. The court issued an injunction to prohibit the use of the test until all the students taking the test had been trained exclusively in desegregated schools. The court permitted the use of the test during the period of the injunction for remedial purposes.

The students also claimed that implementation of the test was unfair because they did not have adequate notice of the test requirement for graduation. The students were in the spring semester of the 11th grade when they took the first test. Those who failed had a total of three chances in their senior year to pass. The court found this violated due process, reasoning that the students may have studied differently and the teachers may have taught differently had they been aware of the requirement earlier. The court found a little over a year to be inadequate notice. In a similar case, *Anderson v. Banks*, 520 F.Supp. 472 (S.D. Georgia 1981), the United States district court in Georgia found that two years was adequate notice.

In *Anderson* the court addressed the issue of whether the tests themselves were so arbitrary and capricious as to violate substantive due process and thus should be totally banned. The court found that the state met its burden of showing a rational relationship between the test and the legitimate state interest of improving education. Thus, the court upheld the use of the test.

Debra P. was appealed and the United States Fifth Circuit Court of Appeals upheld the district court's injunction but remanded for further findings that would affect the use of the test as a diploma sanction. The circuit court first required the state to demonstrate that the competency test was a fair test of what had been taught in the Florida classroom. Secondly, the court said that even if the test were instructionally valid, the state would have to demonstrate either that the test's racially discriminatory impact was not due to the present effects of past intentional discrimination or that the test's use as a diploma sanction would remedy those effects.

On remand, the district court concluded that the state had met its burden of proving, by a preponderance of the evidence, that the competency examination was instructionally valid (a fair test of that which was taught in the Florida schools) and although traces of past segregation still existed to some extent there was no cause or link between the disproportionate failure rate of black students and the present effects of past segregation. The district court's findings were upheld on appeal.

A review of these cases indicates that if a competency test is to be used as a requirement to receive a diploma, the test must not discriminate, it must be instructionally valid (test what has been taught in the classrooms), and sufficient notice must

be given regarding the test's implementation.

Testimony

Chapter 1 is a federally funded program designed to provide remedial instruction in the areas of math and reading. Approximately seven percent of the students in North Dakota are served by Chapter 1; however, participation is mainly at the elementary level where 15 percent are served in grade 2 and progressively fewer at each grade level through grade 12. In grade 6, for example, about 9 percent are served; at grade 9 about three percent are served; and at grades 11 and 12 less than one-half of one percent are served.

The Superintendent of Public Instruction distributed \$7 million in federal funds to 257 school districts in North Dakota under the Chapter 1 program during the 1985-86 school year. Those funds were used to provide remedial instruction to approximately 8,640 public school students and 490 nonpublic school students. The superintendent received over \$8 million in Chapter 1 funds for the 1987-88 school year. Chapter 1 funding must be used primarily in schools having high concentrations of students from low income families; however, all students in those schools are eligible to receive remedial assistance. Based on national surveys, Chapter 1 programs have proven effective. In North Dakota, most students in grades 2 through 6 who score below the 45th percentile on the Iowa Text of Basic Skills or the survey of Basic Skills Test published by Science Research Associates are served by Chapter 1 programs. Approximately 27 school districts received \$120,000 for providing basic skills instruction under the federal Chapter 2 program during the 1986-87 school year. An analysis of statewide scores indicates that North Dakota is above the national average on the composite scores for each grade on the various nationally standardized tests that are used by local school districts. Examination of score frequency distributions, however, indicates that approximately 14 percent of the 11th graders fall below the national 30th percentile and about seven percent fall below the 20th percentile. It was suggested by a representative of the Superintendent of Public Instruction that additional remedial services could be provided to students in grades 7 through 12 to complement the services obtained through Chapter 1 in kindergarten through grade 6.

The two most common tests given to students are the norm-referenced tests and the criterion-referenced tests. Norm-referenced tests are based on the curriculum guides of several states and address common areas that are taught. Norm-referenced tests comprise a normal curve distribution and percentile based on national samples. Criterion-referenced tests are tests that individual school districts select based on what is taught in the district. When a criterion-referenced test is used, a study needs to be conducted of curriculum and the kinds of objectives that should be reached in each grade level. The costs of testing can be held down if students are tested at various grade levels rather than testing each student in each grade.

A representative of the Superintendent of Public

Instruction testified that a testing program that assessed essential curriculum objectives at selected grade levels in all schools so that all regular education students in those selected grades would be taking the same basic skills test would enable a meaningful inservice and remedial instruction program to take place with the goal of improving levels of achievement. Such a testing program would enable district-by-district comparisons to be made so that test score information could be used to develop comprehensive school improvement programs. Although it would be expensive to implement an objective statewide testing program in the basic skills coupled with remedial instruction and a school improvement program, one phase of the program without the other would not be productive. For testing to be useful, students or schools identified as having weaknesses would have to be provided with remedial instruction or school improvement programs.

Representatives of the Superintendent of Public Instruction pointed out some pitfalls to testing. In some states, in response to pressure to improve the standing of a class, a school, or a district, school officials switched to easier tests, eliminated certain populations from the testing, used coaching techniques such as running television programs to tutor students on how to take the test, or informed students of certain items that were on the test. Thus, test validity is questionable. In some states, when competency testing programs were initiated, the dropout rate at the secondary level increased dramatically because students did not want to be exposed to testing. In Washington and Missouri, the minimum standards required on the test became the maximum standards because teachers began to teach to the test.

Representatives of the Superintendent of Public Instruction opposed the concept of large-scale minimum competency testing. Concern was expressed that the use of this type of test establishes minimums that could become the goals for students who could go well beyond the goal of the minimum competency standards.

The United States Department of Education has contracted with the Council of Chief State School Officers to work with various organizations to plan and implement a state-by-state assessment program. In April 1988, Congress requested the National Assessment of Educational Progress, a testing organization that coordinates national testing of student samples throughout the United States, to develop a state-by-state testing project that would enable states to compare their students' results with results of students in other states. Initially, eighth grade students will be tested in mathematics in the spring of 1990. Additional grades and subjects will be tested during following years. Data must be collected by sampling techniques that are representative on a national, regional, and state basis, with reports at least every two years for reading and mathematics, every four years for writing and science, and every six years for history, geography, and civics. The federal government will pay for 80 percent of the cost of testing and states must pay 20 percent. While state participation is voluntary, representatives of the

Superintendent of Public Instruction testified that the superintendent supports participation in this program and proposes that inservice training will be provided after strengths and weaknesses are identified from an analysis of the results.

Conclusion

The committee makes no recommendation with respect to competency testing of elementary and secondary students.

SPECIAL EDUCATION INTERAGENCY AGREEMENTS

Section 15-59-05.2 requires the Superintendent of Public Instruction to cooperatively develop and implement interagency agreements with public and private agencies for purposes of maximizing available state resources in the fulfillment of providing the education and related services required by Public Law 94-142. Public Law 99-457 requires the agreements to define the financial responsibility of each agency for providing handicapped children with a free appropriate public education, establish procedures for resolving interagency disputes among agencies that are parties to the agreement, and establish procedures under which local educational agencies may initiate proceedings to secure reimbursement from agencies that are parties to the agreements. The superintendent is drafting a new Education of the Handicapped Act plan that will cover the years 1990-1992. A component of the planning process is to review the existing agreements between the Superintendent of Public Instruction and other agencies and to revise and develop new agreements as needed.

The agreement between the Superintendent of Public Instruction and the Director of Institutions' office, regarding the responsibility of each agency to provide services to handicapped students from ages three through 21, will be revised when the responsibility for administering Grafton State School is transferred from the Director of Institutions' office to the Department of Human Services. Another agreement with the Department of Human Services specifies the responsibilities of each agency for the provision of services to handicapped children from birth to two years of age. A third agreement, among the Superintendent of Public Instruction, State Board

of Vocational Education, Department of Human Services, and Job Service North Dakota, covers each agency's responsibility in planning transitional arrangements for handicapped students who are moving from school programs to other agency programs at ages 18 through 21.

The Superintendent of Public Instruction has an agreement with the Region 8 Administration for Children, Youth, and Families located in Denver, Colorado. That agency represents the North Dakota Head Start program. The agreement specifies responsibilities of the Superintendent of Public Instruction and the Region 8 Head Start Program for the provision of services to handicapped children ages three through five. The superintendent is developing an agreement with the Office of Indian Education Programs at the Bureau of Indian Affairs regarding the responsibilities of each agency for the provision of services to handicapped children on reservations. The superintendent is also developing agreements with the Head Start programs on each of the reservations that will be similar to the agreement with the Region 8 Administration for Children, Youth, and Families. There is potential that the superintendent will enter into an agreement with respect to the provision of services to handicapped students in juvenile and adult correctional facilities.

The Department of Human Services, Department of Health and Consolidated Laboratories, and Superintendent of Public Instruction are developing a system for tracking children from birth through age five who are at risk for developmental delays. These children are at risk because of problems at birth, such as low birth weight, respiratory problems, or other factors that require them to be placed in a neonatal intensive care unit or because of environmental factors such as having a teenage parent or a parent with developmental disabilities, chemical abuse, or a history of abuse and neglect in the family. These agencies are working with physicians in the private medical sector to identify infants who are at risk. The superintendent is anticipating that a potential agreement will result from the collaborative arrangement.

The committee took no action with regard to the report.

EDUCATION FINANCE COMMITTEE

The Education Finance Committee, established by 1987 Senate Bill No. 2002, was assigned three studies. Senate Bill No. 2002 directed a study of education finance issues, including the issues of adequate funding for school districts, the amount of money spent by school districts for noninstructional purposes, the inequities in the distribution of transportation aid to schools, local effort in support of schools, other funding sources including federal programs and energy tax revenue available to schools, and the special needs of schools in sparsely populated areas of the state. As part of this study, the Legislative Council directed the committee to study the funding of adult basic and secondary education and small but necessary schools. House Concurrent Resolution No. 3015 directed a study of the administrative structure of school districts and a review of the administrative structure of elementary and secondary school districts in other states. Additionally, the chairman of the Legislative Council directed the Education Finance Committee to study the effect of federal law on state law relating to age of schoolbus drivers.

Senate Bill No. 2002 required three professional educators to be on the committee. The Legislative Council selected one educator from a small school district, one from a medium school district, and one from a large school district.

Committee members were Representatives Serenus Hoffner (Chairman), Moine R. Gates, Ray Meyer and David O'Connell; Senators Bonnie Heinrich, Jerome Kelsh, Don Moore, and Curtis M. Peterson; and Citizen Members Julian Bjornson, Duane J. Carlson, and Paul Pearson.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

SCHOOL FINANCE STUDY

The four significant sources for the payment of state financial aid to public school districts in North Dakota are the state foundation aid program, transportation program, special education reimbursements, and tuition apportionment payments.

Foundation Aid Program

The foundation aid formula utilizes three major components to derive the amount of state payments made to school districts. The first component is the per-pupil based state payment. In addition to the per-pupil based state payment, schools receive a per-pupil payment from the state tuition trust fund. Total per-pupil payments made to schools from the 1975-76 school year through the 1988-89 school year are illustrated by this table:

	Foundation Payment	Tuition Apportionment	Total State Payment
1975-76	\$ 640	\$ 38	\$ 678
1976-77	690	47	737
1977-78	775	47	822
1978-79	850	53	903
1979-80	903	80	983
1980-81	970	106	1,076
1981-82	1,425	98	1,523
1982-83	1,353*	158	1,511
1983-84	1,400	176	1,576
1984-85	1,350	202	1,552
1985-86	1,425	209	1,634
1986-87	1,370**	216	1,579
1987-88	1,400	215	1,615
1988-89	1,364***	177****	1,541

* The 1981 Legislative Assembly provided for a \$1,591 per-pupil foundation aid payment. The appropriation necessary to fund this payment was made in anticipation of certain oil extraction tax revenues that were not received by the state.

** Senate Bill No. 2904 (1986), passed during the special session, retroactively reduced the educational support per pupil from \$1,455 to \$1,370 for the second year of the 1985-87 biennium.

*** Estimated payment. The 1987 Legislative Assembly provided for a \$1,400 per-pupil foundation aid payment. This amount was reduced as a result of an executive ordered two percent general fund reduction and referral of the cable television tax.

**** Estimated payment.

The second major component of the foundation aid formula is the use of weighting factors. The weighting factors generally favor schools with lower enrollments and higher per-pupil costs and were included in the original foundation aid program formula to account for the fiscal burden suffered by those school districts. The weighting factors are also higher for students attending high schools. The number of students in a district multiplied by the appropriate weighting factor (determined by each school district's enrollment in its high schools and elementary schools), multiplied by the foundation aid base payment equals the gross entitlement of the school district from the state foundation aid program. A summary of the current weighting factors, the actual cost of education ratios dating back to the 1974-75 school year, and the five-year average cost of education ratios for the years 1982-83 through 1986-87 is shown at the end of this report.

After a school district's gross entitlement of foundation aid is established, the third major component of the foundation aid formula—property equalization—is applied. A 20-mill "equalization factor" is multiplied times the net assessed and equalized valuation of real property in each school district. The intent of this equalization factor is to

make state educational funds available for redistribution to school districts that have relatively low property valuations. The underlying assumption justifying application of this equalization factor is that a school district with a high property valuation is in a better position to raise locally a portion of its total cost of education than is a district with a low property valuation. The gross entitlement, less the amount determined by use of the 20-mill equalization factor, equals the net state foundation aid payment.

Until 1981 all counties were also required to actually levy 21 mills to raise revenue in support of education at the local level. The revenue raised by the 21-mill county levy was paid to school districts and that amount was subtracted from the school district's foundation aid reimbursement. The amount of revenue raised by the county levies varied depending on the property wealth of each county. The theory and rationale of this mandatory levy was that since counties with relatively high property valuations raised more revenue locally and received a proportionately smaller share of state aid payments, more money was available through the state foundation aid program to be distributed to school districts located in counties with relatively low property valuations. Equalization of educational opportunity was therefore enhanced, and the state constitutional guarantee of a free and uniform system of public school education was also addressed.

The passage in November 1980 of Initiated Measure No. 6 brought with it expectations for dramatically increased revenues for state educational finance. Initiated Measure No. 6 imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax be used to make possible state funding of elementary and secondary education at a 70 percent level. With the electorate having approved of the concept of public education being funded at a 70 percent level by the state, the 1981 Legislative Assembly provided that 60 percent of the oil extraction tax revenue be allocated to the state school foundation aid program. Because the oil extraction tax had been shown over the course of the 1981-83 biennium to be an extremely volatile and unpredictable revenue source, the 1983 Legislative Assembly enacted legislation providing for 90 percent of the oil extraction tax revenues to be deposited in the state general fund, rather than 60 percent to the school aid program and 30 percent to the general fund as had been provided in 1981.

The mandatory 21-mill county levy was eliminated by the 1981 Legislative Assembly. Foundation aid payments were also increased by more than 40 percent for the 1981-82 and 1982-83 school years.

Transportation Program

State transportation aid is paid to school districts according to the number of miles traveled and the size of schoolbus operated. Transportation payments for the 1987-89 biennium are 35.5 cents per mile for schoolbuses with the capacity to carry nine or fewer students and 72 cents per mile for schoolbuses with a capacity to carry 10 or more pupils. Transportation payments for the 1985-87 biennium were 38 cents per mile for schoolbuses with a capacity to carry nine or

fewer students and 76 cents per mile for schoolbuses having the capacity to carry 10 or more students. In addition, school districts receive 19 cents per day for each student living outside city limits who is transported in a bus with a capacity to carry 10 or more students. School districts that arrange for transportation within the incorporated limits of a city within which a school is located receive 9.5 cents per student per one-way trip.

State transportation aid has, over the years, steadily increased as a percentage of all transportation costs incurred by school districts. For the 1974-75 school year, total transportation costs amounted to \$10,594,437 and state transportation aid amounted to \$5,592,617 or 52.8 percent. During the 1981-82 school year, total transportation costs amounted to \$23,112,963 and state transportation aid equaled \$17,523,956 or 75.8 percent. Total transportation costs for the 1987-88 school year amounted to \$22,776,286 and state transportation aid payments amounted to \$19,035,452 or 83.6 percent.

The transportation formula has been criticized because there is a wide disparity in the percentage of transportation costs reimbursed to school districts. In general, rural school districts with fewer students and long routes receive the highest ratio of state aid to actual costs. Many such districts receive state aid in excess of 100 percent of their actual costs. The largest school districts with large student populations and relatively short bus routes receive the lowest ratio of state aid to actual transportation costs. These districts typically receive state aid in amounts varying between 40 and 75 percent of their transportation costs.

In some school districts it costs \$300 per year to transport a student while in others the cost is as high as \$1,000 per student. Transportation costs ranged from 69 cents to \$1.71 per mile during the 1986-87 school year and the state average cost per mile was 91.4 cents. The range in cost per mile is due to various factors. For example, some school districts hold costs down by hiring their own mechanics, buying used buses and used or rebuilt parts to repair buses, paying immediate attention to maintenance, paying drivers to use their own cars, and planning and limiting routes. Other variables that affect the cost of transportation from district to district include types of roads, replacement schedules for buses, and salaries of busdrivers. In addition, some school districts that receive over 100 percent of their transportation costs do not include administrative costs or depreciation as part of their transportation costs.

During the 1985-86 interim, the Legislative Council received a \$6,000 grant from the National Conference of State Legislatures for an education study. One part of the study focused on North Dakota's reimbursement for elementary and secondary school transportation. Forty-eight states were surveyed to collect information on state approaches to financing transportation costs. Special emphasis was placed on states that operate under circumstances similar to North Dakota's. Data available about the costs of providing transportation in the various types of school districts in the state was reviewed to see if this data would provide insights into how the current formula could be made more sensitive

to the experiences of North Dakota school districts. Based on the formulas used by Idaho and Colorado for transportation reimbursements, a representative of the Superintendent of Public Instruction simulated alternative approaches to financing transportation in North Dakota. Special emphasis was placed on seeing how changes to the parameters of the current system might improve the distribution of transportation aid across the state.

The committee reviewed various proposals based on the formulas used by Idaho and Colorado to reimburse school districts for transportation. Idaho reimburses school districts for schoolbus transportation at 85 percent of allowable costs. Under this formula, the state payment for transportation would be approximately \$1 million more than current payments (excluding reimbursements for vocational education, special education, and family transportation). Colorado reimburses districts for schoolbus transportation on the basis of 40 cents per mile and 25 percent of the difference between the current operating expenses and the mileage payment. Maximum reimbursement is 90 percent of allowable costs.

The committee reviewed two bill drafts based on the Colorado formula. Both bill drafts would have reduced the disparities between the percent of reimbursements school districts receive under the existing formula. One of the bill drafts would have changed the reimbursement to school districts to 50 cents per mile and 50 percent of the difference between the mileage payment and the school district's actual expenditures for transportation the preceding year (the 50/50 plan). The bill draft provided for a cap so that no school district would have received more than 100 percent of its actual expenditures for transportation. The other bill draft would have provided for a reimbursement of 60 cents per mile and 40 percent of the difference between the mileage payment and the school district's actual expenditures for transportation for the preceding year (the 60/40 plan). Under this bill draft, no school district would have received more than 90 percent of its actual expenditures for transportation. Both bill drafts would have provided for transportation payments to teachers for travel between schools to teach and for transporting students to other schools for academic programs.

Under the 50/50 plan, state payments to school districts would have amounted to \$17,414,747 if payments were capped at 90 percent of a school district's actual transportation expenditures and approximately \$17,500,000 if payments were capped at 100 percent. The state will distribute approximately \$18,860,000 for transportation in the 1987-88 school year. Under the 60/40 plan state payments would have amounted to approximately \$17,625,000.

The committee reviewed the impact of the 50/50 plan, without the 100 percent cap, on school districts. Under the plan, no school district would have received less than 50 percent of its transportation costs, while under the current formula 12 school districts receive less than 50 percent of their costs and four of those school districts receive less than 25 percent of their

costs. Three school districts would have received between 101 and 120 percent of their transportation costs under the 50/50 plan, while under the current formula 35 school districts receive between 101 percent and 120 percent. Under the 50/50 plan, only one school district would have received more than 120 percent of its transportation costs, while under the current formula 15 school districts receive more than 120 percent. A representative of the Superintendent of Public Instruction testified that the 50/50 plan with a 90 percent cap would encourage school districts to be conservative and run efficient transportation programs because the school district would receive a percentage of allowable costs. Even without imposing a percentage cap, both formulas contained a cap because in order for a school district to receive more than 100 percent of its costs, its costs per mile could not have exceeded 50 cents under the 50/50 plan, or 60 cents under the 60/40 plan. The formulas based on Colorado law, unlike the current formula, would not have provided an incentive for school districts to purchase larger than necessary buses in order to take advantage of the higher mileage payment paid for large buses.

A formula that redistributed money by taking it away from low density districts and distributing it to school districts with high densities of students was opposed because of the adverse impact it would have on small rural schools.

Opponents of placing a cap on transportation payments testified that a cap would penalize the most efficient, frugal school districts. Testimony indicated that those school districts use the money they receive in excess of their transportation costs in the classroom. One school administrator testified that if the state placed a cap of 100 percent on transportation expenses the administrator would spend more money on transportation in order to receive higher payments from the state. Additionally, a cap would not be meaningful unless school districts used uniform methods for calculating transportation costs, e.g., some districts include administrative costs and depreciation as part of the cost of transportation while others do not and some districts depreciate buses over five years while others depreciate them over 10 years. Committee members generally agreed not to consider placing a cap on transportation payments.

The committee reviewed amendments to Senate Bill No. 2002 (1987) that would have eliminated transportation aid payments. Had the amendments been adopted, the money paid to schools for transportation would have been included in the per-pupil foundation aid payment. Under the proposal, local districts would have had the discretion to determine how the additional funds would have been used. School districts that receive a high percentage of transportation reimbursement would have received less money from the state under this proposal than under the existing programs. Those districts would have been required to raise money locally to cover lost revenues from the state. Districts that are not required to provide transportation or that receive a low percent of transportation reimbursement would have received an increase in total state dollars.

The current transportation formula has been

criticized because it does not address density. Generally, the more dense the population of a district the higher the cost per mile and the less adequate the state payment. The committee reviewed a bill draft that would have retained the current mileage payments, but in addition, would have provided for a weighted per-pupil payment to address the issue of density. The amount of transportation aid a school district received would have increased as the average number of pupils transported per bus route mile increased. Under this bill draft, the state would have been required to provide an additional \$443,000 per year to fund transportation. Under the proposal, school districts that receive a low percentage of reimbursement under the current formula would have been entitled to additional state funding. The bill draft, however, did not address the problem of school districts that receive over 100 percent of their transportation expenditures. Under the proposal, 121 school districts would have received more than 100 percent of their costs.

The committee reviewed a bill draft that would have retained the existing formula but would have provided that no school district would receive less than 65 percent of its transportation expenditures. Under this proposal, 32 school districts would have received additional state funding at a cost to the state of approximately \$757,000 per year.

The state funds approximately 84 percent of the cost of transportation, 50 percent of the cost of regular education, and 31 percent of the cost of special education. Committee members discussed whether transportation should be funded at a higher level than regular and special education. Committee members generally agreed that the state should not increase or decrease state aid for transportation by more or less than five percent of current state expenditures and that additional state aid for education should go to the classroom instead of transportation.

The mileage payments for transportation have increased from 12 cents a mile in 1975-76 to 35.5 cents a mile in 1987-88 for small buses and from 26 cents a mile in 1975-76 to 72 cents a mile in 1987-88 for large buses. Per-pupil payments have increased from 15 cents a day in 1975-76 to 19 cents in 1987-88. A school administrator from a densely populated school district testified that his school district is efficient and has an economical transportation system but the district only receives 30 percent of its transportation costs from the state. It was suggested that to increase equity in the formula, the state should increase payments made on a per-pupil basis and decrease mileage payments. The committee reviewed a bill draft to reduce the mileage payment for transportation one cent for vehicles having a capacity of nine or fewer pupils and two cents per mile for schoolbuses having a capacity of 10 or more pupils. The bill draft also raised the per-pupil payment seven cents per day for each pupil transported and from 9.5 to 13 cents per pupil per one-way trip for in-city transportation. This proposal would require the state to pay an additional \$47,000 for transportation annually. No district would lose more than three percent of its transportation aid payment.

An issue that surfaced during the 1985 and 1987

legislative sessions concerned certain school districts that charge for the transportation of rural schoolchildren. School districts that have not been reorganized are not required to provide transportation to schools. Therefore, in school districts that have not been reorganized, certain costs of school transportation are charged to the parents of children who are bused to school. This practice was challenged by a Dickinson School District patron in Kadrmas v. Dickinson Public Schools, 402 N.W.2d 897 (N.D. 1987). The assertion was that North Dakota Century Code (NDCC) Section 15-34.2-06.1, which allowed nonreorganized school districts to charge for transportation, violated the North Dakota constitutional provision providing for a uniform system of free public schools. The North Dakota Supreme Court held that the constitutional provision mandating a uniform system of free public schools does not require the state or school districts to provide free transportation for students to and from school. On appeal, the United States Supreme Court affirmed the constitutionality of the statute.

Special Education Reimbursements

School districts are statutorily required to provide special education programs for handicapped children, but are not required to provide special education programs for gifted children. School districts that make expenditures for the special education of exceptional (handicapped or gifted) children are entitled to receive state reimbursements for their cost of education and related services. The state reimbursement for each exceptional child per year may not exceed three times the state average per-pupil cost of education for instruction and four times the state average per-pupil cost of education for related services. The state average cost of education during the 1985-86 school year was \$2,817. Therefore, the maximum reimbursement for special education instructional costs permitted by law would amount to approximately \$8,450 per year. The method used to reimburse school districts is based on the number and qualifications of full-time special education instructors employed by a school district. School districts are reimbursed on an annual flat grant basis for the cost of specific education personnel employed to deliver education services to exceptional children.

The committee reviewed a bill draft relating to several special education finance issues. Because reimbursements to school districts for special education are made based on the special education personnel employed, the bill draft deleted statutory references to state reimbursements being three times the state average cost of education and four times the state average cost of related services.

Transportation aid is paid to school districts for the transportation of exceptional students to and from schools in other districts and to and from schools within the school district for special education programs. The amount of transportation reimbursed by the state is the same amount that school districts are entitled to otherwise receive for transporting students, except that such reimbursements must be made for all miles traveled regardless of whether the students live within the incorporated limits of cities

in which the schools they are enrolled in are located. Some districts transport one or two exceptional students on large schoolbuses and receive the payment for large buses. Under the bill draft, school districts would receive the payment for large buses if they transported 10 or more pupils on a bus. School districts would receive the payment for small buses if they transported nine or fewer pupils on a bus regardless of the size of the bus. This provision is intended to encourage school districts to use small schoolbuses if they are transporting nine or fewer pupils. Additionally, the bill draft required multidistrict special education boards to plan and coordinate the transportation of pupils to special education programs within the multidistrict special education unit.

Social service agencies and courts have the authority to place children outside their school districts of residence if they are in need of either special education services or services supplementary to those generally provided to other public school students. Until June 30, 1989, the school district of residence is financially responsible to pay the bill for these children up to 2.5 times the statewide average per pupil, either elementary or secondary costs. The 2.5 times cost amounted to \$7,403 for preschool through grade 8 and \$9,680 for grades 9 through 12 for the 1986-87 school year. For the 1987-88 school year, the amount for preschool through grade 8 is \$7,855 and for grades 9 through 12 the amount is \$9,282. Legislation enacted in 1987 provides that after June 30, 1989, the district of residence will be liable to pay the admitting district the state average per-pupil cost of education. The remainder of the actual cost of educating these pupils will be made by the district of residence and the state as follows: the state's share will be 40 percent in the 1989-91 biennium, 60 percent in the 1991-93 biennium, and 80 percent in the 1993-95 biennium. After June 30, 1995, the state will be liable for 100 percent of the remainder of the costs of educating these handicapped children.

Over the past several years, representatives of the Superintendent of Public Instruction and school administrators have recommended that the state become financially responsible for 100 percent of the cost of educating handicapped students placed outside their school districts of residence by social service agencies and courts and from state-operated institutions because school districts have no control over where these students are placed. The bill draft required the state to pay the entire tuition and excess costs of educating such children beginning on the effective date of the Act.

If a handicapped student is unable to attend school in the student's school district of residence due to a handicapping condition, the school district may contract with another school district or with a private in-state or public out-of-state school to provide education to the handicapped student. The financial responsibility of school districts that send their students to other school districts for special education is limited to 2.5 times the statewide average per-pupil cost of education per year. The remainder of the actual cost of educating the student is paid by the state.

During the interim, it was reported that because state laws limit the financial responsibility of school districts that send their children to other school districts for special education and because there is no upper financial limit for the liability of a school district that develops its own programs to educate handicapped children within the district, the incentive is for a school district to send children to another school district for special education. The bill draft created an upper limit of 2.5 times the cost of education for a school district that educate its special education students within the district. Under the bill draft, the state is responsible for the remainder of the cost of educating those students.

Under existing law, the school district of residence is liable for the 2.5 times the cost of education, or the actual cost if it is less than the 2.5 times cost, regardless of how long a student is in a program outside the student's district of residence. Many students are placed in programs that run less than an entire year. Under the bill draft, a school district's liability is proportionately reduced if a student does not attend school outside the student's district of residence for an entire school year.

The State Director of Special Education testified that preschool programs for handicapped students are expensive. The average cost of educating a preschool handicapped student in 1986-87 was \$4,028. The bill draft changed the weighting factor for preschool handicapped children from .49 to the weighting factor for elementary schools which would range from .95 to 1.30, depending on the size of the elementary school.

It was reported that some school districts that send their handicapped students to other districts to be educated either do not pay the tuition on time or do not pay at all. The bill draft required the Superintendent of Public Instruction, if notified by the admitting school district that tuition payments are due and are unpaid, to withhold the sending school district's foundation aid payments until the tuition is paid.

Every school district in the state must be part of a multidistrict special education unit. In some units, school districts do not share in the cost of providing programs and services unless they have a special education student which often causes budgetary problems for school districts. Requiring all school districts within a unit to share in the cost of providing programs and services would be similar to a school district having an insurance policy. The bill draft required each school district participating in a multidistrict special education program to share the costs of providing all special education programs and related services. Under this proposal, school districts would be more likely to determine whether a student needs a program based on the student's handicap and not based on the cost of the program. The method of sharing costs was not designated in the bill draft.

The bill draft also provided that when money is distributed to a school district for special education personnel, the Superintendent of Public Instruction should give consideration to the units of service provided by the district and the district's special education program costs and program needs.

Total costs of all special education services are almost \$38 million per year. In the 1986-87 school year the state paid 31.27 percent of the total cost; the federal government paid 6.76 percent; and school districts were responsible for 61.97 percent. In 1985-86 the state share was 47.8 percent and the federal share was 7.4 percent. It was suggested that state payments be increased to pay for a much larger percentage of the total cost of special education programs. The bill draft appropriated \$13 million to the Superintendent of Public Instruction for special education. The State Director of Special Education estimated that the programs in the bill draft would cost approximately \$7 million. The bill draft provides that the remaining \$6 million is to be used to increase the level of special education reimbursements for special education programs.

Based on the recommendations of the State Director of Special Education, the committee reviewed bill drafts relating to the compulsory school attendance exemption for handicapped students and group and residential boarding home care for handicapped students. A parent can be excused from requiring the parent's child to attend school if the school board determines that the child has a physical or mental condition that would render attendance or participation in regular or special education inexpedient or impracticable. This exemption is intended for children who are terminally ill or who have a medical condition that prohibits them from attending school. Some people who teach their children in home schools have sought an exemption by arguing that requiring their children to attend the public schools would cause trauma and damage to the children's peace of mind. The bill draft required the child of a parent or guardian claiming an exemption from the compulsory school attendance laws to first be identified as handicapped under the special education laws.

The Department of Human Services licenses group foster care homes and boarding home care facilities for special education students. Foster care homes can provide services to both foster care children and special education students. A facility registered for boarding care cannot provide foster care services. Boarding care homes are generally used to provide a room for special education students because it would be too difficult to transport them daily to special education programs. For example, many special education students who live in Minot during the week and go home on weekends stay in individual family homes licensed under the boarding home care laws. All but one of the existing facilities that houses more than four special education students is licensed under the foster care provisions. The foster care license requirements contain stricter fire and safety standards than do the boarding home care licensing requirements. The State Director of Special Education testified that the less strict requirements for boarding home care should only apply to residential homes that provide boarding home care for no more than four students. The committee reviewed a bill draft that limited the kind of facility that can be licensed under the boarding home care laws to private residences that provide boarding home care to no more than four

students. A facility providing care for more than four students would have to be licensed under the foster home care laws.

Tuition Apportionment and Other Payments

An increasingly important source of revenue for school districts is the state tuition trust fund. This fund consists of the net proceeds from all fines for violation of state laws and the interest and income from the state common schools permanent trust fund. The Office of Management and Budget certifies to the Superintendent of Public Instruction the amount in the state tuition trust fund on the third Monday in February, April, August, October, and December in each year. The superintendent then apportions the money in the fund among all school districts in the state in proportion to the number of children of school age residing in each school district.

In addition to the various payments already discussed, school districts receive other revenue. Some of this revenue is restricted to specific purposes such as special education or vocational education programs. Some districts receive revenue from various taxes relating to coal, oil, and gas. Federal money is distributed to certain school districts under federal programs such as the waterbank program, federal impact aid, and federal payments for game and fish lands. The committee focused on mineral tax revenues and the federal impact aid program.

Energy Tax Sources

Mineral tax sources of revenue for school districts are the oil and gas gross production tax, the privilege tax on coal conversion facilities, and the coal severance tax.

Portions of the revenues from all three mineral taxes are apportioned to school districts. With respect to the oil and gas gross production tax, NDCC Section 57-51-15(3) provides:

Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer quarterly to school districts within the county on the average daily attendance distribution basis, as certified to him by the county superintendent of schools.

North Dakota Century Code Section 57-62-02(2) requires 35 percent of the proceeds of the coal severance tax to be deposited in the state coal development fund to be apportioned by the State Treasurer to coal-producing counties. Each county must in turn apportion 30 percent of the money it receives from this source to school districts within the county on an average daily membership basis or to school districts in adjoining counties when a portion of those school districts' land has been certified to be eligible to share county funds.

North Dakota Century Code Section 57-60-14 requires the State Treasurer to allocate 35 percent of the funds received from the privilege tax on coal conversion facilities in each county to that county. Section 57-60-15 requires 30 percent of all funds received by a county from the privilege tax on coal conversion facilities to be apportioned by the county treasurer to individual school districts on an average daily membership basis.

Federal Impact Aid Program

The federal impact aid program is designed to provide school districts containing federal installations or pupils from such installations with compensation due to the increase in school enrollments in those areas as a result of the federal activity and for property tax moneys the districts lose because the federal property is exempt from taxation.

The federal payments will not be made to school districts if the state makes less aid available to a school district because it is eligible for federal aid than the district would receive if it were not eligible for federal aid, unless the state has a program to equalize expenditures among the school districts of the state. North Dakota does not equalize these federal payments. A state that takes federal payments into account may do so only to the extent of the proportion that the local revenues of a school district covered under the equalization part of a state aid program are of that school district's total local revenues for education. According to federal law, a state's program for funding education is equalized if the state meets a disparity standard or a wealth neutrality test, or has exceptional circumstances. To meet the disparity standard, the disparity in the amount of current expenditures of revenue per pupil for free public education among the school districts in the state cannot exceed 25 percent. To meet the wealth neutrality test, no less than 85 percent of the total state, intermediate, and local revenues for all school districts must be revenues that are not derived from any wealth advantage that a school district may have over any other school district. Additionally, a state program can take federal impact aid into consideration if the United States Secretary of Education determines the state has exceptional circumstances.

Education Guidelines and Goals

During the first part of the interim, committee members developed and adopted the following education finance guidelines to be taken into consideration during deliberations on the various education finance issues before the committee:

1. The committee should be futuristic. For example, the committee should decide whether it wants to be dealing with issues such as transportation, reorganization, consolidation, and teacher salaries 10 years from now.
2. The committee should establish a vision of what qualities policymakers expect young people to possess once they have gone through the education system. It is imperative that teachers develop the skills necessary to be able to impart that vision and those expectations to students.
3. An education system should provide all children with access to an equal educational experience, including higher level academic and vocational courses.
4. An education system should require financial input from local school districts and the state.
5. The committee should look at all parts of the education system to determine what is and what is not working.

6. The committee should take steps to eliminate or reduce the disparities that currently exist in the education finance system.
7. An education program should be responsive to technology and responsive to the different ways that people learn.
8. An education finance system should provide incentives whenever possible rather than disincentives or directives.
9. Committee members should look at the broad picture and forget how proposals affect individual districts.
10. The committee should propose legislation that can easily be changed or that has change built into it.

The committee also adopted the following goals with regard to the provision of education in the state's elementary and secondary school system:

1. Schools should be responsive to the needs of students and communities.
2. Schools should be flexible and should address the individual needs of students. Schools should have well-qualified staff. School staff should receive inservice training that will provide the staff with vision that staff members can impart to students.
3. At a minimum, schools should teach students the basics. Students should learn how to read, write, and make computations. Students should also be exposed to social sciences.
4. Schools should cooperate with each other.
5. Schools should use new technology.
6. Schools should provide an environment conducive to developing learning and thinking skills.
7. Schools should be a positive part of the community, should be involved in lifelong learning, and should provide career guidance throughout a student's education process.
8. Schools should evaluate achievement and challenge each student to that student's optimum level.
9. Schools should move in the direction of trying to be a part of an efficient administrative unit.
10. The term of the school year should be increased.
11. School districts should have local control and should be responsible for local financial effort.
12. Schools should actively explore and implement the results of valid research on teaching and learning methodology by using and expanding ties with the state's system of higher education.

Testimony

The committee received testimony from school personnel, citizens, representatives of the Superintendent of Public Instruction and of various education associations, and various education finance consultants regarding education finance in general and problems with North Dakota's education finance system.

Dr. John Augenblick, President, Augenblick, Van de Water, and Associates, Denver, Colorado, testified that a school finance system should make adequate amounts of revenue available to ensure that all

students receive an adequate education, should promote equity among school districts and their students as well as taxpayers, and should maintain a level of local control that is consistent with past levels of local control in the state. The four goals of a school finance system in North Dakota should be to assure a minimum, adequate base of support to all school districts; to offer school districts the choice to raise money above the minimum base; to provide incentives to school districts for school improvements and to eliminate incentives for inefficiencies; and to provide some assistance to school districts for capital outlay. The state foundation aid formula should take into consideration the individual characteristics of school districts such as special education, sparsity, cost of living, and cost of providing education. A state should determine the best measure of wealth in the state and may want to use both property wealth and income to determine a school district's fiscal capacity to support education. Dr. Augenblick testified that the variations in the revenues, tax rates, and spending of school districts in North Dakota is at such a significant level that policymakers should be concerned about challenges that the education finance system is not providing the constitutionally required uniform system of free public schools. He criticized North Dakota's system of financing education because it does not provide incentives for school improvement, does not address the specific needs and characteristics of school districts other than those related to size, and may not be providing an equal educational opportunity to all students.

Dr. Richard Hill, University of North Dakota, testified that the quality of education should not be a function of the wealth of the community in which a child happens to live. School districts levying the greatest number of mills are increasing their mill levy rates twice as fast as those levying the lowest number of mills. There is an increasing disparity among school districts in local effort and in dollars available to buy education.

Dr. E. Gareth Hoachlander and Dr. Robert A. Fitzgerald, MPR Associates, Inc., Berkeley, California, were retained by the North Dakota Education Association to analyze North Dakota's school finance system. Dr. Hoachlander discussed issues relating to how North Dakota compares to neighboring states and the nation with respect to growth or decline in average daily membership, pupil-teacher ratio, spending per pupil, and ability of the state to support per-pupil expenditures; the relationship between differences in local wealth, tax effort, and spending per student among school districts; how the current system equalizes spending in North Dakota; and relationships between district size and cost per student. Spending inequities have increased dramatically over the past 10 years. These inequities have been caused by considerable differences in local taxable valuation per average daily membership; revenue from oil, gas, and coal taxes; revenue from federal impact aid; and local tax effort. The proportion of revenue to local districts from the state has declined since 1981-82 which increases the difficulty in improving equity in the education finance system. The weighting factors that were designed to account

for differing costs associated with the operation of different types and sizes of schools are no longer reflective of the cost data compiled by the Superintendent of Public Instruction. Dr. Hoachlander and Dr. Fitzgerald recommended that the weighting factors be changed and that an average be used to minimize fluctuations.

Dr. Fitzgerald testified that if all children in districts of fewer than 50 in average daily membership were moved to districts of the next size the state would save \$540,000 excluding transportation costs. If the two smallest categories of schools were moved to the next largest, the state would save \$3.3 million excluding transportation costs. This is approximately one percent of the state's foundation aid program. This indicates there is not a strong economic reason for consolidation, although consolidation may provide benefits such as a wider range of curriculum and activities for students. If the 20-mill equalization factor were increased, more money would flow to the poorer school districts. However, increasing the mill levy would have a modest impact on increasing equity because larger, wealthier districts would still be able to tax themselves higher to improve the education they provide. As the 20-mill equalization factor is increased additional state aid would generally flow to districts with over 500 students in average daily membership. School districts with average daily membership of between 159 to 300 students would receive approximately the same amount of state aid, and the smaller school districts would receive less state aid because they generally have a higher taxable valuation per student in average daily membership. The increase in state aid is a function of taxable valuation and not a function of size. If the equalization factor were raised to 80 mills, there would be an improvement in equity of 9.5 to 10 percent which narrows the gap of spending per pupil by \$80. Dr. Hoachlander testified that North Dakota could improve equity in spending and the overall quality of education in North Dakota by increasing the 20-mill equalization factor; broadening the definition of local wealth to recognize federal impact aid and oil, gas, and coal tax revenues; adjusting the weighting factors; and where practical, consolidating school districts.

School District Expenditures for Instruction

The cost of education consists of expenditures for instruction, administration, and operation and maintenance of school buildings. Instructional expenditures include expenditures for salaries and benefits for instructional staff, instructional supplies, staff development, and instructional equipment such as computers and overhead projectors. In the 1986-87 school year, school district instructional expenditures totaled \$260,791,000. A representative of the Superintendent of Public Instruction testified that education expenditures for noninstructional purposes have not been rising as fast in North Dakota as they have been in other states. In 1985-86 approximately 72 percent of the expenditures that make up the cost of education went toward instruction, 14 percent went toward administration, and 14 percent went toward operation and maintenance of school buildings.

Almost 74 percent of the budget in school districts with enrollments of 550 students or more was spent on instruction and 5.36 was spent on administration. The percentage of a school district's budget that is spent for instructional services decreases as enrollments decrease. In schools with 24 or fewer pupils in high school, 55.67 percent of the school's budget was spent on instruction and 13.21 percent was spent on administration. School districts spend an average of \$387 per pupil for operation and maintenance of school district buildings which ranges from 5.23 percent to 13.16 percent of the school district's budget.

Committee Considerations

The committee reviewed several proposals revising the education finance formula. The committee generally agreed that any formula approved by the committee should increase state aid to school districts by \$35 million. The committee reviewed several individual bill drafts that would have provided incentives to school districts. The committee combined several of the incentive bill drafts into an education finance reform bill draft in an attempt to submit a package of reform legislation to the 1989 Legislative Assembly. That bill draft, entitled the North Dakota Education Finance and Reform Act of 1989, would have increased per-pupil payments from \$1,400 to \$1,836 the first year of the biennium and from \$1,412 to \$1,991 the second year of the biennium. The 20-mill equalization factor would have been increased to 40 mills. The bill draft would have changed the weighting factors from a fixed number to a five-year average in order to reflect more accurately the cost of education in each enrollment category and to minimize fluctuations.

Under NDCC Sections 15-40.1-07 and 15-40.1-08, the weighting factors for high school and elementary schools are based on the number of pupils in the school. In some school districts the ninth grade is in a building that is separate from the 10th through 12th grade. As a result, the enrollment of the high school drops and the school sometimes qualifies for a higher weighting factor. The bill draft would have required the weighting factor for high school students to be based on the number of students in grades 9 through 12 in the school district rather than the number of pupils in the school. For elementary schools, the weighting factor would have been based on the number of pupils in grades 1 through 6 in the school district rather than the number of pupils in the school. The weighting factor for alternative schools, however, would have been based on the enrollment in the school.

The bill draft contained an incentive for nonaccredited schools to become accredited. Under the bill draft, nonaccredited schools would have been entitled to a \$100 weighted per-pupil payment for two years. School districts would have been required to use the incentive payment to become accredited. A \$100 weighted per-pupil payment would have been deducted from the foundation aid payment of any school district that was not accredited by the 1991-92 school year.

The bill draft contained a provision to encourage

school districts to employ teachers with master's degrees or the equivalent. Under the bill draft, school districts in which a certain percentage of the teachers had at least a master's degree or 32 hours of master's degree courses in subjects that enhanced their instructional abilities would have been entitled to a per-pupil payment. The per-pupil payment would have increased as the percentage of teachers with master's degrees or the equivalent increased. The maximum reimbursement would have been an annual payment of \$40 per pupil if at least 55 percent of the teachers had master's degrees or the equivalent.

Testimony indicated that North Dakota has one of the lowest graduation requirements in the country. The bill draft would have increased graduation requirements from 17 to 21 credits over a four-year period.

North Dakota Century Code Section 57-15-27 prohibits school districts from having funds in excess of 75 percent of their last year's operating budget in an interim fund. There is no penalty if a school district accumulates more in its interim fund than is allowed by law. Forty-two school districts have approximately \$10 million in excess of the amount allowed by law in their interim funds. The bill draft would have reduced a school district's foundation payment by the amount of money the school district had in its interim fund in excess of the amount allowed by law.

North Dakota Century Code Section 15-40.1-16.1 provides for transportation aid to school districts that transport students to vocational education and special education programs. As an incentive to encourage cooperation among school districts, the bill draft would have provided for transportation aid payments to school districts for transporting students to academic programs in other schools and for teacher travel between schools to teach.

Finally, the bill draft would have appropriated \$200,000 to the Superintendent of Public Instruction to make grants to school districts to establish programs for gifted students.

Opposition was expressed to raising the 20-mill equalization factor in an effort to increase equalization because equalizing based on property valuation is based on the assumption that property valuation is indicative of ability to pay. It was stated that the equalization factor seeks to equalize educational opportunity by focusing on local property valuation rather than actual dollar income. It was suggested that local effort should be based on income rather than property valuation.

Critics of providing incentive payments to school districts for employing teachers with master's degrees testified that the incentive payments would put money into the schools that already had the most qualified teachers. The schools that would benefit the most would be the large schools that are located in cities that have colleges offering master's degrees. Critics testified that raising graduation requirements would unfairly discriminate against the small rural schools. Concern was expressed that raising graduation requirements would increase the student dropout rate. Critics of reducing a school district's foundation payment by the amount of the district's

excess interim funds testified that it would penalize school districts that save money for emergencies.

North Dakota school districts are paid for 180 days of instruction. These instructional days include two parent-teacher conference days, three holidays, and two days for attendance at an annual North Dakota Education Association convention. The committee reviewed a bill draft that would have included one-half day of inservice education training as part of the 180 days of instruction. Committee members expressed concern that this would reduce the number of hours teachers spend with students. Other committee members favored the proposal because of the importance of inservice education training and because it would have allowed school districts to offer a benefit to teachers at no cost to the school district.

The committee reviewed a bill draft that would have provided incentive payments to school districts that levied mills for capital improvements. Committee members expressed concern that this proposal would divert money from instruction to buildings.

The foundation aid formula's 20-mill equalization factor has been criticized for not adequately equalizing educational opportunities. In addition to suggestions to raise the 20-mill equalization factor to increase the local level of support required of school districts with high property valuations, it was suggested that the formula equalize other sources of revenue to school districts. For example, many school districts receive federal educational funds to replace taxes lost due to the presence of federal property that is not subject to state or local taxation. Because the federal property is not subject to taxation, the 20-mill equalization factor is not applied to that property thus reducing the amount that is subtracted from the foundation aid payment in those districts. In addition, those districts also receive the federal educational aid. Other school districts derive revenues from the coal severance tax, the tax on the production of oil and gas, and the tax on coal conversion facilities. As a result of these concerns, the committee reviewed various proposals, adding \$35 million in state aid to the foundation program and changing the equalization factor to take other sources of revenue into consideration. Under one of the proposals, the equalization factor would have included the dollar amount raised by all school districts for general fund purposes plus total federal revenues received by all school districts as payments in lieu of taxes, including federal impact aid revenues, plus all oil, gas, and coal tax revenues school districts receive, divided by the number of pupils in average daily membership in school districts in the state, multiplied by the number of pupils in average daily membership in the school district. This would have amounted to a deduction of approximately \$1,390 per pupil. Additionally, an amount equal to all general fund reserves in excess of 75 percent of the school district's preceding year's general fund expenditures would have been deducted from the school district's foundation payment. The proposal would have changed the weighting factors so that each school district would have received a factor of 1.21 for each pupil in grades 9 through 12 regardless of the size of the school. Each school district would have received a weighting factor of 1.0 for each

pupil in grades 1 through 6, a weighting factor of .52 for each kindergarten student, and a weighting factor of 1.05 for each pupil in grades 7 and 8. The bill draft would have changed how reimbursements are made to school districts for special education. Instead of reimbursing school districts based on the number and qualifications of full-time special education instructors employed in the school district, school districts would have received a per-pupil payment for each handicapped child. The weighting factor for each handicapped student would have been based on the student's primary handicap. The proposal also would have provided state payments to sparsely populated school districts. Testimony indicated that maximum efficiency in schools is achieved at a certain level of enrollment. As the numbers drop below that level, the cost of providing education increases at an increasing rate. Under this proposal, school districts having fewer students than estimated to be the maximum efficiency level would have received additional state aid.

Representatives of the North Dakota Association of Oil and Gas Producing Counties opposed deducting oil, gas, and coal tax revenues from a school district's foundation aid payments. School districts save mineral tax revenues during good years to prevent fluctuations in revenues. The gross production tax was originally enacted to provide revenues for in lieu of tax payments to areas impacted by oil and gas activity because oil equipment, which is worth millions of dollars, cannot be taxed. Oil and gas revenues are already equalized as 72 percent of the money in the common schools trust fund is from oil and gas revenues, and this money is distributed to every school district in the state.

The committee reviewed a proposal relating to education finance reform which would have changed the rate of transportation aid for special education and family transportation to the amount provided for travel by state employees. The proposal established a school district needs fund. Under this proposal, school districts could have applied to the Superintendent of Public Instruction for additional state aid if they had a special need and were levying at least 125 percent of the state average general fund mill levy or at least 125 percent of the statewide average levy in dollars per student. Under the proposal, no school district would have received a payment if the school district's building was within a certain number of miles from another school district's building.

School districts offering high school summer school programs are entitled to receive proportionate foundation aid payments for students enrolled in those courses. A school principal testified that the earlier remediation courses begin, the more effective they are. Although some elementary schools provide summer school courses, there are charges for those courses and many of the families that have students that need remediation cannot afford to pay for the courses. The committee reviewed a bill draft providing for proportionate foundation aid payments to school districts for students enrolled in elementary summer school programs. It was estimated by a representative of the Superintendent of Public Instruction that this

proposal would cost approximately \$1,435,000 a biennium.

Adult Basic and Secondary Education Funding

House Concurrent Resolution No. 3066 directed the Legislative Council to study the funding of adult basic and secondary education, to review the various alternative methods of funding this type of education, and to arrive at a method of funding adult basic and secondary education that is secure and stable. Although that resolution was not prioritized for study by the Legislative Council, the Legislative Council directed that consideration of the subject area contained in the resolution be included in the study of the financing of education called for in Senate Bill No. 2002 (1987).

Background Information

North Dakota adult basic and secondary education is presently financed with federal, state, and local money. Federal money is derived under the Adult Education Act of 1966, 20 U.S.C. 1201 et seq., and the Job Training Partnership Act, 29 U.S.C. 1501 et seq. State money for financing adult basic and secondary education is derived from the state general fund and funds from the displaced homemaker program.

The congressional declaration of purpose for the Adult Education Act of 1966 is "to expand educational opportunities for adults and to encourage the establishment of programs of adult education that will—(1) enable all adults to acquire basic literary skills necessary to function in society, (2) enable adults who so desire to continue their education to at least the level of completion of secondary school, and (3) to make available to adults the means to secure training and education that will enable them to become more employable, productive, and responsible citizens." "Adult" is defined as any individual who is 16 years or over or is beyond the age of compulsory school attendance under state law. The Act authorizes grants to states for the establishment or expansion of "adult basic education programs" and "adult education programs" to be carried out by local educational agencies and public or private agencies. "Adult basic education" means adult education for adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability. "Adult education" is defined as services or instruction below the college level for adults who do not have a certificate of graduation from a school providing secondary education or the basic skills to enable them to function effectively in society.

The Adult Education Act appropriated \$140,000,000 for fiscal year 1985 and such sums as may be necessary for each of the three succeeding years. The adult basic education program began in North Dakota in 1966 through grants from the federal Adult Education Act.

State Law

North Dakota Century Code Section 15-46-01 authorizes the school board of any public school district to establish and maintain a public adult education program as a branch of the public schools.

An adult education program, when maintained, must be available to all persons over 16 years of age who for any reason are unable to attend the public schools in the district. Section 15-46-04 provides that the board of any public school district may use school district funds for the purpose of aiding and promoting adult education programs established by the school board and authorizes the board to charge reasonable fees to persons enrolled in adult education programs. Adult education includes adult basic and secondary education programs as well as other types of adult education programs.

Section 15-21-04.2 makes the Superintendent of Public Instruction responsible for coordinating adult basic and secondary education programs and authorizes the superintendent to hire a director for that purpose. Section 15-21-04.3, created by the 1987 Legislative Assembly, establishes an adult basic and secondary education fund for gifts, grants, devises, or bequests for adult basic and secondary education. The Superintendent of Public Instruction received \$700 during the 1987-89 biennium for this fund.

Testimony and Committee Considerations

To receive a federal grant, a state must have a plan for the establishment or expansion of adult education programs to be carried out by local educational agencies and by public or private agencies, organizations, and institutions. The federal share is 90 percent of the cost of carrying out the state's plan. In 1966 North Dakota received its first federal grant under the Adult Education Act of 1966 in the amount of \$62,269. The amount allotted to North Dakota has consistently been increasing. In 1986 the state received approximately \$391,000 and in 1987 the state received approximately \$492,000. The first state general fund appropriation for adult education amounted to \$250,000 for the 1983-85 biennium. The 1985-87 appropriation for adult education was \$225,000. The 1985-87 appropriation was reduced to \$216,000 by executive order. The 1987 Legislative Assembly appropriated \$400,000 for adult basic and secondary education for the 1987-89 biennium.

The Superintendent of Public Instruction cooperates with other agencies such as Job Service North Dakota and the Department of Human Services to provide adult basic and secondary education services. The Job Service North Dakota bureau contracts with the Superintendent of Public Instruction in the amount of \$220,000 per year to provide services for Job Training Partnership Act eligible adults. That amount was reduced from \$250,000 in 1984. Further decreases are anticipated in the future. The Superintendent of Public Instruction also received \$235,246 for the 1987-89 biennium to provide displaced homemaker services through adult learning centers. Under the displaced homemaker program, the clerk of court is required to send a \$50 marriage dissolution fee to the State Treasurer for the displaced homemaker program. In Gange v. Clerk of Burleigh County District Court, 429 N.W.2d 429 (1988), the North Dakota Supreme Court upheld the \$50 marriage dissolution fee against a challenge that the fee was an unconstitutionally discriminatory tax.

Money that the state receives from the Job Training

Partnership Act must be spent on people who are economically disadvantaged. Eighty percent of the adult education federal money must be used for students who are below the eighth grade level and 20 percent can be used to assist students in obtaining their general equivalency development certificate. Federal adult basic and secondary education funds are allocated to states based on the adult population that needs services while funds received through the Job Training Partnership Act are allocated to states based on the unemployment rate of the state.

The number of adult basic and secondary programs in place has increased from eight to 10 project sites in 1966 to 48 to 50 project sites in 1987. The number of adults enrolled in those programs has increased from 1,741 in 1984 to 2,945 through May 1987. In recent years, more adults with lower skills have been entering the programs. Approximately 121,000 North Dakota adults 25 years of age and older have less than a high school education, 65,800 have less than an eighth grade education, and 12,500 have less than a fourth grade education. The United States census data projections and the North Dakota Job Service testing program indicates that 15 to 20 percent of the adults age 25 and over need assistance in basic skills areas. Over 50,000 adults in North Dakota age 25 and over fall into the functionally illiterate category. Many adults are seeking assistance for basic skills due to a greater awareness of adult education and job insecurity, caused by the lack of basic skills. While adult education is the fastest growing segment of education, the funding for adult education is more fragmented than any other education program.

The committee reviewed a bill draft that would have authorized school boards to levy mills to fund adult basic and secondary education programs. North Dakota Century Code Section 57-15-14 prohibits school boards from levying over 18 percent more than they did the previous year up to a maximum of 180 mills. Under the bill draft, the levy for adult basic and secondary education would have been excepted from this levy limitation. A representative of the Superintendent of Public Instruction testified that school boards already have the authority to levy for adult basic and secondary education. The 180 mill levy limitation would not prevent many schools from levying for adult basic and secondary education because not many schools are at the 180 mill levy limit. Testimony indicated that the other exceptions to the 180 mill levy limit were for things school districts have no control over such as asbestos removal or court judgments.

The committee reviewed a bill draft that appropriated \$200,000 to the Superintendent of Public Instruction for the purpose of providing adult basic and secondary education programs. This appropriation was in addition to the superintendent's budget request of approximately \$398,000 for adult basic and secondary education programs. The bill draft also provided definitions, based on federal law, for "adult" and "adult basic and secondary education." Adult, for the purpose of providing adult basic and secondary education programs, means any person who is beyond the age of compulsory school attendance. Adult basic and secondary education means

instructional services for adults who do not have the basic literacy skills to enable them to function effectively in society or who do not have a certificate of graduation, or the equivalent in education, from a school providing secondary education. It also means education for adults whose inability to speak, read, or write the English language substantially impairs their ability to obtain employment commensurate with their ability.

Small But Necessary Schools

House Concurrent Resolution No. 3060 (1987) directed the Legislative Council to study small but necessary schools to determine what needs to be done to capitalize upon the strengths as well as to correct the deficiencies of those schools. Although that resolution was not prioritized for study by the Legislative Council, the Legislative Council directed that consideration of the subject area contained in that resolution be included in the study of the financing of education called for in Senate Bill No. 2002 (1987).

Background Information

Rural and small schools face several problems that larger and more urban schools do not. Some of those problems include recruiting highly competent teachers and administrators, securing needed capital and operating funds, and compensating for the inherent isolation and population sparsity of rural areas. Aside from these problems, however, small and rural schools have many strengths such as small class size, individualized instruction, high participation in extracurricular activities, low dropout rates, and accountability.

Task Force on Small and Rural Schools

The Superintendent of Public Instruction established the Task Force on Small and Rural Schools in 1985 to deal with the special needs of small schools. The task force conducted a survey to identify general and specific educational concerns and needs of North Dakota small and rural school districts. After the results of the survey were tabulated, the task force identified the following eight categories of responses as priority areas of concern: (1) finance; (2) inservice education; (3) curriculum; (4) sharing among school districts, including teacher sharing, program sharing, and forming cooperatives to purchase school supplies; (5) long-range planning; (6) grant writing; (7) hiring staff to teach in several different areas; and (8) other curriculum concerns including a desire for assistance in providing equipment for labs and other courses, providing better library facilities, raising student achievement, evaluating programs, and developing curriculum.

A national survey conducted by the Rural Education Association found similar results. In that survey, superintendents reported that their most serious ongoing challenges were (1) financial support to adequately operate the districts; (2) improving the school curriculum; (3) teacher recruitment; and (4) providing adequate inservice training for teachers. Locating qualified teachers in the mathematics and

sciences was identified as the most significant staff recruitment problem.

Alternative Methods of Providing Education in Rural Schools

In the article entitled "Innovative Programs in America's Rural Schools" published in the fall 1985 issue of *The Rural Educator*, the authors note that one of the most common criticisms directed toward rural schools is that they are unable to provide learning opportunities equal to those available to students attending larger schools. The authors of the article contacted 640 rural schools across 45 different states in an effort to identify exceptional programs and practices in rural schools. One of the programs they identified was the program at Mott, North Dakota. The Mott School District shares a multidistrict vocational mobile program with six other districts. A mobile classroom is moved each semester to a different school district and provides high school students living in isolated rural settings with the opportunity to study welding, carpentry, nursing, or institutional food services. Instructors travel with trailer units and bring programs to the students rather than having school districts bus students to the programs.

Other programs included the use of supervised correspondence study; use of computers; use of the report card by parents to report their perception of teacher/school performance and for any problems they may see in the school; use of the modified block scheduling system, which provided secondary students more study time and permitted teachers more instructional time; use of telecommunications; use of volunteers to assist teachers in providing programs that would otherwise not be available; and cooperative sharing of education specialists and programs between school districts.

Testimony

Small rural schools often have problems meeting the requirements of the federal special education laws, taking educational field trips, providing inservice training to staff members, finding housing for teachers, and recruiting and retaining qualified teachers. Other problems include high per-pupil costs due to low student-teacher ratios and fixed operating and maintenance costs that are the same regardless of the number of students, limited curriculum diversity, the multiple assignment of teachers, and transportation needs.

Consolidation of school districts is frequently suggested by education authorities as the solution to these problems and as a means of providing a more uniform tax base. School districts have been slow to consolidate because the school is often the focal point of the community. Loss of the school often means loss of the community. Additionally, consolidation often increases the distance students must travel to get to school. A representative of the Superintendent of Public Instruction testified that the objective of school district reorganization should not be simply to reduce the number or increase the size of school districts, but should be to realign the enrollment of students to attendance areas in order to efficiently use educational dollars and meet the program needs of

students.

Ten schools in North Dakota are within five miles of the nearest neighboring school, 88 schools are within six to 10 miles of the nearest neighboring school, 106 schools are within 11 to 15 miles of the nearest neighboring school, 57 schools are within 16 to 20 miles of the nearest neighboring school, 12 schools are within 21 to 25 miles of the nearest neighboring school, and five schools are over 25 miles from the nearest neighboring school. During the 1987-88 school year, 40 school districts enrolled fewer than 35 high school students. Thirteen of those high schools were not accredited and were within 17 miles of another high school.

The committee reviewed the use of a geographic isolation factor to provide additional state aid to geographically isolated districts. Under this concept, districts that were not geographically isolated but had small enrollments would be allowed to operate if the residents of the district were willing to bear the additional expense involved in providing an adequate educational program and facilities for the children of the district. The use of a geographic isolation factor is regarded by some education researchers as a solution that would not entail the extremely high cost of additional state aid to all small schools, would not encourage continued operation of unnecessary small schools, would not force consolidation of small districts in disregard of local choice, and would not perpetuate inadequate programs in small isolated districts. A frequently mentioned criterion as a measure of isolation is the distance to the nearest neighboring school. A representative of the Superintendent of Public Instruction testified that the most frequently mentioned distance in education literature is 10 miles for elementary students and 15 miles for secondary students. Also associated with distance is travel time that takes into consideration the length of time students are required to ride a bus. Population density is also frequently used as an isolation factor. Using population density takes into consideration the size of the school district and the number of students enrolled.

The committee reviewed amendments to Senate Bill No. 2002 (1987) which, had they been adopted, would have added a geographic isolation factor to the North Dakota foundation aid formula. The geographic isolation factor was based on the geographic isolation factor adopted by Minnesota. A representative of the Superintendent of Public Instruction testified that Minnesota adopted that geographic isolation factor because it limited aid to districts that, because of their small size, were unable to provide a high quality educational program under the existing financial system, and were so isolated that consolidation was not practical. The isolation factor provided districts classified as small and isolated with enough funds to provide the educational opportunities available in larger districts. The amendments to Senate Bill No. 2002 included a size criterion factor and an isolation criterion factor. The size criterion portion of the formula provided aid in an inverse proportion to a district's total number of pupil units. The isolation portion of the formula took into consideration the distance that students would have to travel from their

homes to get to the nearest neighboring school.

The committee reviewed another geographical isolation factor that incorporated distance and size criteria. That factor provided for a certain amount of aid if a school was 12 or more miles from another school and partial aid if a school was between eight and 12 miles from another school. To be eligible for aid a school could not have more than 150 students in grades 1 through 6 and 150 students in grades 7 through 12. School administrators and representatives of the Superintendent of Public Instruction suggested incentives for cooperating would help address problems occurring in small and rural schools. It was also suggested that North Dakota school districts be reorganized on either a county or an enrollment basis to provide more equitable educational opportunities for students.

Recommendations

The committee recommends House Bill No. 1044 to decrease the mileage payment for small buses from 35.5 to 34.5 cents, decrease the mileage payment for large buses from 72 to 70 cents, increase the per-pupil payment from 19 to 26 cents, and increase the in-city transportation payment from 9.5 to 13 cents per pupil per one-way trip. Committee members generally agreed that it may take a long period of gradual adjustments to make the transportation formula more equitable.

The committee recommends Senate Bill No. 2037 to make the state financially responsible to pay the entire tuition and excess costs for handicapped children placed outside their school districts of residence if the placement is made by a county or state social service agency, if the placement is made by a state-operated institution, or if the placement is made by a court or juvenile supervisor. The bill would remove references to state reimbursements being three times the state average per-pupil cost of education and four times the state average per-pupil cost of related services. The bill would provide that school districts will receive the state payment for small buses if they transport nine or fewer pupils on a bus regardless of the bus size. The bill would require multidistrict special education boards to plan and coordinate the transportation of special education pupils within the multidistrict special education unit. The bill would create a limit of 2.5 times the cost of education for school districts that educate their special education students within the student's district of residence. The bill would increase the weighting factor for preschool handicapped students from .49 to a factor that would range from .95 to 1.30, depending on the size of the elementary school of which the preschool program is a part. The bill would require the Superintendent of Public Instruction to withhold foundation aid payments from any school district that does not pay the tuition for special education students. The bill would require each school district participating in a multidistrict special education program to share the cost of providing all special education programs and related services. The bill would appropriate \$13 million to the Superintendent of Public Instruction to cover the cost of the new programs in the bill and to increase the

level of reimbursements for special education programs.

The committee recommends Senate Bill No. 2038 to require children of parents or guardians who claim an exemption from the compulsory school attendance laws on the basis that the children have a physical or mental condition that would render attendance or participation in a regular or special education program inexpedient or impractical to first be identified as handicapped under the special education laws.

The committee recommends Senate Bill No. 2039 to require any facility that provides boarding care services to more than four students to be licensed under the foster care laws.

The committee recommends House Bill No. 1045 to permit proportionate foundation aid payments for summer elementary school courses approved by the Superintendent of Public Instruction. Payments could not be made for more than 15 full days or 30 half days of instruction.

The committee recommends House Bill No. 1046 to appropriate \$200,000 to the Superintendent of Public Instruction for adult basic and secondary education. The bill also would define adult and adult basic and secondary education.

During the latter part of the interim, the committee discussed various proposals that would have taken into consideration, as part of the foundation aid program, payments to school districts other than from the state, in determining local fiscal capacity to support education. Because there was insufficient time in the interim to consider this issue fully, the committee recommends two studies.

The committee recommends Senate Concurrent Resolution No. 4001 to direct the Legislative Council to study in lieu of property tax payments to school districts; school district revenues derived from oil, gas, and coal taxes; and other payments to school districts other than from the state to determine whether to include these funds as local resources when measuring a school district's contributions to the foundation program.

The committee also recommends Senate Concurrent Resolution No. 4002 to direct the Legislative Council to study the use of various factors in addition to property wealth which could be used in the education finance formula to equalize educational opportunities for students and to meet the state constitutional guarantee of a free and uniform system of public school education.

ADMINISTRATIVE STRUCTURE OF SCHOOL DISTRICTS STUDY

Background

There are approximately 310 local school districts in North Dakota. Each school district is managed by an elected board of five to nine members. Each school board is authorized to appoint a school superintendent to supervise the schools within the district. If no superintendent is appointed by the board, the schools of the district are under the supervision of the county superintendent of schools.

A county superintendent of schools is required to be elected for a term of four years in each organized

county at the same time as state officials are elected. Prior to 1982, Article VII, Section 9, of the Constitution of North Dakota required a superintendent of schools to be elected in each county for a term of four years. The repeal of that section was approved at the primary election held June 8, 1982. The new Article VII, Section 9, adopted at the primary election, provides that questions "on the elimination or reinstatement of elective county offices may be placed upon the ballot by petition of electors of the county equal in number to twenty-five percent of the votes cast in the county for the office of governor at the preceding gubernatorial election."

The county superintendent of schools is required to visit each school under the superintendent's supervision at least once each year and carefully observe the condition of the school, the mental and moral instruction given, the methods of teaching employed by the teacher, the teacher's ability, and the progress of the pupils. The superintendent is required to advise and direct the teachers, in regard to the instruction, classification, government, and discipline of the school and the courses of study. The superintendent is required to keep a record of the visits and indicate the superintendent's judgment of the teacher's ability to teach and govern and the condition and progress of the school. The superintendent is required to carry into effect all lawful instructions of the Superintendent of Public Instruction and distribute to the proper officers and teachers all forms furnished by the Superintendent of Public Instruction.

During the 1983-84 interim, the Education "B" Committee studied the position of the county superintendent of schools. The report of that committee notes that the position of the county superintendent was established by the First Legislative Assembly in 1890. Reflecting the essentially rural composition of the state at that time, the primary responsibility of the county superintendents was to supervise one-room rural schools. The Education "B" Committee reviewed a report prepared in January 1983 entitled "The County Superintendency in North Dakota: Analysis and Opinion" which was completed by Dr. Richard L. Hill and Ms. Elizabeth Myers of the University of North Dakota. The report was of a study that analyzed the work of the county superintendent in North Dakota in as multifaceted a manner as possible. The report proceeded from the fact that the role of the county superintendent of schools in North Dakota had changed progressively and that with that change visible administrative responsibilities had diminished. The report concluded that the county superintendent performs real work and serves necessary functions; however, the nature, quantity, and legitimacy of that work require further attention.

Dr. Hill presented a proposal to the Education "B" Committee that the office of county superintendent of schools be eliminated and that area service agencies be created. The proposal recommended that all operating public school districts be required to be a member of an area service agency and that each agency have a governing board of nine members selected from separate membership districts within

the area service agencies and three members selected at large. Each area service agency would provide administrative services, educational services, and special education services to its member school districts. It was recommended that six to 12 agencies be created and that the specific number and configuration of the agencies be determined by January 1, 1987. The proposal indicated that agency boundaries should be drawn so that at least 12,000 students were served by each service agency and no more than 10,000 square miles were incorporated within each agency's boundaries.

The Education "B" Committee recommended 1985 House Bill No. 1053 to implement an area service agency pilot program. The bill would have authorized the area service agency pilot program board to assess local school districts up to two mills of the taxable valuation of their property to pay for services provided through the pilot program. The bill would have required that a plan be established for the eventual transfer of all county superintendents of schools' duties to area service agencies. This bill failed in the House.

Administrative Structure of School Systems in Selected States

One of the approaches to providing equal educational opportunities for students is through the formation of larger local school district administrative units. Hawaii and Florida have structured their school system this way. The entire state of Hawaii is one school district and each county in Florida is one school district. Another approach for providing educational opportunities to students is through the formation of regional educational service agencies. The administrative structure of school systems in over 30 states includes some form of educational service agency. At the request of the committee chairman, a group of committee members and representatives of the Superintendent of Public Instruction, State Board of Vocational Education, teacher learning centers, and North Dakota County Superintendents Association worked on a proposal relating to the administrative structure of the school system in North Dakota. Of particular interest to the group of committee members were the administrative structures of school systems in Minnesota, Texas, and Iowa. Each of these states has developed regional educational service agencies to provide educational opportunities to students.

Minnesota has nine educational cooperative service units. The units perform educational planning on a regional basis and assist in meeting specific educational needs of children in participating school districts which can be provided better by the unit than by the districts themselves. Each unit is controlled by a board of directors of between six to 15 members. The units may provide administrative services in purchasing; curriculum development; data processing; educational television; evaluation and research; inservice training; media centers; publication and dissemination of materials; pupil personnel services; regional planning, joint use of facilities, and flexible year-round scheduling; secondary, postsecondary, adult, community, and adult vocational education; individualized instruction inservice programs,

including services for students with special talents and special needs; teacher personnel services; vocational rehabilitation; health, diagnostic, and child development services and centers; leadership or direction in early childhood and family education; community services; and shared time programs. The funding for the unit programs and services is provided by participating local school districts along with private, state, and federal financial support. The board of directors may assess each participating school district its proportionate share of its expenses to pay administrative, planning, operating, or capital expenses. The share of each district is based upon the extent of participation.

Texas has established 20 regional educational service centers. Participation by school districts in the centers is voluntary. Each center is governed by a seven-member board. Costs for providing services to school districts are paid from the foundation school fund.

Prior to 1974 Iowa had a county school system and county superintendents. As the number of rural schools declined, the role of the county superintendents became one of maintaining records and providing special education and curriculum services. In 1974 the state replaced the county system with 15 area service agencies. Participation by school districts is mandatory. Each agency is governed by an area education agency board of directors. The agencies may provide inservice training programs for district employees and area education agencies; data processing; research, demonstration projects and models, and educational planning for children requiring special education; and various other programs and services.

Testimony and Committee Considerations

The basic design of the educational structure in North Dakota, which consists of school districts, county superintendents, and the Superintendent of Public Instruction, has changed very little since statehood while population demographics and school district organization have radically changed.

The committee reviewed a bill draft which replaced the offices of the county superintendent with area service agencies. The bill draft required the Superintendent of Public Instruction to establish the boundaries for eight area service agencies within 30 days after the effective date of the Act. The bill draft required every public school district in the state to be a member of an area service agency. The area service agencies would provide special education, inservice training, planning and coordination of support services for vocational education, coordination of continuing education and adult basic and secondary education, and other educational services. The bill draft provided that each area service agency would be governed by a board of directors consisting of nine members elected by local school boards within the area service agency's territory and three ex officio school administrators selected by the area service agency board. The bill draft authorized the area service agencies to assess each school district for services and programs and school districts had the authority to levy two mills to pay for the assessments.

The bill draft abolished the office of the county superintendent as of July 1, 1990.

The committee reviewed various proposals to change the bill draft. The president of the North Dakota Association of County Superintendents recommended establishing 12 to 16 area service agencies; making the boards of the area service agencies more diversified by including parents, teachers, principals, and county commissioners; abolishing the office of the county superintendent as of January 1, 1993, which is the end of the current term of office of the county superintendents; and making the county financially responsible for part of the cost of the area service agencies. The association president testified that it would be necessary to extend the time for abolishing the superintendent's office in order to address the complex issues of restructuring this form of government. The association president recommended that the state be financially responsible for funding 100 percent of the administrative costs of the area service agencies until the office of the county superintendent was abolished and thereafter the state and county would share the administrative costs. The association president testified that all duly elected county superintendents should be qualified to serve as area service agency directors and the records of the county superintendents should be maintained by the county office designated by the board of county commissioners. Additionally, the association president recommended that the sections of the law relating to annexation, reorganization, and dissolution of school districts, tuition hearings and appeals, and various other things be left as they currently are and that a study resolution be proposed directing the Legislative Council to study these statutes during the next interim to determine who should take over the responsibilities currently being performed by the county superintendents under those statutes.

The director of the State Board of Vocational Education recommended that language mandating area service agencies to provide vocational education coordination and planning services be replaced with language allowing the State Board of Vocational Education to contract with the area service agency to provide those services. This recommendation was made because vocational education is currently organized on an areawide basis similar to the area service agency concept and because mandating those services would cost an additional \$400,000 annually.

A representative of the Superintendent of Public Instruction submitted a map proposing that nine area service agencies be established. The boundaries of the agencies on the proposed map were drawn so that each region contained a student population of at least 13,000 students. The boundaries of the nine regions, with some modifications, were based on the boundaries of the regional human service centers.

After considering these recommendations, the committee revised the bill draft so that it required the Superintendent of Public Instruction to establish nine area service agencies within 30 days after the effective date of the Act. The bill draft required the board of the area service agencies to be elected and a director to be selected within 60 days after the effective date of the Act. The bill draft required the agencies to begin

operating no later than July 1, 1990. The area service agencies would be required to provide inservice training and coordination of continuing education and adult basic and secondary education. The bill draft authorized the State Board of Vocational Education to contract with an area service agency to provide coordination, planning, and support services for vocational education. Each area service agency would be required to provide administrative services to school districts and transmit and receive reports to and from the Superintendent of Public Instruction. The bill draft provided that each area service agency would have supervision over school districts that do not employ a superintendent of schools. The bill draft required the area service agencies to provide special education services to all handicapped students within the agency area. The area service agencies would be required to provide the special education services currently being provided by multidistrict special education units. All school districts within the area service agency would be required to share the cost of all special education programs and services. The bill draft required special education services to begin July 1, 1990. The area service agencies would be governed by a board consisting of nine members who are local school board members and three ex officio members. The ex officio members would be an administrator, a teacher, and a citizen. The bill draft required the county superintendent's duties and records to be transferred by July 1, 1990, or within an additional time not exceeding one year if the transfer cannot be completed by that date. The bill draft required all records maintained by the office of the county superintendent to be transferred to the office of the register of deeds or a county office designated by the board of county commissioners. The bill draft required assessments to school districts for services provided by the area service agency to be based 50 percent on school census and 50 percent on the district's taxable valuation. Except for special education programs and services, if fewer than all districts receive benefits, only those districts may be assessed.

The bill draft required the state to pay 100 percent of the administrative costs of the area service agencies until July 1, 1990. For one year after that date the state would be responsible for funding 100 percent of the excess administrative costs of school districts. Excess costs are those administrative costs school districts would not have incurred if area service agencies had not been established. For the following year, the state would be responsible for 90 percent of the administrative costs and school districts for 10 percent. For the 1992-93 school year, the state would be responsible for 80 percent and school districts for 20 percent. For all following years the state would be responsible for 70 percent and school districts for 30 percent.

Recommendations

The committee recommends House Bill No. 1047 to replace the offices of the county superintendent with area service agencies for the provision of special education, inservice training, coordination of continuing education and adult basic and secondary education, administrative services, and other

educational programs and services. The bill would require the county superintendents to work with the area service agencies to transfer duties and records. The office of the county superintendent would be abolished as of January 1, 1993.

The committee recommends Senate Concurrent Resolution No. 4003 to direct the Legislative Council to study the duties of the county superintendents relating to reorganization, annexation, and dissolution of school districts; tuition hearings and appeals; appeals relating to the placement of students in other school districts; and various other responsibilities currently being performed by the county superintendents.

SCHOOLBUS DRIVER AGE DISCRIMINATION STUDY

The April 1988 issue of the North Dakota School Boards Association's "Bulletin" contained an article concerning NDCC Section 15-34.2-14, relating to the age of schoolbus drivers. According to the article, school districts in North Dakota are caught between the state law, which allows a maximum age of 65 for schoolbus drivers unless the school board extends the maximum age beyond 65, and federal law that prohibits discrimination on the basis of age. Because of concerns relating to this issue, the chairman of the Legislative Council directed the committee to study the impact of the federal law on the state law.

State and Federal Law

Section 15-34.2-14 requires schoolbus drivers to "be at least eighteen and not more than sixty-five years of age." The school board, however, may extend the maximum age of a driver beyond 65.

The Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq., generally prohibits mandatory retirement. The purposes of the Act are to promote employment of older persons based upon their ability rather than age, to prohibit arbitrary age discrimination in employment, and to help employers and workers find ways to meet problems arising from the impact of age on unemployment. Federal law contains an exception to the prohibition against mandatory retirement when "age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business."

One of the leading cases addressing the age of busdrivers as a bona fide occupational qualification is Usery v. Tamiami Trail Tours, Inc., 531 F.2d 224 (5th Cir. 1976). In that case, the United States Fifth Circuit Court found that a bus company's policy of refusing to consider applications of individuals between the ages of 40 and 65 for initial employment as intercity busdrivers was a bona fide occupational qualification reasonably necessary to the normal operation of its business. The court established a test for determining whether an age requirement is a bona fide occupational qualification under the Age Discrimination in Employment Act. That two-part test was adopted by the United States Supreme Court in Western Air Lines, Inc. v. Criswell, 472 U.S. 400 (1985). Under the first part of the test, an employer that discriminates based on age must show that the requirement is "reasonably necessary to the normal

operation of the particular business." The court in Usery said Tamiami Trail Tours' business was the safe transportation of bus passengers from one point to another and the greater the safety factor, measured by the likelihood of harm and the probable severity of that harm in case of an accident, the more stringent an employer can make the job qualifications designed to ensure safe driving.

For the second part of the test an employer must show either:

1. That all or substantially all individuals excluded from the job are in fact disqualified, i.e., there must be a factual basis for believing that all or substantially all persons over the age qualifications would be unable to perform the duties of the job involved safely and efficiently; or
2. That it is impossible or highly impracticable to deal with the older employees on an individualized basis, e.g., an employer must establish that some members of the discriminated class possess a trait precluding safe and efficient job performance which cannot be ascertained except by reference to age (in Usery the court found that individual examinations were not reliable for identifying which individuals over the age of 40 would be unable to operate buses safely).

Some courts have addressed the issue of whether an age limit, as applied to schoolbus drivers, is a bona fide occupational qualification. In Sposato v. Ambach, 435 N.Y.S.2d 149 (N.Y. 1982), the Supreme Court of Albany County, New York, held that the regulation requiring termination of employment of schoolbus drivers upon attaining the age of 65 was an acceptable bona fide occupational qualification. The court noted that the studies provided by the Commissioner of Education of New York established a higher incidence of accident rates by drivers, including schoolbus drivers, over the age of 65. Based on this factual evidence, the court found that the commissioner had reasonable cause to believe that substantially all persons over 65 would be unable to perform the duties required in a safe and efficient manner.

In Maki v. Commissioner of Education of State of New York, 568 F.Supp. 252 (N.D.N.Y. 1983), the United States Northern District Court in New York said that the presence of an overriding safety factor, where safety is the essence of a particular business such as the transportation of passengers by bus or airplane, minimizes the level of proof required to establish a bona fide occupational qualification. The court said there is no question that a primary function of a schoolbus driver is the safe transportation of schoolchildren, and that the qualifications for schoolbus drivers transporting schoolchildren are more stringent than those required of intercity busdrivers. The court said that given the overwhelming concern for the safety of transported schoolchildren, it cannot be said that the age requirement is not reasonably necessary to the essence of the business of bus transportation, thus meeting the first part of the Usery test. To meet the second part of the test, the state produced statistical evidence indicating a correlation between age and

accident frequency of those under age 30 and over 65. At trial an expert witness testified that one could not determine who was a safe driver solely by using medical tests. The court also noted that there was strong support in case law for the proposition that as one grows older, the examinations lose their predictive value because sudden incapacity due to medical defects becomes significantly more frequent in people over 60 and these defects cannot be predicted. The court said the correlation between age and accident frequency is to physical deficiencies and not to age per se. The court found, however, that the overwhelming safety consideration lowered the burden of proof on the state, and the state met this burden.

In Equal Employment Opportunity Commission v. KDM Schoolbus Company, 612 F.Supp. 369 (S.D.N.Y. 1985), the Equal Employment Opportunity Commission brought an action against the Commissioner of Education of New York claiming that the regulation requiring schoolbus drivers to retire at age 65 violated the Age Discrimination in Employment Act. The state moved to dismiss the complaint based upon the decision of the Northern District Court of New York in Maki, which was affirmed by the United States Second Circuit Court in an unpublished opinion. The Southern District Court said the affirmance by the court of appeals in Maki did not have precedential effect and did not bind the court in Equal Employment Opportunity Commission v. KDM Schoolbus Company. The southern district court found that the KDM Schoolbus Company did not present any evidence to the effect of age upon safety. The court said it could not assume, without such evidence, that an age limitation of 65 for schoolbus drivers was a per se bona fide occupational qualification. According to a representative from the Commissioner of Education's office in New York, New York eliminated the 65 age limit effective October 23, 1985, as a result of a study conducted by the commissioner's office. The study indicated that the most dangerous drivers were those between 21 and 25 and not those over 65.

Position of the Equal Employment Opportunity Commission

While some courts in New York have held that age 65 is a bona fide occupational qualification for schoolbus drivers, the federal Equal Employment Opportunity Commission has taken the position that the North Dakota statute violates the Age Discrimination in Employment Act of 1967. The commission contends that the state could use regular training and examinations to allow the employment of drivers who are qualified and in good physical and mental health. This method of determining who may be hired or retained would give persons in all age groups, who are otherwise qualified, the opportunity to be hired rather than preclude hiring of qualified drivers age 65 and over by application of the current state statute.

Testimony and Committee Considerations

Representatives of the Superintendent of Public Instruction and the executive director of the North Dakota School Boards Association testified that the

Equal Employment Opportunity Commission had filed complaints against several school districts in the state alleging that the school districts are violating the federal law which prohibits age discrimination. The executive director of the North Dakota School Boards Association testified that the Equal Employment Opportunity Commission would discontinue further action against school districts if the School Boards Association notified all school districts that they should voluntarily comply with the position taken by the Equal Employment Opportunity Commission and if the Legislative Council's interim Education Finance Committee gave almost unanimous support for a bill draft changing the state law by removing references to an upper age limit. Although some courts have upheld an upper age limit requirement for schoolbus drivers, the executive director of the School Boards Association testified that the resources to fight a lawsuit were not available.

Testimony indicated that the lower age limit in the state law should be raised to 21 because a 1986 federal law will require all schoolbus drivers who cross state lines to be at least 21 years of age by 1992.

Recommendation

The committee recommends House Bill No. 1048 to amend NDCC Section 15-34.2-14 to remove references to schoolbus drivers more than 65 years of age. The bill would raise the minimum age for schoolbus drivers from 18 to 21 but would allow a school board to lower the minimum age.

Kind of District	Year											Five- Year Average	Current Weighting Factor					
	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85			1985-86	1986-87			
Preschool																		
Kindergarten	.55	.53	.52	.55	.53	.52	.54	.55	*	1.84	1.47	1.54	1.43	1.57	.49			
Rural (1-8)	1.23	1.19	1.38	1.11	1.13	1.16	1.68**	1.09	1.33	.54	.49	.49	.50	.51	45-.65			
Elementary (1-6) 99	1.07	1.03	1.05	1.11	1.12	1.15	1.13	1.17	1.17	1.15	1.47	1.31	1.17	1.29	1.30			
Elementary (1-6) 100-999	.93	.95	.96	.95	.94	.94	.92	.92	.93	1.17	1.17	1.18	1.18	1.17	1.00			
Elementary (1-6) 1,000	.96	.96	.95	.95	.94	.94	.93	.93	.94	.90	.91	.92	.91	.91	.90			
Grades 7 and 8	.95	.97	.99	1.04	1.03	1.03	1.04	1.06	.94	.93	.94	.95	.95	.94	.95			
High school (9-12)									1.01	.98	1.01	1.02	1.04	1.01	1.00			
550 or more pupils	1.10	1.13	1.10	1.08	1.10	1.08	1.09	1.11	1.11	1.08	1.09	1.09	1.08	1.09	1.20			
150-549	1.03	1.02	1.02	1.01	1.00	1.00	1.00	1.08	1.11	1.17	1.20	1.17	1.13	1.16	1.32			
75-149	1.07	1.05	1.06	1.04	1.04	1.05	1.07	1.10	1.10	1.16	1.20	1.14	1.19	1.18	1.40			
74 or less	1.28	1.28	1.25	1.26	1.23	1.27	1.30	1.31	1.38	1.43	1.43	1.42	1.41	1.41	1.70			
Average cost per pupil	\$938	\$1,097	\$1,212	\$1,376	\$1,544	\$1,741	\$1,957	\$2,392	\$2,476.82	\$2,682.50	\$2,736.12	\$2,837	\$2,817	\$2,710	XXXX			

*Data not available for preschool prior to the 1983-84 school year.

**Error in data reporting

Cost of education ratios are calculated by dividing the statewide average cost per pupil for each of the enrollment categories by the statewide average cost per pupil for all pupils. The ratios reflect only the amount that was spent and do not reflect the need for new programs or enhancements to existing programs. The ratios reflect cost economics that were instituted by schools to the extent that the ratios did not increase as dramatically as most cost indices. Per-pupil cost of education figures do not include the cost of student activities, transportation, food services, or building expenditures.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Garrison Diversion Overview Committee originally was a special committee created in 1977 by House Concurrent Resolution No. 3032 and recreated in 1979 by Senate Concurrent Resolution No. 4005. In 1981 the 47th Legislative Assembly enacted North Dakota Century Code Section 54-35-02.7, which creates the Garrison Diversion Overview Committee. The committee is responsible for legislative overview of the Garrison Diversion Project and related matters and for any necessary discussions with adjacent states on water-related topics.

Section 54-35-02.7 directs that the committee consist of the majority and minority leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore of the Senate selected at the end of the immediately preceding legislative session, the chairmen of the House and Senate standing Committees on Natural Resources, and the chairmen of the House and Senate standing Committees on Agriculture.

Committee members were Senators William S. Heigaard (Chairman), Mark Adams, Adam Krauter, Rick Maixner, Walter A. Meyer, John M. Olson, and Rolland W. Redlin and Representatives William G. Goetz, Serenus Hoffner, Richard Kloubec, Charles F. Mertens, Eugene Nicholas, Alice Olson, and Earl Strinden.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

HISTORY OF THE PROJECT

The Garrison Diversion Unit is one of the principal developments of the Pick-Sloan Missouri River Basin program, a multipurpose program authorized by the Flood Control Act of 1944 (Pub. L. 78-534; 57 Stat. 887). The Pick-Sloan plan provided for construction of a series of dams on the Missouri River to control flooding, provide power generation, and maintain a dependable water supply for irrigation, municipalities, industry, recreation, wildlife habitat, and navigation. Approximately 550,000 acres of land in North Dakota were inundated by reservoirs on the Missouri River under the Pick-Sloan plan.

One feature of the Pick-Sloan plan was the Missouri-Souris Unit, which was the forerunner of the Garrison Diversion Unit. Under the plan for the Missouri-Souris Unit, water was to be diverted below the Fort Peck Dam in Montana and transported by canal for irrigating 1,275,000 acres; supplying municipalities in North Dakota, South Dakota, and Minnesota; restoring Devils Lake; conserving wildlife; and augmenting the Red River.

After considerable study and review of the Missouri-Souris Unit, Congress reauthorized the project as the initial stage, Garrison Diversion Unit, in August 1965 (Pub. L. 89-108; 83 Stat. 852). The building of Garrison Dam changed the diversion point of the Missouri-Souris Unit from Fort Peck Dam to Garrison Reservoir (Lake Sakakawea). With the change in the diversion point and the selection of some different areas to be

irrigated, the plan was renamed the Garrison Diversion Unit.

The first detailed investigations of the Garrison Diversion Unit were completed in 1957 and involved a proposed development of 1,007,000 acres. The initial stage of the Garrison Diversion Unit, authorized in 1965, provided for irrigation service to 250,000 acres in North Dakota. This plan involved the construction of major supply works to transfer water from the Missouri River to the Souris River, James River, Sheyenne River, and the Devils Lake Basin. The plan also anticipated water service to 14 cities, provided for several recreation areas, and provided for a 146,530-acre wildlife plan to mitigate wildlife habitat losses resulting from project construction and enhancement of other wetland and waterfowl production areas.

Under the 1965 authorization the Snake Creek Pumping Plant would lift Missouri River water from Lake Sakakawea into Lake Audubon, an impoundment adjacent to Lake Sakakawea. From Lake Audubon the water would flow by gravity through the 73.6-mile McClusky Canal into Lonetree Reservoir, situated on the headwaters of the Sheyenne River. The Lonetree Reservoir would be created by construction of Lonetree Dam on the upper Sheyenne River, Wintering Dam on the headwaters of the Wintering River, and the James River dikes on the headwaters of the James River. Lonetree Reservoir is situated so that water can be diverted by gravity into the Souris, Red, and James River Basins and the Devils Lake Basin.

The Velva Canal would convey project water from the Lonetree Reservoir to irrigate two areas totaling approximately 116,000 acres. The New Rockford Canal would convey project water for irrigation of approximately 21,000 acres near New Rockford and to deliver water into the James River feeder canal for use in the Oakes-LaMoure area. The Warwick Canal, an extension of the New Rockford Canal, would provide water for irrigation in the Warwick-McVile area and provide water for the restoration of the Devils Lake chain.

The United States Bureau of Reclamation has overall responsibility for operation and maintenance of the Garrison Diversion Unit and will operate and maintain all project works during the initial period following completion of construction.

A number of concerns have halted construction on the project in recent years, including:

1. Canadian concerns that the Garrison Diversion Project would allow transfer of foreign species of fish and other biota to the detriment of Canadian waters in violation of the Boundary Waters Treaty of 1909.
2. Numerous problems concerning wildlife mitigation and enhancement lands.
3. Legal suits brought by groups, such as the National Audubon Society, seeking to halt construction of the Garrison Diversion Unit by claiming that the project violates the National Environmental Policy Act and to enforce a stipulation between the United States and

Audubon to suspend construction until Congress reauthorizes the Garrison Diversion Unit.

Canadian Concerns

Canadian interest in the Garrison Diversion Unit has centered on concerns that because the Garrison Diversion Unit involves a transfer of water from the Missouri River to the drainage basins of the Souris and Red Rivers, the return flows entering Canada through the Souris and Red Rivers would cause problems with regard to water quality and quantity.

In 1973 the Canadian government requested a moratorium on all further construction of the Garrison Diversion Unit until a mutually acceptable solution for the protection of the Canadian interests, under the Boundary Waters Treaty of 1909, was achieved. The United States government responded by formally stating its recognition of its obligation under the Boundary Waters Treaty and adopting a policy that no construction affecting Canada would be undertaken until it was clear that this obligation would be met.

During 1974 several bi-national meetings of officials were held to discuss and clarify the Canadian concerns over potential degradation of water quality. An agreement was reached in 1975 between the governments of Canada and the United States to refer to the International Joint Commission the matter of potential pollution of boundary waters by the Garrison Diversion Unit.

The International Joint Commission created the International Garrison Diversion Study Board. The board concluded that the Garrison Diversion Unit would have adverse impacts on water uses in Canada including adverse effects on flooding and water quality. The board specifically recommended that any direct transfer by the Garrison Diversion Unit of fish, fish eggs, fish larvae, and fish parasites be eliminated by adopting a closed system concept and the installation and use of a fish screen structure.

In August 1984 a press line, approved by representatives of Canada and the United States, was issued announcing a general agreement between the two governments that Phase I of the initial stage of the Garrison Diversion Unit could be constructed. Canada, however, remained firmly opposed to the construction of any features that could affect waters flowing into Canada.

Garrison Diversion Unit Commission

For the fiscal year 1985 the water and energy appropriations bill, signed by the President on July 16, 1984, contained an agreement to establish a commission to review the Garrison Diversion Unit.

The Garrison Diversion Unit Commission was a 12-member panel appointed by the Secretary of the Interior to reexamine plans for the Garrison Diversion Unit in North Dakota. The commission was directed to examine, review, evaluate, and make recommendations regarding the existing water needs of North Dakota and to propose modifications to the Garrison Diversion Unit before December 31, 1984. Construction on the project was suspended from October 1 through December 31, 1984.

The commission worked under the restriction that

any recommendation of the commission must be approved by at least eight of the 12 members and that should the commission fail to make recommendations as required by law, the Secretary of the Interior was authorized to proceed with construction of the Garrison Diversion Unit as currently designed.

Congress directed the commission to consider 11 specific areas:

1. The costs and benefits to North Dakota as a result of the Pick-Sloan Missouri Basin program.
2. The possibility for North Dakota to use Missouri River water.
3. The need to construct additional facilities to use Missouri River water.
4. Municipal and industrial water needs and the possibility for development, including quality of water and related problems.
5. The possibility of recharging ground water systems for cities and industries, as well as for irrigation.
6. The current North Dakota water plan to see if parts of the plan should be recommended for federal funding.
7. Whether the Garrison Diversion Unit can be redesigned and reformulated.
8. The institutional and tax equity issues as they relate to the authorized project and alternative proposals.
9. The financial and economic impacts of the Garrison Diversion Unit, when compared with alternative proposals for irrigation and municipal and industrial water supply.
10. The environmental impacts of water development alternatives, compared with those of the Garrison Diversion Unit.
11. The international impacts of the water development alternatives, compared with those of the Garrison Diversion Unit.

The commission released its final report and recommendations on December 20, 1984. The commission affirmed the existence of a federal obligation to the state of North Dakota for its contribution to the Pick-Sloan Missouri Basin program but recommended that an alternative plan be implemented in place of the 250,000-acre initial stage of the Garrison Diversion Unit as authorized in 1965 and the original project authorization in 1944. The commission recommended that Lonetree Dam not be completed at this time and that the Sykeston Canal be constructed as the functional replacement. The commission specifically said, while the Lonetree Dam and Reservoir should remain an authorized feature of the plan, the construction should be deferred pending a determination by the Secretary of the Interior consisting of a demonstration of satisfactory conclusion of consultations with Canada and after appropriation of funds by Congress. The commission recommended that the Garrison Diversion Unit be configured to provide irrigation service to 130,940 acres in the Missouri River and James River Basins instead of the first stage 250,000-acre project. The commission also recommended that the first phase of the Glover Reservoir be included as a feature of the plan in lieu of Taayer Reservoir for regulation of flows in the James River.

The commission further recommended the establishment of a municipal, rural, and industrial system for treatment and delivery of quality water to approximately 130 communities in North Dakota. A municipal and industrial water treatment plant with a capacity of 130 cubic feet per second was recommended to provide filtration and disinfection of water releases to the Sheyenne River for use in the Fargo and Grand Forks areas.

An alternate state plan for municipal water development was submitted to the Garrison Diversion Unit Commission by then Governor Allen I. Olson and Governor-elect George Sinner, proposing that the state would design and construct the water systems and pay 25 percent of their costs. In return, the federal government would provide up to \$200 million in nonreimbursable funds for municipal water development projects. The federal government would pay 75 percent of the construction costs of the systems with only the operation and maintenance costs borne by the benefiting cities.

Authorization Legislation

Following the issuance of the commission's final report, Congress enacted the Garrison Diversion Unit Reformulation Act of 1986, Public Law 99-294, 100 Stat. 433. This legislation was approved by representatives of the state of North Dakota, the Garrison Diversion Conservancy District, the National Audubon Society, and the National Wildlife Federation.

The legislation addressed the James River by directing a comprehensive study of effects over the next two years during which time construction of the James River Feeder Canal, the Sykeston Canal, and any James River improvements could not be undertaken. Of the 32,000-acre New Rockford Extension, included in the Garrison Diversion Unit Commission final report, 4,000 acres were transferred to the West Oakes area and 28,000 acres were authorized for development within the Missouri River Basin.

The legislation also provided for:

1. 130,940 acres of irrigation.
2. Deauthorization of the 1944 Flood Control Act and the 1965 Garrison authorization.
3. Preservation of North Dakota's water rights claims to the Missouri River.
4. Nonreimbursement of features constructed prior to enactment which will no longer be employed to full capacity, to the extent of the unused capacity.
5. Acre-for-acre mitigation based on ecological equivalency rather than the 1982 mitigation plan.
6. Deauthorization of the Taayer Reservoir and purchase of the Kraft Slough for waterfowl habitat.
7. Continued authorization, but no construction, of the Lonetree Reservoir. The Sykeston Canal was mandated for construction following required engineering, operational, biological, and economic studies. The Lonetree Reservoir could be built if:

- a. The Secretary of the Interior determines a need for the dam and reservoir.
 - b. Consultations with Canada are satisfactorily completed.
 - c. The Secretaries of State and the Interior certify determinations to Congress and 90 days have elapsed.
8. No construction of irrigation acreage other than on the Indian reservations or the 5,000-acre Oakes Test Area until after September 30, 1990.
 9. A \$200 million grant for construction of municipal and industrial water delivery systems. A \$40.5 million nonreimbursable water treatment facility to deliver 100 cubic feet per second to Fargo and Grand Forks was authorized. All water entering the Hudson Bay drainage must be treated and must comply with the Boundary Waters Treaty of 1909.
 10. Municipal and industrial water delivery systems for the Fort Berthold, Fort Totten, and Standing Rock Reservations.
 11. Irrigation soil surveys that must include investigations for toxic or hazardous elements.
 12. Federal participation in a wetlands trust to preserve, enhance, restore, and manage wetland habitat in North Dakota.

Garrison Municipal, Rural, and Industrial Water Supply Program

Included within the Garrison Diversion Reformulation Act of 1986 is an authorization enabling Congress to appropriate \$200 million for the Garrison Municipal, Rural, and Industrial Water Supply Program. These funds are to be utilized for the planning and construction of water supply facilities for municipal, rural, and industrial use throughout the state of North Dakota.

On July 18, 1986, the Garrison Diversion Conservancy District and the North Dakota State Water Commission entered an agreement for the joint exercise of governmental powers. This agreement allows the district to use the expertise of the commission in developing and implementing the water supply program. In addition, the agreement directs the district to enter into a cooperative agreement with the Secretary of the Interior and designates the district as the fiscal agent for the state concerning money received and payments made to the United States for the water supply program.

On November 19, 1986, the United States and the Garrison Diversion Conservancy District entered into an agreement that designated the district to act on behalf of the state of North Dakota in the planning and construction, as well as the operation and maintenance, of the water systems constructed pursuant to the Garrison Diversion Reformulation Act of 1986. This agreement contains a definition of the responsibilities of the United States and the district under the agreement, provisions concerning the work to be undertaken by the district, stipulations concerning the transfer of funds, and the procedure for reporting, accounting, and reviewing the planning and construction programs. The agreement also provides that the Southwest Pipeline Project is eligible to receive funding under this program.

Another important aspect of the water supply program is that in order to be eligible for financial assistance for construction of a water supply project under the program, applications must be submitted by a local governmental entity and must be supported by a preliminary report and followed by a feasibility report. The preliminary report should contain the following information:

1. Name of project sponsor.
2. Purpose and description of the project together with a map showing the project area.
3. Potential user interest.
4. Source of water supply.
5. Preliminary plan for the project with alternative plans where appropriate.
6. Preliminary cost estimate for both capital costs and operation, maintenance, and replacement costs.
7. Repayment concepts including user costs and project financing plans.

Following approval of the preliminary report by the State Water Commission, a feasibility report must be submitted before the project can be approved for funding. This report should contain the following information:

1. Purpose and description of the project together with a map showing the project area and proposed facilities.
2. Source of water supply.
3. Project plans with alternative plans where appropriate.
4. Description of water treatment and storage facilities proposed.
5. Design criteria including population projections and water demands.
6. Interest survey of potential water users.
7. Environmental assessment.
8. Discussion of permit requirements and responsibilities.
9. Cost estimates for capital and operation, maintenance, and replacement costs.
10. Cost of water to users.
11. Financial plan for the project.

Once these steps have been satisfactorily completed, the project sponsors may then seek financial assistance to proceed with the design and commence construction of the project.

Legal Issues

Throughout the interim, legal counsel for the Garrison Diversion Conservancy District informed the committee on the progress of the litigation surrounding the project. The recent decision of the North Dakota Supreme Court entitled In the Matter of the Ownership of the Bed of Devils Lake in which the court determined that the area of the state-owned lakebed fluctuates with the elevation of Devils Lake is important from an economic standpoint. Under the recreation portion of the Garrison Diversion Unit Project, the district is required to match federal funds dollar for dollar. Transfer of the lakebed involved in this case to the United States earned the state a \$3.5 million credit under the \$12 million authorized to be spent on the recreation component of the project. Since the court, in effect, ruled that the state attempted to

convey more of the lakebed than it actually owned, the district and the state will have to supply additional funds, assets, or improvements upon recreation land to replace credits received for that portion of the lakebed the state does not own in order to meet the 50 percent matching requirement of the recreation component.

Following is a discussion provided by that counsel of the lawsuits and their status through October 3, 1988.

I. 101 Ranch v. United States, No. A2-81-89, United States District Court for the District of North Dakota (Judge Benson and United States Magistrate Klein).

A. Purpose of Garrison Diversion Conservancy District involvement in this litigation:

This is a quiet title action concerning about 11,000 acres of lakebed in West Bay of Devils Lake. The land was conveyed by the Garrison Diversion Conservancy District to the United States in 1971 as a nonfederal cost-sharing payment for the Garrison Diversion Unit. The plaintiffs (101 Ranch and others) also claim the land. The state and the Garrison Diversion Conservancy District intervened as defendants to assert claims of state ownership over the lakebed and to protect the monetary credits received as a result of the conveyance.

B. Status of this case:

1. The court declared that Devils Lake was navigable at statehood and that the state owns the lakebed.
2. The court denied a motion by the Devils Lake Sioux Tribe to intervene in the case (the court's order is dated September 30, 1985).
3. A trial was held before the United States Magistrate on February 2-5, 1988. The magistrate ruled that the riparian landowners own the lakebed to the water's edge.
4. Judge Benson held a hearing on the United States Magistrate's decision on June 27, 1988. A final decision is expected soon.

II. In the Matter of the Ownership of the Bed of Devils Lake, 423 N.W.2d 141 (N.D. 1988).

A. Purpose of Garrison Diversion Conservancy District involvement in this litigation:

This quiet title case is a state class action concerning ownership of the bed of Devils Lake below the meander line.

B. Status of this case:

1. The trial court ruled that the state of North Dakota acquired the bed of Devils Lake as an incident of statehood.
2. The trial court denied a motion by the Devils Lake Sioux Tribe that the case must be dismissed.
3. The trial was held in Devils Lake on November 17-19, 1986. The trial court ruled that the state acquired the lakebed at statehood; that the area of the state-owned lakebed fluctuates with the elevation of the water; and that the current boundary between the private riparian upland and public lakebed is about 1426' mean sea level.
4. The trial court's decision was upheld by the North Dakota Supreme Court.
5. The state and Garrison Diversion Conservancy District filed a motion with the court concerning the ownership and control of the lakebed between the ordinary high water mark and the low water mark. The court denied the motion, so the state and Garrison Diversion Conservancy District will have no further role in any future proceedings.

III. Devils Lake Sioux Tribe v. State of North Dakota, No. A2-86-87, United States District Court for the District of North Dakota.

A. Purpose of Garrison Diversion Conservancy District involvement in this litigation:

The Devils Lake Sioux Tribe sued the State of North Dakota because of the state/Garrison Diversion Conservancy District claims of ownership and management. The tribe claims that the United States owns the lakebed in trust for the tribe.

B. Status of this case:

1. The state and Garrison Diversion Conservancy District were served with a complaint on June 23, 1986; an answer has been filed.
2. Interrogatories and answers to interrogatories have been exchanged by the parties.
3. The United States filed a motion to dismiss on October 15, 1986. The United States contends that the tribe should have filed its lawsuit within 12 years after the July 7, 1971, quit claim deed from the Garrison Diversion Conservancy District to the United

States. The court has not acted on the motion.

4. The state/Garrison Diversion Conservancy District filed a motion to dismiss because of the tribe's failure to join necessary parties (riparian landowners around Devils Lake). The court denied the motion.
5. The United States filed a motion for summary judgment seeking a dismissal of this action on various grounds including subject matter jurisdiction. The court has not ruled on the motion.

PROJECT UPDATE

Throughout the interim the committee received updates concerning the Garrison Diversion Unit Project from representatives of the Garrison Diversion Conservancy District, State Water Commission, United States Bureau of Reclamation, Association of North Dakota Water Resource Districts, North Dakota Water Users Association, and the United States Fish and Wildlife Service. Due to concerns with the Sykeston Canal feature of the Garrison Diversion Unit Project, the Garrison Diversion Conservancy District, in conjunction with the State Engineer and the Governor, has developed a proposal to construct the Mid Dakota Reservoir as a functional replacement for the Sykeston Canal.

Testimony received by the committee indicated that the proposed Mid Dakota Reservoir possesses several advantages over the Sykeston Canal. Construction of the Mid Dakota Reservoir would result in an estimated construction and operational cost savings of \$125 to \$150 million over the life of the project. The reservoir would be operable during the winter months, thus providing water for municipal and industrial needs and stabilization of Devils Lake. The reservoir would have less adverse impact on wildlife refuges and allow more timely delivery of water for irrigation purposes. The reservoir would have significant environmental, wetland, wildlife, and recreational advantages over a canal. Finally, although the reservoir would be adequate for the reduced project, it would have no excess capacity, thus allaying Canadian concerns that the project would be expanded at a later date.

The State Water Commission has received inquiries from 64 North Dakota communities concerning water improvement projects. Funding under the Garrison Municipal, Rural, and Industrial Water Supply Program has been allocated for the Grand Forks Riverside Park Dam Project, the McLean-Sheridan Rural Water Project, and the Southwest Pipeline Project.

The Southwest Pipeline Project is approximately 35 percent complete and representatives of the State Water Commission estimated that the pipeline will begin supplying water to Dickinson in 1990. The United States Bureau of Reclamation has allocated an additional \$10.5 million for construction of the project.

The United States Bureau of Reclamation expended \$40.7 million on the Garrison Diversion Unit Project during fiscal year 1988. The bureau has commenced operations on the Oakes Test Area and is continuing construction of the New Rockford Canal. Activities planned for fiscal year 1989 include commencement of land acquisitions for the Kraft Slough National Wildlife Refuge, continued acquisition of land for Garrison Diversion Unit Project mitigation purposes, and commencement of construction on Indian water supply systems.

The Garrison Diversion Conservancy District expanded for the first time in over 20 years with the addition of Burleigh County. The district is now composed of 26 counties comprising 40 percent of the land area of the state. Burleigh County will now be eligible for irrigation under the Garrison Diversion Unit Reformulation Act of 1986 and will be eligible to receive a portion of the \$12 million available for expenditure on recreation programs under the Act.

JOBS DEVELOPMENT COMMISSION

House Concurrent Resolution No. 3005 directed the Legislative Council to establish a Jobs Development Commission composed of legislators, officials from the executive branch of government, officials from higher education, and representatives of private industry to study methods and coordinate efforts to initiate and sustain new economic development in this state. The Jobs Development Commission was assigned an additional study. Senate Concurrent Resolution No. 4060 directed a study of the securities laws in this and other states, the need for regulation of the various aspects of the securities business, and the desirability of revising the Securities Act of 1951 to foster legitimate capital formation in the state in a manner that does not diminish necessary public protections.

Commission members were Representatives Roy Hausauer (Chairman), Jay Lindgren, Dan Ulmer, and Joseph R. Whalen; Senators Mark Adams, Ray Holmberg, Joe Keller, Gary J. Nelson, David E. Nething, Joseph A. Satrom, Larry W. Schoenwald, R. V. Shea, and Art Todd; and Citizen members Harvey Huber, Robert D. Koob, Gordon B. Olson, William S. Patrie, Mick B. Pflugrath, and Richard Rayl.

The report of the commission was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

JOBS DEVELOPMENT STUDY Economic Development Activities in North Dakota

The extreme vulnerability of the North Dakota economy to national and international forces that have depressed energy prices and the prices of the state's leading agricultural export commodities illustrates the need to strengthen and diversify the economic base of this state through a continued, concerted effort by the public and private sectors to retain and expand existing business and industry and to facilitate the formation and growth of new business and industry in the state.

Similar concerns have compelled other states to undertake a wide and innovative array of policies to promote economic development and diversification. Across the nation state policymakers are concerned with economic growth and diversification; job creation, retention, and expansion; the quality and skills of the labor force; and the national and international competitiveness of each state's major industries. The major state economic development strategies include recruitment of domestic industrial plants, financial and technical assistance to new and existing small businesses, aid with technology innovation for new products and processes for both large and small businesses, export promotion and recruitment of foreign investment, targeted help for mature industries and emerging industries, aid to distressed regions and industries, general encouragement of entrepreneurship, and emphasis on tourism. Economic development concerns have also been the prime motivating force behind reforms in education, job training and retraining, vocational education, infrastructure, government reorganization,

unemployment and workers' compensation systems, administrative regulation, and taxation.

The Jobs Development Commission is but one example of cooperative efforts by the public and private sectors of the state which provided a useful forum to discuss and develop proposals and execute policies for state economic development and diversification. The commission examined economic and labor trends in North Dakota and reviewed activities of the public and private sectors designed to encourage economic development and job creation in the state. As in most other states, economic development and job creation in North Dakota has now assumed a high profile, which is represented by recent initiatives from the public and private sectors of the state.

Legislative Initiatives

Economic development and job creation in North Dakota is encouraged and facilitated through a wide variety of legislative initiatives, including business and industrial financing and technical assistance, tax incentives, capital formation, state and local development agencies including the Economic Development Commission and the Bank of North Dakota, and promotional activities. Some of the more recent legislative initiatives include the establishment of a public venture capital corporation and the provision of income tax incentives designed to encourage the formation of private venture capital corporations, modifications to the state's securities laws to facilitate in-state capital formation, support for university research and technology transfer, establishment of small business and agricultural loan programs at the Bank of North Dakota, provision of tax incentives for corporate research and property used for academic research purposes, energy tax relief, authorization for the establishment of city and county job development authorities, protection of confidential proprietary information generated from university research, and the restructuring of the Economic Development Commission.

Activities of the Economic Development Commission

The director of the Economic Development Commission is directed, in part, by North Dakota Century Code (NDCC) Section 54-34-06 to plan, execute, and direct a program of publicity, research, and agricultural and industrial promotion which will attract investors, investment capital, and new residents to the state; foster and promote tourism and international trade; and assist in improving the business and agricultural climate of the state to encourage the growth and development of business and industry. The director of the Economic Development Commission reported that the commission is striving to form a state consensus with respect to a broad direction for economic development efforts in the state and focusing on three objectives. The first objective of the Economic Development Commission is to retain and expand existing businesses because the state has lost jobs in its basic

industries. Testimony indicated, however, that the state is only beginning to make meaningful efforts toward program delivery to the state's existing businesses and industries. The second objective of the Economic Development Commission is the startup of new business and industry in the state. According to one nationally recognized manufacturing climates study, the comparative superiority of North Dakota's manufacturing climate is apparent. However, other purported "measurements" of states' economic development success are not so flattering. For example, North Dakota ranked 49th among the states in 1987 according to another study based on actual state performance in stimulating entrepreneurial activity and economic expansion. Testimony indicated that North Dakota is losing about the same percentage of businesses as other states are; however, the state does not adequately provide the means to replace those businesses and jobs through new business startups and business expansion. An apparent consensus of many involved in state economic development is that the state does not lack creativity and ideas, but lacks the entrepreneurial skills needed to stimulate business startups and new jobs. Industrial recruitment is the third objective of the Economic Development Commission. However, due to the state's limited ability to attract those few relocating businesses, the Economic Development Commission has targeted its efforts to businesses compatible with the demographics and natural resources of the state, particularly the food industry.

The commission generally reviewed programs of the Economic Development Commission, including international trade and tourism promotion efforts, the Small Business Development Center program that provides management assistance for small businesses, and a federal procurement and technical assistance program designed to assist North Dakota businesses in selling their goods and services to the federal government. In an effort to foster coordination between the various public and private agencies and organizations involved in economic development in the state, the Governor and the Economic Development Commission created the Economic Development Roundtable, composed of representatives of those public and private agencies and organizations. The organizational structure of the roundtable consists of "clusters," which are working groups formed to address particular aspects of economic development in the state, including business financing, community development, tourism, workforce and training, business development, minority business development, statistical reporting, agriculture, applied research, and education. The clusters are designed to cut across the jurisdictional boundaries between agencies and the public and private sectors. Testimony indicated that proposed initiatives to be undertaken by various clusters of the roundtable include the development of a research directory of workforce and training resources, a resource directory of business assistance and community resources, and a North Dakota economic data book containing statistical data useful for economic development purposes. The commission generally reviewed the activities of the Economic

Development Roundtable and received many suggestions for possible legislation from representatives of each roundtable cluster.

Other Economic Development Activities

1. Greater North Dakota Association

A growing number of states are developing long-term strategies for state economic development. The Greater North Dakota Association recently formed the North Dakota 2000 Committee charged with developing a "common vision" for new wealth creation in North Dakota. Testimony indicated that a number of development specialists from outside the state, who have been involved in helping to rebuild economies of area states, concluded that the lack of a common vision for new wealth creation is one of the key factors missing in North Dakota's economic development efforts which is essential to developing consistent and appropriate strategies to offset the decline in employment opportunities presently occurring in the state. The North Dakota 2000 Committee, composed of 29 individuals with a high level of influence in the state, will serve to help formulate, with the assistance of a consulting firm, a common vision and a strategic plan for new wealth creation in the state. The Greater North Dakota Association has set October 1989 as the target month for unveiling the findings of the North Dakota 2000 Committee and for beginning a major effort to implement the recommendations that will be outlined in the strategic plan.

2. Great Plains Coal Gasification Plant

A notable event that occurred during the commission's study was the federal government's sale of the nation's first commercial synthetic natural gas plant. The acquisition of the Great Plains Coal Gasification Plant from the United States Department of Energy by Dakota Gasification Company, a wholly owned subsidiary of Basin Electric Power Cooperative, was probably the biggest real estate transaction in the history of the state. The chief operating officer of Dakota Gasification Company indicated that the company cannot rely solely on revenues from synthetic gas sales for the long-term success of the plant because of the volatility of oil and natural gas prices used to determine pricing for the synthetic gas. The company intends to aggressively pursue plans to develop byproducts of synthetic gas production. A strong incentive for byproduct sales is a provision in the company's purchase agreement with the federal government that the company will receive all profits from byproducts. Testimony indicated that some byproducts that generally require little or no additional processing are currently sold. However, to develop other byproducts the economical and technical feasibility must be assessed and additional investments will be required to produce additional marketable products.

3. North Dakota World Trade, Inc.

North Dakota World Trade, Inc., was incorporated in August 1987 as a nonprofit North Dakota corporation designed to develop, promote, and expand business ventures in the state by foreign firms or

individuals; to foster economic development in the state which will increase employment and contribute to a stable and diversified economy; and to develop and maintain a network of key contacts with foreign business and governments that may facilitate and contribute to the development of international markets for North Dakota products. The corporation is a joint effort of the public and private sectors in North Dakota for which the 1987 Legislative Assembly appropriated \$200,000 to the Economic Development Commission with an additional \$150,000 to be raised from the private sector during the 1987-89 biennium. The president of North Dakota World Trade, Inc., indicated that the corporation has selected a representative for purposes of developing a North Dakota presence in Japan to attract Japanese capital for investment opportunities in the state.

4. Business Retention and Expansion Program

A business retention and expansion program, cosponsored by the Economic Development Commission, the Greater North Dakota Association, and the North Dakota State University Cooperative Extension Service, has been implemented as a means of assisting existing business and industry grow and expand within communities of the state. The first stage of the retention and expansion program is a business visitation program through which the needs and concerns of existing businesses and industries are identified. Local volunteers visit each business and industry and ask questions from a standard survey. One of the purposes of the survey is to identify those local and nonlocal problems that prevent or reduce a business' growth, increase its costs, or complicate its operations. Attempting to remove obstacles to development is the second stage of the program. During this stage, a community's retention and expansion program can assume several different forms depending on the concerns expressed by firms during the business visits. Testimony indicated that although the program is designed to retain and expand existing businesses, the program also provides an important foundation for business startups and recruitment by providing an additional tool and support base from which can be shown the favorable business environment of the state and the community.

5. Entrepreneurial Training Program

In light of the need for more entrepreneurial activity in the state, a new entrepreneurial training program was initiated as a cooperative effort of the Department of Vocational Education, the Economic Development Commission, and others from which was developed several small business startup workshops targeted at individuals who want to start a business. Testimony indicated that many North Dakota communities have or will hold these workshops as an annual or semiannual activity. The workshop curriculum focuses on three primary aspects relating to the business startup process, i.e., a feasibility study, a business plan, and a financial package. The workshops include 40 hours of classroom time and 80 hours of course preparation, one-on-one consultations, and other activities. Testimony indicated that these

workshops have proved to be successful in starting new businesses in the state.

6. Bank of North Dakota

The statutory purpose of the Bank of North Dakota is to encourage and promote agriculture, commerce, and industry in the state. The commission reviewed various lending services provided by the Bank of North Dakota, including general participation loans, farm operating loans, agribusiness operating loans, family farm loans, small business loans, and other loan programs. In 1987 the Bank allocated \$5 million to a risk loan program designed to assist new and existing businesses in the state in obtaining loans that have a higher degree of risk than would normally be acceptable to a lending institution. The Bank's participation percentage is negotiated on each loan up to a maximum of \$500,000 and the local lender's portion must be 10 percent or more of the total loan amount. Testimony indicated that the Bank will allocate an additional \$5 million to the program each year until the total program funding reaches \$25 million.

One of the problems with the state's financial industry in the past has been a lack of experience in providing financial assistance to local development organizations or entrepreneurs who have good ideas but do not constitute the typical agriculture or "main street" business loan prospect. In an effort to remedy this problem, the Bank of North Dakota has hired an industrial loan specialist to provide consulting services to local development organizations or financial institutions. Testimony indicated that although the Bank of North Dakota has been hampered by a shortage of trained staff, improvements have been made in the time the Bank takes to finalize loan requests.

7. Regional Railroads

The commission held a meeting in Jamestown in conjunction with the North Dakota Inventors Congress, during which meeting the commission examined the impact of North Dakota's rail system, particularly regional or short line railroad systems, and railroad abandonments on jobs in North Dakota. Testimony indicated that two recently established regional railroads providing service in the state provide several advantages over their larger counterparts such as Burlington Northern Railroad and the Soo Line Railroad in terms of serving light density rail lines. Testimony indicated that some of these advantages result from avoidance of contractual and regulatory obligations that prevent larger railroads from operating these lines in the most productive manner. Other advantages result from being able to obtain excess equipment and facilities at low costs. As a result of reduced labor and equipment costs and increased business volumes, regional and short line railroads are often able to return previously unprofitable or marginally profitable trackage to viable profitmaking operations as an alternative to rail line abandonment.

Testimony indicated that while regional and short line railroads enjoy significant advantages, they are also beset with major disadvantages. As with any

major transitional process, there is a certain amount of difficulty when workers and their families are displaced or relocated. As a result of serving limited geographic areas with concentrated product mixes, operational risks are high, competent management is expensive and hard to find, and there are considerable startup and financial risks involved in establishing regional or short line railroads.

North Dakota Economy—Perceived Problems and Proposed Solutions

North Dakota Projected Employment

The commission reviewed information developed by the North Dakota State University Department of Agricultural Economics estimating recent changes and projecting future trends in the state's economic base. The following chart depicts projected employment in North Dakota based on projected gross business volumes and productivity ratios:

	1986 Employment	Projected Employment in the Year 2000	Percentage Change
Agriculture	39,200	21,300	-46
Petroleum	4,500	2,700	-40
Manufacturing/ agricultural processing	26,600	21,200	-21
Retail trade	49,600	40,800	-18
Service	58,700	59,600	+2
Government	52,500	45,800	-13
Other	41,700	33,400	-20
Total	272,800	224,800	-18

Testimony indicated that the projected decline in employment in North Dakota through the year 2000 will amount to 48,000 jobs if present business volumes and productivity trends continue. On the other hand, further testimony and projections indicated that if the state is able to stem the outmigration of its population approximately 178,000 additional jobs will be needed in order to utilize the labor force that will be available in the state in the year 2000.

Perceived Problems

Testimony revealed the existence of various views and perceptions among individuals in the state regarding reasons for North Dakota's job creation problems.

A representative of North Dakota State University indicated that one problem faced by the state is a general lack of understanding of the fundamentals underlying economic development and the mechanisms for initiating the economic development process. In addition, there seems to be an attitude in the state that it is alright if someone wants to succeed in business, but the public should not become actively involved even though stimulating development is critical to the economic and social interests of all citizens of the state.

Various views were expressed by other individuals engaged in economic development efforts in the state, including the need for public support to enhance opportunities or to reduce barriers to entrepreneurial

development. Testimony indicated that North Dakota is not short on ideas or inventors but is short on entrepreneurial skills needed in developing the business, marketing, and manufacturing aspects of those ideas. Other individuals expressed concern that the state has a national image problem that affects business relocation efforts and university research contracts and grants, while other individuals pointed to the state's "scattered" economic development efforts and the need for a clear set of economic development goals and strategies for achieving those goals.

Proposed Solutions

The commission heard many proposals for legislation designed to stimulate economic development and job creation in the state, including proposals relating to the role of higher education in state economic development; basic and applied research, and technology transfer; energy and mineral development in the state; business financing; business and entrepreneurial development; job training; minority business development; community development; agriculture; education; manufacturing; tourism; state economic development policies; and other proposals. The commission selected several of these proposals for further study, including proposals to allow institutions of higher education to enter into partnerships with private industry and business to leverage outside dollars; provide exemptions from the state's open records and open meetings laws for discussion and consideration of certain economic development records and information; revisions to state law relating to the public venture capital corporation established by the 1987 Legislative Assembly, and other venture capital corporations; and expansion of the state's urban renewal law for the purpose of allowing cities to utilize tax increment financing for the development of industrial or commercial property.

Higher Education

According to a publication of the Public Policy Center of SRI International, the key economic roles for institutions of higher education include (1) human resources development—to meet the changing needs of industry for skilled and adaptable labor; (2) technical assistance—to apply existing technology and knowledge to practical business needs; (3) technology transfer—to help transfer newly developed technology and knowledge to keep industry competitive; (4) basic research—to develop new knowledge to help improve industrial competitiveness; (5) support for entrepreneurship and new business development—through incubators, research parks, and similar efforts; (6) promotion of international trade—to help industry to understand and compete more effectively in international markets; and (7) economic analysis and capacity building—using analytic resources to improve the understanding of and new approaches to revitalizing economies.

The commission heard presentations and toured facilities relating generally to the role of North Dakota's system of higher education in economic development in the state, in particular the efforts of North Dakota State University and the University of

North Dakota to increase basic research and foster applied research, technology transfer, and other linkages between the universities and private business and industry.

Basic and Applied Research

An economic development role that is becoming increasingly important for institutions of higher education, particularly in the wake of technological change, is basic and applied research. Testimony indicated that the combined research budgets of North Dakota State University and the University of North Dakota from sources other than the state exceed \$35 million annually. Federal agencies and private business and industry provide the bulk of the funding for this research. Testimony indicated the need to view state support of university research as an investment because that state support will generate additional support through research grants and contracts from external sources, and the need for state matching funds for the formation of research and development linkages with universities, private industry, and federal research and development programs.

Technical Assistance

Technical assistance to apply existing knowledge to industry was identified as an important role that could be provided through the array of business and technical talent that exists in the state's institutions of higher education. A representative of North Dakota State University indicated that the application of the agricultural extension model in a broader economic or industrial context as a means of providing technical assistance to North Dakota business and industry might well be the single most likely means of adding economic diversity, growth, and stability to the largely commodity-based economy of the state. North Dakota State University officials are developing and pursuing a proposal to create an entity within the NDSU Cooperative Extension Service of which the primary function would be to coordinate and facilitate components of the NDSU scientific community along with components of the University of North Dakota to link businesses and potential businesses of North Dakota to the research and knowledge base of the state's two research universities.

Technology Transfer

The commission was told that it is imperative to state economic development that ideas be effectively transferred from the university laboratory and classroom to North Dakota business and industry through state support of technology transfer at the state's universities. Testimony indicated that results of university research are often published but rarely commercialized because university resources are generally insufficient for technology assessment, commercial evaluation, patent protection, licensing, and technology transfer.

The 1987 Legislative Assembly provided some funding to the Economic Development Commission for the Center for Innovation and Business Development at the University of North Dakota. The purpose of the center is to nurture homegrown industry and provide support services to inventors,

business entrepreneurs, and existing small manufacturers. Services provided by the center include (1) invention evaluations and patent assistance to help inventors and owners of small businesses determine the potential for technical and commercial success of inventions and new product ideas, and to help them understand the innovation process; (2) technology transfer from university research and other sources to places where it can be utilized; (3) technical development and assistance to help identify and analyze technical problems and provide solutions or referrals to other sources of assistance through research and development, engineering and science support, product/process design, product testing, quality control and assurance, interpretation of safety, energy, performance, and testing standards, and prototype development; and (4) business development to help those persons who have developed new products or processes but have not had the business experience necessary to commercialize their innovation.

Testimony indicated that the Center for Innovation and Business Development has launched three companies in the state from university technologies attracting over \$5.5 million in outside financing, and creating over 100 jobs. Testimony also indicated that there are at least 20 known technologies at the University of North Dakota and North Dakota State University that would likely be commercially viable and, if further developed, would likely be attractive to entrepreneurs or licensed to existing manufacturers.

University and Private Industry Partnerships

The commission was advised that the State Board of Higher Education has broad powers with respect to the supervision and administration of property of institutions of higher education; however, state law does not specifically authorize or encourage institutions of higher education to enter into partnerships or other contractual relationships with private business and industry. Nevertheless, notable examples of emerging partnerships between the state's system of higher education and private business and industry include the Robert Perkins Engineering Computer Center at North Dakota State University and the Aerospace Training and Research Center, Energy and Minerals Research Center, and Center for Innovation and Business Development at the University of North Dakota.

The commission considered a bill draft that specifically authorized the State Board of Higher Education to authorize and encourage institutions of higher education under its control to enter into partnerships, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.

Testimony indicated that the bill draft would provide the State Board of Higher Education and institutions of higher education with a specific indication of legislative intent that partnerships and other relationships between North Dakota's

institutions of higher education and private business and industry are encouraged.

Economic Development Records and Information

Testimony indicated that some economic development efforts in the state are hampered, and sometimes prematurely thwarted, because of the application of the state's open records and open meetings laws. State and local governmental entities and other local organizations engaged in economic development efforts are not able to ensure business and industry looking at North Dakota as a prospective location, or business or industry seeking financial or technical assistance, that their location efforts will not be prematurely disclosed or any commercial or financial information they submit in applying for assistance will be handled in a confidential manner. For example, a representative of a city urban development office that administers a local revolving loan pool designed to assist new and expanding businesses indicated that a considerable amount of information is requested of a business or business prospect applying for financial assistance, including supplier and customer lists, financial statements, growth patterns, manufacturing processes, future plans, and other commercial or financial information that, if publicly disclosed or disclosed to a business competitor, would jeopardize the business' position in the marketplace. Potential applicants routinely inquire whether the commercial or financial information they submit with their applications will remain confidential; however, such assurances cannot be made because the state's open records law renders the information a public record, open and accessible for inspection by the public. Testimony indicated that other states' laws designed to ensure that commercial or financial information need not be publicly disclosed puts North Dakota at an extreme competitive disadvantage, which in the past has resulted in the state losing good economic development prospects.

In light of these concerns, the commission reviewed the state's open records law and reviewed examples of statutory provisions of other states exempting certain economic development records and information from open records laws. Both Article XI, Section 6, of the Constitution of North Dakota and NDCC Section 44-04-18 provide that "all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds" are public records that are open and accessible to the public unless otherwise exempted by state law. The commission learned that many states provide an exemption from open records laws for all commercial or financial records of a confidential nature or trade secrets, regardless of whether those records pertain to economic development activities. North Dakota law provides similar exemptions from the state's open records law for commercial or financial information obtained by the Bank of North Dakota and the Myron G. Nelson Fund, Inc. At least two states, Kansas and Kentucky, exempt from their open records law any records

pertaining to a prospective location of a business or industry if no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within, or expanding within the state.

The commission considered a bill draft that exempted from the open records law any records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of its interest or intent to locate in, relocate within, or expand within the state. The exemption did not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within the state, except as otherwise provided by law. The bill draft also exempted from the open records laws any trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance or other forms of business assistance.

A representative of the North Dakota Newspaper Association and the North Dakota Broadcasters Association did not express strong opposition to the proposed exemption. Some concern was expressed, however, with the "previous public disclosure" condition and the need to dispel or verify rumors of business locations, relocations, or expansions notwithstanding that the particular business or industry involved has not made a public disclosure. Commission discussion indicated that by requiring that the previous disclosure be made by the business or industry, the bill draft provided a reasonable basis for disclosing records or information because that business or industry is in a better position to make a more responsible decision as to whether its intent or activity should be publicly disclosed.

The commission identified the need to expand the bill draft to authorize those entities involved in economic development activities to discuss and consider economic development records or information during a closed meeting. Testimony indicated that many difficulties arise when governmental entities and local development organizations attempt to review the qualifications of persons or businesses applying for economic development assistance, if that review takes place at a meeting attended by the news media or the applicant's business competitors. The only alternative for these entities and organizations is to not discuss or consider financial or commercial information of a confidential nature at a meeting; however, this practice results in a less than adequate decisionmaking process and conveys the impression that the entity or organization has not adequately reviewed information necessary to make an informed and intelligent decision regarding the application for assistance.

The commission reviewed the state's open meetings law and several examples of statutory provisions of other states that exempt from open meetings law any discussions or consideration of certain economic development records or information. Both Article XI, Section 5, of the Constitution of North Dakota and NDCC Section 44-04-19 provide that "all meetings of

public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds" are open to the public unless otherwise exempted by state law. The commission learned that many states specifically exempt from their open meetings law any discussions or consideration of business or industry prospects or of confidential financial or commercial information of a business or industry, while several other states provide even broader authorization to consider and discuss all records that are exempt from the state's open records law in a closed meeting.

In recognition of the need to not only authorize, but encourage, candid and thorough discussions and consideration by governmental entities or local organizations concerning individuals or commercial enterprises applying for economic development assistance, the commission amended the bill draft to provide an exemption from the state's open meetings law for a meeting or a part of a meeting held to consider or discuss any economic development records or information exempted from the state's open records law. The commission was advised that the bill draft incorporated what appears to be the general consensus of other states as to appropriate safeguards in providing the exemption. The bill draft provided that the exemption from the open meetings law would apply only if (1) the meeting is authorized by a motion made and carried in a meeting open to the public, (2) only the records and information exempt from public inspection are considered or discussed at the meeting, and (3) final action concerning the records and information is taken at a meeting open to the public.

The commission was unable to resolve concerns expressed by some commission members concerning the requirement that any final action concerning records and information considered and discussed in a closed meeting be taken at a meeting open to the public. Testimony indicated that a business or industry may be adversely affected by the disclosure because adverse inferences may be made from the fact that assistance was denied or withdrawn, notwithstanding that a denial of assistance may not have anything to do with the credit worthiness or other characteristics of the applicant.

Testimony indicated that media organizations in the state generally would not object to allowing the closure of certain meetings for the purpose of considering or discussing economic development records and information. However, opposition to the bill draft was expressed in the form of objections by media organizations to the fact that the bill draft would not specifically delineate which public bodies would be authorized to close meetings, thereby raising the possibility that boards of county commissioners, city councils or commissions, park boards, and similar public bodies would be able to close meetings to consider economic development matters even though no means would exist by which to determine what was actually discussed.

Testimony contrary to the position taken by the media organizations indicated that while the economic development records and information

described in the bill draft are not in the nature of matters generally considered or discussed by boards of county commissioners, city councils or commissions, park boards, and similar public bodies, in some areas of the state a board of county commissioners or similar public body may be involved in various programs, including the North Dakota Community Development Block Grant Program for which a county's or city's sponsorship is required. These programs provide financial assistance to businesses which necessarily involves the consideration and discussion of commercial or financial records and information which, if publicly disclosed, may compromise the competitiveness of businesses applying for assistance.

The commission's discussion indicated that the bill draft would provide important and appropriate safeguards in delineating specifically those economic development records and information that may be considered and discussed in a closed meeting, requiring that those records and information be the only matters discussed in a closed meeting, and requiring that any final action concerning the records and information be taken at a meeting open to the public.

Venture Capital Corporations

The commission monitored the incorporation and other organizational activities of the Myron G. Nelson Fund, Inc., a public corporation established by the 1987 Legislative Assembly to organize and manage an investment fund capitalized through the sale of shares of the corporation's stock to the Bank of North Dakota and other public and private investors to provide a source of investment capital for the startup, expansion, and rehabilitation of North Dakota businesses. The fund was incorporated in September 1987, has selected a fund manager that will establish an office in the state from which the corporation will conduct its business, and has developed a strategic plan and 1989 operating budget.

The board of directors of the fund identified several provisions of the corporation's implementing legislation, NDCC Chapter 10-30.2, that should be revised to assist in ensuring the ultimate success of the corporation. The commission considered a bill draft incorporating the board of directors' suggestions which (1) amended NDCC Section 10-30.2-06 to eliminate the prohibition against the corporation investing in more than 40 percent of any one entity's capital; (2) amended NDCC Section 10-30.2-14 to extend to the corporation's board of directors the limited immunity from liability provided the state for any damage incurred by an investor in the corporation; (3) amended NDCC Section 10-30.2-11 to entitle trust companies to the privilege tax credit for investment in stock of the corporation as is provided for banks, savings and loan associations, and insurance companies; (4) amended NDCC Section 10-30.2-13 to raise the total amount of tax credits allowable for investment in the corporation from \$5 million to \$10 million; (5) allowed an individual, estate, or trust to claim the income tax credit for investment in the corporation under the simplified optional method of computing income tax liability (short income tax form); and (6) allowed taxpayers to

claim income or privilege tax credits for investment in a limited partnership created by the corporation as an affiliate for tax purposes.

The board of directors indicated that flexibility is needed, through the elimination of the 40 percent investment limitation, to allow the corporation to provide companies with necessary management support in the early stages of their development. Concern was also expressed about the board of directors' inability to obtain director and officer liability insurance and, therefore, the need to provide the board of directors, all of whom are volunteer directors, with some form of immunity from personal liability. The board of directors estimated that investments in the corporation totaling at least \$10 million will be necessary to create a viable venture capital fund to address the needs of North Dakota businesses, and suggested that allowing the income tax credit to be claimed by investors on the short income tax form would provide a broader base of investment in the corporation. As a source of additional capital, the board of directors suggested that the commission consider committing a certain percentage of public pension funds and other state institutional funds to venture capital investments in North Dakota businesses. The corporation's fund manager suggested that the corporation form a limited partnership, for the purpose of avoiding double taxation of dividends, as the legal entity through which private investors may invest in the fund.

The commission also addressed concerns expressed by representatives of venture capital corporations organized under NDCC Chapter 10-30.1. Enacted in 1985 to encourage capital investment, Chapter 10-30.1 provides income tax credits for application against any state income tax liability of taxpayers who invest in qualified venture capital corporations that provide financing to small business concerns doing business in North Dakota. Testimony indicated, however, that many taxpayers who invested in venture capital corporations organized under Chapter 10-30.1 received little or no benefit from the allowable income tax credits because the tax credit, by law, may not be claimed on the short income tax form. The commission was requested to consider allowing taxpayers who invest in venture capital corporations to claim the income tax credit on the short income tax form, retroactive for investments made in 1987 and 1988, and that financial institutions eligible to claim privilege tax credits for investment in the Myron G. Nelson Fund be allowed an additional privilege tax credit for investment in venture capital corporations organized under Chapter 10-30.1. The commission was advised that the proposal to allow taxpayers to claim income tax credits retroactively on the short income tax form raises the issue of whether that retroactivity may result in an unconstitutional "donation" by the state. Article X, Section 18, of the Constitution of North Dakota generally prohibits the state from making donations except for the reasonable support of the poor. Although the North Dakota Supreme Court has not directly addressed this issue, case law from another jurisdiction indicates that when a tax has become due, any subsequent legislation reducing the tax in any manner results in an

unconstitutional donation of public funds, unless a public purpose serves as the primary basis for the tax reduction.

Although the State Tax Commissioner did not take a position on the merits of the proposal to allow income tax credits for investment in the Myron G. Nelson Fund or other venture capital corporations to be claimed on the short income tax form, a representative of the commissioner indicated that tax policy should not be determined by the size of the income tax form. The commission amended the bill draft to allow income tax credits for investment in venture capital corporations organized under NDCC Chapter 10-30.1 to be claimed on the short income tax form. However, in light of constitutional considerations, the commission decided not to allow investors to claim previous income tax credits on a retroactive basis, but rather to allow those taxpayers who did not previously claim the income tax credit on the short income tax form to now claim the allowable income tax credit for previous years on the short income tax form for a taxable year beginning after December 31, 1988, with continued applicability of carryforward, but not carryback, provisions.

The commission considered one additional matter relating to venture capital corporations. Under NDCC Chapter 10-30.1, a taxpayer must claim the tax credit for investment in a venture capital corporation, which is equal to 25 percent of the taxpayer's investment up to a total tax credit of \$250,000, in the taxable year in which full consideration for the investment is received by the venture capital corporation. The amount of the tax credit that exceeds the taxpayer's tax liability for that year may be carried back as a credit against taxable liability for the preceding three taxable years and carried forward as a credit for seven taxable years. However, under NDCC Chapter 10-30.2, income and privilege tax credits for investment in the Myron G. Nelson Fund, which are also equal to 25 percent of the investment, may only be claimed in increments of 25 percent of that tax credit in any one taxable year. To remove this disparity the commission amended the bill draft to allow the entire income or privilege tax credit for investment in the fund to be claimed in the taxable year in which full consideration for the investment is paid by the taxpayer and to provide carryback and carryforward provisions identical to NDCC Chapter 10-30.1.

Tax Increment Financing

The commission reviewed the purposes for which cities are allowed to utilize tax increment financing under the state's urban renewal law, NDCC Chapter 40-58, to provide a method of stimulating private development of unused or underutilized industrial or commercial property.

Historically, the tax increment financing method has been used in North Dakota as an urban renewal tool, to redevelop slum and blighted areas within cities. In utilizing tax increment financing, a city generally uses increased property tax revenues generated by a redevelopment project to finance the necessary public investment in that project to prepare it for private development. First, however, the governing body of the city must adopt a resolution

finding that slum or blighted areas exist in the city and that rehabilitation, conservation, or redevelopment is necessary for the public good. Once this finding of necessity is made, the city may prepare and approve an urban renewal plan for which an urban renewal project is defined. Although numerous variations in proceeding under the urban renewal law are possible, the city generally enters into an agreement with a developer to undertake an urban renewal project. The city may issue tax-exempt bonds to finance the eligible public costs, such as site acquisition and public improvements associated with the project, which are paid by applying revenues generated by the incremental tax value of the redeveloped property, i.e., the increased revenues generated by the increased taxable value resulting from the redevelopment of the property. In 1985, cities were granted, in lieu of issuing bonds to be amortized with tax increments, the option to grant a total or partial tax exemption for up to 15 years in order to provide assistance to a project developer that paid the eligible public costs. The tax exemption is limited to the tax increment but must be in an amount sufficient to reimburse the project developer for those eligible public costs.

The commission considered a bill draft that expanded the scope of tax increment financing for use by cities to the development of unused or underutilized industrial or commercial property. The bill draft amended NDCC Chapter 40-58 to authorize cities to use tax increment financing to assist a project developer in the development of certain industrial or commercial property pursuant to an agreement between the city and the developer. Only the following public costs incurred in preparing the property for private development would be reimbursable by tax increments: (1) the cost of acquiring or the market value of all or a part of the industrial or commercial property; (2) costs of demolition, removal, or alteration of buildings and improvements on the industrial or commercial property, including the cost of clearing and grading land; (3) costs of installation, construction, or reconstruction of streets, utilities, parks, and other public works or improvements necessary for carrying out the development or renewal plan; and (4) all interest and redemption premiums paid on bonds issued by the city to provide funds for the payment of eligible public costs of development. The bill draft required cities, prior to entering into agreements with developers for the development of industrial or commercial property, to hold a public hearing and notify potential competitors of the prospective industrial or commercial enterprise of that hearing to determine whether or not the agreement will result in unfair competition and is in the best interest of the city as a whole.

Proponents of the bill draft indicated that the availability of tax increment financing as a means of providing financial assistance for industrial or commercial development will not only expand the local tax base but also give North Dakota cities a competitive advantage over, or at least place them in the same position as, cities of some other states which are able to provide similar assistance to a prospective business or industry in developing an industrial or

commercial site.

Jobs Development Commission

The commission considered a concurrent resolution draft that directed the Legislative Council to again establish a Jobs Development Commission composed of legislators, officials from the executive branch of state government, officials from higher education, and representatives of private industry to study methods and coordinate efforts to initiate and sustain state economic development and to stimulate the creation of new employment opportunities in the state. Testimony indicated that the commission has provided an ideal forum for the formulation of economic development related legislation and for individuals and representatives of the public and private sectors to discuss state economic development policies with legislators. In order to provide, if necessary, for broader representation of the private sector on the commission, the commission amended the resolution draft to provide for representation from the private "sector" rather than private "industry."

Recommendations

The commission recommends Senate Bill No. 2040 to specifically authorize the State Board of Higher Education to, in turn, authorize and encourage institutions of higher education under its control to enter into partnerships, joint ventures, or other contractual arrangements with private business and industry for the purpose of business and industrial development or fostering basic and applied research or technology transfer.

The commission recommends Senate Bill No. 2041 to exempt certain economic development records and information from disclosure under the state's open records and open meetings laws.

The commission recommends House Bill No. 1049 to amend NDCC Chapter 10-30.2 to eliminate the limitation on investments by the Myron G. Nelson Fund, Inc., in any one entity, to entitle trust companies to the privilege tax credit for investment in the corporation, to raise the total income and privilege tax credit limitation for investments in the fund from the first \$5 million to \$10 million of total investment in the corporation, to provide limited immunity from personal liability to the corporation's board of directors, to allow the income tax credit for investment in the corporation to be claimed under the optional simplified method of computing the state income tax, to allow the entire tax credit for investment in the corporation to be claimed in the year of the taxpayer's investment, and to allow tax credits to be claimed for investment in a legal entity such as a limited partnership created by the corporation as an affiliate for tax purposes. The bill would allow the income tax credit for investment in venture capital corporations organized under NDCC Chapter 10-30.1 to be claimed under the optional simplified method of computing the state income tax and would allow a taxpayer who was entitled to a credit against any state income tax liability for investment in a venture capital corporation organized under NDCC Chapter 10-30.1, and did not claim the

tax credit in the appropriate taxable year, to claim the tax credit in a taxable year beginning after December 31, 1988.

The commission recommends Senate Bill No. 2042 to authorize cities to use tax increment financing for the development of unused or underutilized industrial or commercial property.

The commission recommends House Concurrent Resolution No. 3004 to direct the Legislative Council to again establish a Jobs Development Commission composed of legislators, officials from the executive branch of government, officials from higher education, and representatives of the private sector to study methods and coordinate efforts to initiate and sustain state economic development and to stimulate the creation of new employment opportunities for the state.

SECURITIES LAWS STUDY

Background

The sale of securities was largely unregulated in the United States until the early 1900s. Rapid industrial development brought about an ever increasing need for capital, and drew an ever larger number of private citizens into the world of investing in private enterprise. In the unregulated setting, however, investors all too often ended up being victims of either criminals or swindlers who lied, cheated, and stole; overaggressive promoters who overstated their companies' projections and potential; or honest developers who urgently forged ahead without undertaking the necessary preparation, and who did not warn investors about the risks they were about to take. State regulation of the sale of securities in the United States began in 1911 when Kansas passed the first state securities law. By 1913, 23 other jurisdictions had adopted securities laws, including North Dakota. However, it became apparent that states' securities regulation with its limited jurisdiction was not the total answer. It took the stock market crash of 1929 to precipitate a movement to create a federal securities agency that could deal with schemes involving interstate commerce. The federal Securities Act of 1933 and the federal Securities Exchange Act of 1934 ushered in the era of federal involvement, and the federal Securities and Exchange Commission was created.

State securities laws follow a pattern similar to the framework of federal regulations established in the Securities Act of 1933 and the Securities Exchange Act of 1934. However, the state securities laws, unlike the federal Acts which have their focus in regulating the national markets, are focused more toward the regulation of the irregular securities and the newly formed company or enterprise. The federal approach emphasizes full disclosure on the assumption that investors can protect their own interests if presented with adequate information. By contrast, a majority of the states, including North Dakota, impose "merit" regulation to ensure that an offering is made on terms that are "fair, just, and equitable." This approach assumes that investments may involve the necessity of business experience that many investors do not possess.

The sale of securities in this state is regulated by

the Securities Act of 1951, NDCC Chapter 10-04. Chapter 10-04 is a strong merit review statute inasmuch as the right to sell securities in the state is denied in any case in which it appears to the Securities Commissioner that the sale of the securities will work a fraud or deception on purchasers or the public, that the proposed disposal of the securities is on unfair terms, or if the proposed plan of business of the applicant appears to be unfair, unjust, or inequitable. Generally, regulation of the sale of securities in the state involves a three-part framework for the protection of investors and the public. First, provisions exist requiring the registration of securities sold within the state and exempting certain securities and transactions in securities from those registration requirements. These provisions ensure that people receive relevant information about securities upon which they can base their investment decisions and protect investors from securities which do not meet statutory standards. Second, there are provisions requiring the registration of certain persons involved in the securities industry. These provisions are designed to prevent unqualified, unethical, and fraudulent persons from entering the securities business, to supervise the activities of persons in the securities business after they have registered, and to enforce the statutory standards by suspending or revoking registrations for noncompliance. Finally, antifraud provisions exist which provide penalties for fraudulent activities associated with the offer or sale of securities. Although certain securities and transactions are exempt from registration, there are no exemptions from the antifraud provisions. The Securities Commissioner is authorized to pursue a number of options to restrain fraudulent activities which may range from issuing public warnings and investigating activities suspected of being fraudulent to pursuing administrative actions or criminal prosecutions.

Testimony and Considerations

The commission reviewed the impact of NDCC Chapter 10-04 on legitimate capital formation in the state.

Some of the testimony heard by the commission suggested that state securities regulation primarily affects only legitimate capital formation, inasmuch as the criminals and swindlers in the securities marketplace who lie, cheat, and steal make no attempt to comply with the securities laws. Varying perceptions exist regarding the restrictiveness of NDCC Chapter 10-04. While the present and former Securities Commissioners and others indicated that the state's securities laws generally provide an appropriate balance between the need to foster legitimate capital formation and the need to provide necessary public protections, other testimony indicated that Chapter 10-04 may be overly restrictive and in some instances inhibit legitimate business and capital formation. A former Securities Commissioner emphasized that federal and state tax policies impact the capital formation process to a much greater degree than do state securities laws. Illustrative is the apparent impact on the number of private placements in the state by the federal Tax Reform Act of 1986,

which affected many of the driving forces of tax shelter offerings such as accelerated depreciation, investment tax credits, and the purchase of existing net operating losses. The Tax Reform Act of 1986 was cited as the major reason for a dramatic decrease from 1985 to 1986 in both the number of applications filed and the dollar amount of applications granted under the private limited offering transactional exemption.

In an effort to determine how other states might in some manner be fostering legitimate capital formation through innovative securities laws, the commission compared various provisions of NDCC Chapter 10-04, particularly provisions relating to registration requirements and securities and transactions in securities exempt from the registration requirements, with the securities laws of other states, including Minnesota, South Dakota, and Oklahoma. A majority of states have adopted, or substantially adopted with modifications, the Uniform Securities Act, which was adopted by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1956. The 1956 Act accommodated itself to the different regulatory philosophies, i.e., full disclosure versus merit regulation, and permitted states to adopt as little or as much of it as each state desired. In 1985 the National Conference of Commissioners on Uniform State Laws approved a revised Uniform Securities Act which, notwithstanding comprehensive reorganization and updating, retained a very substantial amount of the provisions of the 1956 Act. While North Dakota's securities laws incorporate many if not most of the provisions of the Uniform Securities Act of 1956, the commission identified several provisions from other states which appear to be intended to encourage the formation of in-state capital. Those provisions included limited offering or sales transactional exemptions, the federal-state coordinated limited offering exemption, and provisions providing for an abbreviated process for registration of securities of in-state corporations.

Limited Offering Transactional Exemptions

The private limited offering exemption found in NDCC Section 10-04-06(9)(a) is the most widely used transactional exemption. For many years, Chapter 10-04 recognized a private limited offering exemption that allowed promoters to offer to sell securities to up to 10 individuals before having to register the securities as a public offering. The 1985 Legislative Assembly increased this number to 25 in an effort to expand the exemption. The private limited offering exemption exempts any transaction pursuant to an offer directed by the offeror to not more than 25 persons (other than institutional investors such as banks and insurance companies) in the state during any period of 12 consecutive months if (1) the seller reasonably believes that all buyers in the state, other than institutional investors, are purchasing for investment; (2) no remuneration is paid or given directly or indirectly for soliciting any prospective buyer in the state other than institutional investors; and (3) the offeror applies for and obtains the written approval of the Securities Commissioner prior to making any offers and pays a filing fee of \$100.

Testimony indicated that because the limited offering exemption is focused on the number of offers that can be made, even a casual conversation may result in one of the 25 offers being used notwithstanding the potential investor's lack of interest in the venture.

To address this problem, the 1987 Legislative Assembly adopted a private limited sales exemption, NDCC Section 10-04-06(9)(b), which exempts any sales by an issuer to not more than 20 persons (other than institutional investors) in the state during any period of 12 consecutive months if (1) the issuer reasonably believes that all the buyers in the state other than the institutional investors are purchasing for investment; (2) no remuneration is paid or given directly or indirectly for soliciting prospective buyers in the state other than the institutional investors except reasonable and customary commissions; (3) the issuer is organized under the laws of North Dakota and has its principal place of business in the state; (4) no public advertising matter or general solicitation is used in connection with the offers or sales; and (5) the issuer has, 10 days prior to any sale, supplied the Securities Commissioner with a statement containing certain descriptive information. Testimony indicated that the new private limited sales exemption is an excellent tool for North Dakota businesses seeking to raise capital; however, many North Dakota businesses are not aware of this new transactional exemption that essentially allows a North Dakota corporation to make an unlimited number of offers to reach the 20 allowable securities sales. The Securities Commissioner expressed the need for additional resources for a public education campaign promoting the private limited sales exemption to negate the false assumptions many persons have that the state's securities laws are so restrictive that in-state capital formation is impossible.

Federal-State Coordinated Limited Offering Exemption

Because of dissatisfaction with both state and federal laws concerning the imposition of restrictions on the formation of investment capital for small corporations or enterprises, the federal Small Business Investment Incentive Act of 1980 was adopted directing the Securities and Exchange Commission to work with any association of state representatives to ease the burdens on small issuers. In 1982 the commission promulgated Regulation D, which streamlined and coordinated federal securities registration and disclosure for small securities offerings. In response to Regulation D, the North American Securities Administrators Association in 1983 endorsed the Uniform Limited Offering Exemption, which outlines conditions under which small securities offerings may be conducted in the various states. As endorsed by the North American Securities Administrators Association, the exemption includes only one of the exemptions permitted under Regulation D but permits states to adopt another. The exemption is formulated as an administrative rule in order to enable those state administrators who may adopt exemptions by rule to adopt the Uniform Limited Offering Exemption rule immediately, while those states not having such a procedure need

enabling legislation or specific statutory adoption of the Uniform Limited Offering Exemption rule.

Regulation D consists of seven preliminary notes and Securities and Exchange Commission Rules 501-506. Rules 501-503 are general rules that apply to all three substantive exemptions found in Rules 504, 505, and 506. The first of the substantive exemptions is Rule 504, which creates an exemption for the sale of up to \$500,000 worth of securities, during any 12-month period, by nonreporting companies, i.e., companies that do not file reports with the Securities and Exchange Commission under certain provisions of the Securities Exchange Act of 1934, without regard to sophistication or experience. The second substantive exemption is Rule 505, which creates an exemption for the sale of up to \$5 million of securities during any 12-month period to an unlimited number of "accredited investors" and 35 unaccredited investors. Rule 505 is the primary basis for the Uniform Limited Offering Exemption. The final substantive exemption is Rule 506, which is a private placement rule that allows the sale to an unlimited number of accredited investors and 35 unaccredited investors; however, unlike Rule 505, this exemption does not have a dollar limitation and is designed for use primarily for tax shelter offerings. Rule 501 defines eight categories of "accredited investors":

1. Institutional investors such as banks, insurance companies, and investment companies.
2. Private business development companies.
3. Tax-exempt organizations, corporations, certain business trusts, or partnerships with total assets in excess of \$5 million, if not formed for the specific purpose of acquiring the securities offered.
4. Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partners of a general partner of that issuer.
5. Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of purchase exceeds \$1,000,000.
6. Any natural person whose income is in excess of \$200,000 in each of the two previous years or \$300,000 with income of that person's spouse and who reasonably expects the same income level in the current year.
7. Any trust, with total assets in excess of \$5 million, not formed for the specific purpose of acquiring the offered securities, whose purchase is directed by a "sophisticated" person.
8. Any entity in which all of the equity owners are accredited investors.

The Uniform Limited Offering Exemption is made up of two parts. The first part is a proposed statutory change authorizing the securities administrator of the state to adopt an administrative rule as a means of providing easier amendment at the state level as the Securities and Exchange Commission alters Regulation D. The second part is the rule itself which generally provides that any offer or sale of securities will be exempt at the state level if it complies with Securities and Exchange Commission Rules 501-503, Rule 505, and four additional conditions: (1) no

commissions are paid to other than persons registered under the securities law as dealers or agents; (2) the issuer is not barred by state disqualifying provisions; (3) the issuer files certain forms with the securities administrator; and (4) the issuer reasonably believes that either the transaction is suitable for the unaccredited investors or the unaccredited investors are sophisticated.

At least 28 states have adopted some form of the Uniform Limited Offering Exemption; however, many variations exist among the states that have adopted a modified Uniform Limited Offering Exemption or some other less restrictive limited offering exemption for small issuers. Testimony indicated that while the differences may not appear substantial, they are considerable when viewed from the perspective of small business owners. Because uniformity has not been obtained, small, relatively unsophisticated issuers must still turn to "high priced" professionals for assistance in issuing securities on a national basis.

The commission considered a bill draft that would substantially incorporate the Uniform Limited Offering Exemption by statute and, in the alternative, a bill draft that would substantially incorporate a provision of the Uniform Securities Act of 1985 which would allow the Securities Commissioner to adopt the Uniform Limited Offering Exemption or comparable limited offering transactional exemption by rule.

Testimony in favor of adopting the Uniform Limited Offering Exemption indicated the exemption would provide a more practical approach to state regulation of private limited offerings or sales of securities by recognizing the existence of more sophisticated or "accredited" investors and other realities of the securities marketplace, and would allow legitimate small businesses to raise equity capital without going through the cumbersome registration process. Proponents also indicated that the Uniform Limited Offering Exemption would, from a theoretical standpoint, reduce costs for nationwide offerings if the states were truly uniform in their adoption of the exemption.

A former Securities Commissioner indicated that the state's adoption in 1987 of the private limited sales exemption provides a more appropriate and flexible means of regulating private placements by limiting sales, rather than offers, of securities and by allowing the Securities Commissioner to increase or decrease the number of permitted sales.

Opposition to adopting the Uniform Limited Offering Exemption by statute was expressed by the Securities Commissioner who indicated that the only possible effect of adopting the exemption would be to facilitate private placements by national issuers which would be counterproductive to in-state capital formation efforts because the exemption would make it easier for those out-of-state issuers to attract North Dakota investors and, in turn, use the proceeds of those sales for out-of-state businesses and ventures. The Securities Commissioner expressed a preference, however, that if the state were inclined to adopt the Uniform Limited Offering Exemption, that the Securities Commissioner be granted sufficient rulemaking authority to adopt the exemption by rule, rather than incorporating the exemption by statute,

as recommended by the North American Securities Administrators Association.

Some testimony in support of adopting the Uniform Limited Offering Exemption by statute heard during the administration of a former Securities Commissioner was later disavowed in subsequent testimony indicating that the need for adopting the exemption by statute no longer existed because the Securities Commissioner now employs a less restrictive philosophy and attitude toward private limited offerings and other capital formation efforts in the state. That subsequent testimony supported the proposal to allow the Securities Commissioner to adopt the Uniform Limited Offering Exemption by rule if the Securities Commissioner determines that the exemption is a necessary component of the state's securities regulation.

Public Limited Offering Exemption

The commission reviewed Oklahoma legislation passed in 1987 providing a registration process for in-state issuers for the purpose of encouraging capital formation. The Oklahoma legislation resulted from an economic development study in that state which recommended that the state's application and review process with respect to the registration of securities be abbreviated for in-state issuers for the purpose of increasing in-state firms' access to public markets and to make the state more attractive to relocating companies and outside investors. The Oklahoma legislation adopted as a result of the recommendation allows for an abbreviated process for registration of common stock of in-state corporations if at least 80 percent of the net proceeds of the sale of those securities are used in the state. The commission learned, however, that the abbreviated registration process in Oklahoma has not been utilized by Oklahoma corporations to a great extent due to economic difficulties being experienced in that state.

The Securities Commissioner proposed that the commission consider granting rulemaking authority to the Securities Commissioner to adopt a "public limited offering exemption" that would provide a streamlined registration process for North Dakota corporations seeking to raise capital through the sale of capital stock or limited partnership interests, similar to the Oklahoma abbreviated registration process. The Securities Commissioner indicated that a mechanism is needed to allow North Dakota corporations, which cannot be restricted by the limited number of sales or offerings allowed under the state's private limited offering and sales exemptions, to make a public offering without having to first clear some of the costly regulatory obstacles of registering securities that often prove insurmountable, and yet retain the important consumer protection principles that are the essence of state securities regulation. The Securities Commissioner also indicated that the most significant problem faced by North Dakota corporations intending to make an intrastate public offering is a statutory requirement that dealers and issuers obtain an indemnity bond prior to offering or selling securities. Testimony indicated that these bonds are either impossible to obtain or are cost prohibitive.

The commission considered a bill draft that amended NDCC Section 10-04-06(9) to authorize the Securities Commissioner to adopt, by rule, one or more transactional exemptions from the registration requirements of the state's securities laws "to further the objectives of facilitating sales of securities by North Dakota issuers or providing uniformity among the states," which would allow the Securities Commissioner to provide a public limited offering exemption for intrastate public offerings of stock by North Dakota issuers and to adopt the Uniform Limited Offering Exemption. The rulemaking authority provided by the bill draft, because it is couched in terms of providing additional transactional exemptions, would allow the Securities Commissioner to adopt transactional exemptions that would not be subject to the indemnity bond required of dealers, their agents, and salesmen offering for sale or selling securities within the state under NDCC Section 10-04-10, which requires those dealers, "except in transactions exempt under Section 10-04-06," to obtain an indemnity bond or deposit cash or other properties conditioned for the faithful compliance with the law and performance and payment of all obligations.

At the commission's request, the Securities Commissioner proposed a draft rule to implement the provisions of the bill draft relating to the Securities Commissioner's proposed authority to adopt a public limited offering exemption for North Dakota issuers. The draft rule exempted from registration requirements the offer and sale of capital stock or limited partnership interests, provided the aggregate offering price of that stock or partnership interests does not exceed \$500,000 to any number of buyers in the state during any 12 consecutive months if various conditions are met. Those conditions included that the issuer be a North Dakota corporation that maintains its main office and a majority of its full-time employees in the state for a three-year period following the termination of the offering, that at least 80 percent of the net proceeds of the offering be used in connection with the operations of the issuer within the state, that a minimum investment of at least \$500 be made by each purchaser, that all funds raised in the offering be placed in an escrow account until the total aggregate offering price is raised, that the issuer and anyone acting on its behalf in organizing the business or enterprise place all shares held by the issuer or anyone acting on its behalf in escrow for a period of three years following the completion of the offering, that no commissions or other remuneration be paid or given directly or indirectly for soliciting any prospective buyer in the state except for reasonable and customary commissions, and that a prospectus or offering document be given to every offeree at least 72 hours before the sale is completed. The public offering could be made only with the written approval of the Securities Commissioner and the tendering of a \$100 filing fee. The draft rule also allowed the issuer to appoint up to two officers to act as salesmen for the public offering in lieu of the offer or sale being made by a registered dealer or salesman. The draft rule also disqualified certain persons from

participating in a public limited offering who have a history of unscrupulous practices.

The commission considered whether the provisions of the proposed public limited offering exemption would best be provided specifically by statute or through a grant of rulemaking authority to the Securities Commissioner. The Securities Commissioner indicated that Oklahoma is not the only state that has adopted an abbreviated registration process as a means of fostering in-state capital formation, but that Washington has had a similar provision in effect for three years and has achieved good results. Although the Oklahoma abbreviated registration process was adopted by statute, testimony indicated that Washington and Maine have conferred rulemaking authority on their securities administrators to adopt an abbreviated registration process. The Securities Commissioner indicated that a major advantage to expanding the commissioner's rulemaking authority to accomplish the implementation of a public limited offering exemption, rather than specifically delineating the exemption by statute, is that the commissioner would then have the flexibility to improve and fine tune the exemption as problems or barriers are encountered.

The Securities Commissioner indicated that the successful implementation of a public limited offering exemption will require a modest increase in funding to the Securities Commissioner, which could be generated from modest fee increases, in order to expand the enforcement capabilities of that office for purposes of monitoring those North Dakota corporations that take advantage of the public limited offering exemption and to ensure their compliance with the exemption. The commissioner also expressed the need for an extensive public education campaign to inform North Dakota businesses of the new public limited offering exemption.

Uniform Securities Act of 1985

The commission only briefly considered a bill draft that would have substantially incorporated the Uniform Securities Act of 1985, which has been adopted by only two states. The Securities Commissioner opposed the bill draft because in his opinion the adoption of the Uniform Securities Act of 1985 would have only served to weaken various aspects of merit regulation in the state and would not have provided any additional focus on the need for in-state capital formation and retention.

Recommendations

The commission recommends Senate Bill No. 2043 to amend NDCC Section 10-04-06(9) to authorize the Securities Commissioner to adopt, by rule, one or more transactional exemptions from the registration requirements of the state's securities law to further the objectives of facilitating sales of securities by North Dakota issuers or providing uniformity among the states. The bill would authorize the Securities Commissioner to adopt a public limited offering exemption for intrastate public offerings and sales of securities by North Dakota issuers and to adopt the North American Securities Administrators Association's Uniform Limited Offering Exemption or other comparable coordinated exemption provision.

The commission recommends Senate Bill No. 2044 to substantially incorporate by statute the Uniform Limited Offering Exemption. The commission concluded that it would be appropriate to recommend a bill to adopt the Uniform Limited Offering Exemption by statute, notwithstanding the rulemaking authority proposed for the Securities Commissioner.

JUDICIAL PROCESS COMMITTEE

The Judicial Process Committee was assigned three studies. House Concurrent Resolution No. 3031 directed a study of nonagricultural real estate mortgage foreclosure laws of the state of North Dakota in relation to the foreclosure laws adopted by other states. Senate Concurrent Resolution No. 4046 directed a study of the state's game and fish laws and rules, with an emphasis on those laws and rules concerning the issuance of game and fish licenses and the role of county auditors in the issuance of game and fish licenses. The chairman of the Legislative Council assigned to the committee a study relating to the payment of attorneys' fees in workers' compensation cases.

Committee members were Senators Adam Krauter (Chairman), Ray David, Layton Freborg, Herschel Lashkowitz, Duane Mutch, and Donna Nalewaja and Representatives Connie L. Cleveland, Ralph C. Dotzenrod, Gerald A. Halmrast, Orlin Hanson, Tom Kuchera, Clarence Martin, Bill Oban, and Harold N. Trautman.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

NONAGRICULTURAL REAL ESTATE MORTGAGE FORECLOSURE LAW STUDY

House Concurrent Resolution No. 3031 reflected the Legislative Assembly's concern regarding North Dakota's nonagricultural real estate mortgage foreclosure laws in that certain aspects of the laws are confusing, burdensome, and archaic, and that the effect of the statutory redemption and deficiency judgment provisions of the foreclosure statutes on the secondary mortgage market in North Dakota should be reviewed. It should be noted that House Concurrent Resolution No. 3031 limited the study to nonagricultural real estate mortgage foreclosure laws and thus the committee did not address issues related to the foreclosure of mortgages on agricultural property or agricultural debt.

Background

There are generally two types of real estate mortgage foreclosure systems in the United States. One system is known as foreclosure by judicial sale or foreclosure by action. This system is characterized by close supervision by the state through its court system as the result of the mortgagee (lender) commencing an action for foreclosure in the appropriate court. This system is designed to determine the rights of the parties involved in the real estate mortgage foreclosure process as well as protect the rights of the mortgagor (borrower). However, the system is complex, time-consuming, and expensive.

The other type of real estate mortgage foreclosure system is foreclosure by power of sale, commonly known as foreclosure by advertisement. This system rests on a clause contained in the mortgage agreement allowing the mortgagee to sell the mortgaged property without court supervision. Although this system is expedient and inexpensive

when compared to foreclosure by judicial sale, it is not without its drawbacks. Arguably, this system does not protect the interests of the mortgagor as well as foreclosure by judicial sale because the process can be subject to later judicial scrutiny and possibly constitutional attack as violative of due process of law if the statutory procedures are not followed carefully. Because the specter of a subsequent challenge is present, the purchaser's title is necessarily less secure than if title had been obtained pursuant to a judicially supervised foreclosure.

Both types of real estate mortgage foreclosure systems provide for notice to the mortgagor and a public sale at which the purchaser receives title to the property. However, approximately one-half of the states also provide that the mortgagor may redeem the property sold at the foreclosure sale by paying the purchaser the foreclosure sale price.

The money obtained from the foreclosure sale is usually applied to the expenses of the foreclosure, the mortgage debt, and the satisfaction of any junior liens, in this order. The mortgagor receives any funds left after the expenses, the debt, and any liens have been satisfied. If the proceeds of the foreclosure are not sufficient to satisfy the indebtedness, the mortgagee is usually entitled to a judgment for the amount of the indebtedness and the expenses of the foreclosure action less the proceeds of the foreclosure sale. This is known as a deficiency judgment.

Several states have enacted laws limiting the availability or amount of deficiency judgments. These laws are commonly termed antideficiency statutes and may prohibit deficiency judgments in certain situations or limit the amount of the judgment which may be obtained against the mortgagor.

Existing State Law

North Dakota law provides three procedures for foreclosing real estate mortgages. One method is foreclosure by action, another is foreclosure pursuant to the Short-Term Mortgage Redemption Act, which also falls within the foreclosure by action or foreclosure by judicial sale system, and a third method is foreclosure by advertisement.

Foreclosure of Real Estate Mortgages by Action

North Dakota Century Code (NDCC) Chapter 32-19 contains the foreclosure by action provisions. Foreclosure by action in North Dakota is substantially the same as foreclosure by action or foreclosure by judicial sale generally and is characterized by close judicial supervision. Section 32-19-20 provides that the mortgagee must give the mortgagor at least 30 days and not more than 90 days notice before commencing an action to foreclose a real estate mortgage. Section 32-19-04 provides that the mortgagee must state in the complaint whether a deficiency judgment is sought. Once the preliminary procedural steps have been complied with and a judgment has been obtained against the mortgagor, Sections 32-19-06 and 32-19-07, assuming the mortgagee is seeking a deficiency judgment, come into play. These sections contain the state's antideficiency

provisions and provide a mechanism for establishing any deficiency judgment. Section 32-19-06 restricts the amount of any deficiency judgment to the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged property. The section provides further that fair value is to be determined by a jury. If the fair value of the mortgaged property, as determined by a jury, exceeds the amount of the indebtedness and the costs of the foreclosure action, the plaintiff is not entitled to a deficiency judgment.

Section 32-19-18 contains the statutory redemption provisions applicable to mortgages foreclosed pursuant to the foreclosure by action process. This section establishes a one-year redemption period as prescribed by Chapter 28-24. Section 28-24-02 provides that the judgment debtor or person seeking to redeem the property from the purchaser at the foreclosure sale may do so by paying the purchaser the amount of the purchase price with interest at the rate provided in the original instrument on which the judgment is based. In addition, the redemptioner must pay the purchaser any insurance premiums, assessments, taxes, utilities, or other items paid by the purchaser. The mortgagor is entitled to remain in possession of the property subject to the foreclosure sale during the redemption period and is entitled to the rents, use, and benefit of the property sold from the date of the sale until the expiration of the redemption period.

Short-Term Mortgage Redemption Act

North Dakota Century Code Chapter 32-19.1 contains the North Dakota Short-Term Mortgage Redemption Act. The foreclosure process under the Act is the foreclosure by action or foreclosure by judicial sale system. The Act allows the parties to a real estate mortgage upon not more than 40 acres of property to provide in the mortgage agreement that upon default the mortgage may be foreclosed under the Act. The Act provides a six-month redemption period if the amount claimed due upon the mortgage at the date of the notice before foreclosure is more than two-thirds of the original indebtedness secured by the mortgage and a one-year redemption period in all other instances. Perhaps the most important aspect of the Act is that the mortgagee is not entitled to a deficiency judgment if the mortgage has been foreclosed under the Act.

Foreclosure of Mortgages on Real Property by Advertisement

North Dakota Century Code Chapter 35-22 contains the foreclosure by power of sale or foreclosure by advertisement provisions. These provisions are limited to mortgages on real property held by the state or any of its agencies, departments, or instrumentalities which contain a power of sale clause. The chapter specifically provides that no other mortgages on real property may be foreclosed in this manner. The redemption period provided in North Dakota Century Code Section 28-24-02, i.e., one year, is applicable to mortgages foreclosed by advertisement.

Other States' Laws

After reviewing general real estate mortgage foreclosure law principles and North Dakota real estate mortgage foreclosure laws, the committee examined real estate mortgage foreclosure laws of South Dakota, Minnesota, and California.

The real estate mortgage foreclosure laws of South Dakota are generally comparable to those of North Dakota. The South Dakota foreclosure by judicial sale or foreclosure by action process is similar to the North Dakota foreclosure by action process. In South Dakota, if a mortgagee seeks to obtain a deficiency judgment, the mortgagee must bid the fair and reasonable value of the mortgaged premises at the foreclosure sale. The fair and reasonable value of the property is determined by a court and not by a jury as in North Dakota. Thus, South Dakota law prevents mortgagees from bidding less than the fair and reasonable value of the property at the foreclosure sale and subsequently obtaining a deficiency judgment for the difference between the indebtedness and the foreclosure sale price. In other words, the amount of any deficiency judgment in South Dakota is limited to the amount of the indebtedness less the fair and reasonable value of the property.

In addition to restricting the amount of any deficiency judgment to the difference between the indebtedness and the fair and reasonable value of the property, South Dakota law prohibits deficiency judgments in the case of purchase money mortgages. However, the provisions restricting deficiency judgments in the case of purchase money mortgages apply only to vendors or grantors of the property. The redemption period provided in South Dakota is the same as that provided in North Dakota under the long-term mortgage redemption provisions, i.e., one year.

South Dakota law differs substantially from North Dakota law with respect to foreclosure by power of sale or foreclosure by advertisement. South Dakota allows foreclosure by advertisement if the mortgage contains a power of sale clause, which upon default in the conditions of the mortgage allows foreclosure by power of sale. The mortgagor is protected by the right to require the mortgagee to foreclose by action rather than foreclose by advertisement. However, if the mortgagee seeks to obtain a deficiency, the mortgagee must bring an action in court to secure the deficiency judgment. Before the mortgagee can obtain a deficiency judgment, the mortgagee must submit evidence to the court that the property subject to the mortgage sold for its true market value or more at the foreclosure sale. The court is then required to deduct from the amount of the mortgage indebtedness remaining unsatisfied after the sale of the mortgaged property the difference between the true market value of the property at the time of the sale and the amount for which it was sold, if that amount is less than the true market value at the time of sale.

South Dakota law also allows short-term redemption mortgages. These types of mortgages are restricted to real property covering an area of 40 acres or less. The redemption period applicable to short-term mortgages is 180 days or six months. However, short-term mortgages may be foreclosed either by

action or, if the mortgage agreement contains a power of sale clause, by advertisement. Deficiency judgments are allowed under the South Dakota short-term mortgage redemption law and are calculated using the fair and reasonable value method if foreclosure by action is utilized or by the true value method if foreclosure by advertisement is utilized.

The process for foreclosure by action in Minnesota is similar to that provided in North Dakota and South Dakota. However, one notable difference is the redemption period provided by Minnesota law. Minnesota law provides that the general redemption period is six months unless the mortgage was executed prior to July 1, 1967, the amount claimed to be due is less than two-thirds of the original principal amount secured by the mortgage, or the mortgage premises exceed 10 acres in size. In these cases the redemption period is 12 months.

Minnesota law allows the mortgagee to obtain a deficiency judgment except in cases where a six-month redemption period is provided. Mortgagees under the foreclosure by action provisions are entitled to obtain a deficiency judgment for the difference between the indebtedness and the amount received by the mortgagee at the foreclosure sale. However, Minnesota courts are empowered to postpone the foreclosure sale for a period of up to six months. In determining whether to exercise this power, the court is to consider whether the mortgagor is unemployed, underemployed, facing catastrophic medical expenses, facing economic problems due to low farm commodity prices, or unable to make payments on the mortgage. Minnesota law also allows foreclosure by power of sale or foreclosure by advertisement.

Although generally similar to general mortgage foreclosure law and the systems employed by North Dakota, South Dakota, and Minnesota, California follows what is commonly known as the "one action" rule. Under the one action rule, the mortgagee must first bring a foreclosure action and then seek a deficiency judgment in the same action. Should the mortgagee attempt to bring an action on the note, the mortgagor can have the action dismissed and force the mortgagee to foreclose on the property. This rule is designed to protect the mortgagor from a multiplicity of actions and ensure that the mortgagee exhaust the real estate before attempting to collect the debt from the mortgagor's other assets. California law limits deficiency judgments to the amount by which the indebtedness exceeds the fair value of the property. However, fair value is determined by a court as in South Dakota and not by a jury as is the case in North Dakota. California law prohibits deficiency judgments in the case of purchase money mortgages obtained to secure the purchase price of the real property. Another unique aspect of California real estate mortgage foreclosure law is that if the mortgagee elects not to seek a deficiency judgment, the mortgagee can effectively cut off the mortgagor's right to redeem the property.

California also allows foreclosure by power of sale or advertisement if the instrument evidencing the mortgage agreement confers a power of sale. However, under this procedure there is no statutory redemption period and the mortgagee is not entitled to a

deficiency judgment.

In conducting its study, the committee also examined the relevant provisions of the Uniform Land Transactions Act. The default provisions of the Act are analogous to current statutory real estate mortgage foreclosure law. Under the Act, however, although foreclosure by judicial sale is available, foreclosure by power of sale is the preferred procedure for foreclosure.

Committee Considerations

The committee studied a proposal to allow mortgagees to obtain deficiency judgments in actions to foreclose mortgages on commercial real property without having to comply with the state's antideficiency statutes. Commercial real property included all real property except residential real property consisting of fewer than four residential units and agricultural property. Under current law, the mortgagee must state in the complaint whether a deficiency judgment will be sought if the proceeds of the sheriff's sale do not satisfy the indebtedness. If so, a separate action for the deficiency must be brought. A jury must be empaneled to determine the fair value of the mortgaged premises and the deficiency judgment may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. This proposal would have enabled plaintiffs seeking a deficiency judgment to file a request for an appraisal of the real property with the clerk of the district court. The amount of the deficiency judgment would have been limited to the amount of the indebtedness and costs of the sheriff's sale, including the costs of the appraisal, less the present fair market value of the property.

The committee received testimony that the proposal would encourage commercial economic development in the state as several commercial lenders have stopped doing business in the state because of the state's antideficiency statutes and long redemption periods. Supporters of the proposal also testified that the proposal would equalize the statutory relationship between mortgagee/lenders and mortgagor/borrowers and possibly allow borrowers to obtain more favorable interest rates and terms for commercial ventures. In addition, proponents testified that the proposal may make real estate mortgages originated in North Dakota more saleable on the secondary mortgage market thus generating money for commercial real estate lending in North Dakota. The secondary mortgage market concerns mortgage loans that originate within the state and are then sold or assigned to permanent investors. The aggregate of these transactions constitutes a secondary mortgage market and is designed to promote the even distribution of real estate investment capital throughout the different regions of the country.

The committee also received testimony that the current statutory balance between mortgagee/lenders and mortgagor/borrowers is working well and should not be altered, especially in light of the current economic conditions in the state. Testimony noted that mortgagees can obtain a shorter redemption period if they use the Short-Term Mortgage Redemption Act, which provides a six-month redemption period if they

forego a deficiency judgment. The committee also received testimony that any difficulty in obtaining financing for commercial real estate loans is due to the economy of the state and not the antideficiency and redemption provisions of North Dakota law.

The committee also studied a proposal to allow mortgagees to bring an action on the promissory note or other obligation of the mortgagor in instances where a promissory note or other obligation and a mortgage upon real property have been given to secure the debt provided the mortgagee waives the right to foreclosure of the mortgage. The proposal would not have applied to first purchase money mortgages.

The impetus for this proposal was the recent North Dakota Supreme Court case Mischel v. Austin, 374 N.W.2d 559 (N.D. 1985), in which the court addressed the issue of whether a second mortgagee can sue directly on the note under NDCC Chapter 32-19.1. The court held that the state's antideficiency statutes would be obviated if a mortgagee were able to sue directly on the underlying note and that the mortgagee's remedy is to foreclose the mortgage. Thus, homeowners selling their homes and taking a second mortgage on the property are only entitled to foreclose the mortgage secured by the real estate or redeem real estate that is the subject of a foreclosure action by a senior mortgagee and may not bring a separate action on the promissory note or other obligation of the mortgagor. If the second mortgagee or lienholder redeems the property, the holder of the first mortgage or first lien must be satisfied and if the second mortgagee or lienholder forecloses the mortgage, the property is subject to the prior mortgage, which is not extinguished by the foreclosure action.

Although the committee received testimony that this proposal would be beneficial for homeowners, the committee also received testimony that lenders should not be entitled to bring a separate action on the debt but should only be able to look to the real property for satisfaction of the debt. Testimony also indicated that allowing a second mortgagee to bring an action on the debt may jeopardize the security of the first mortgagee and would override any benefits contained in the proposal. Also, testimony noted that under present law lenders may avoid this problem by obtaining an unsecured note as opposed to a note and second mortgage.

The committee also studied a proposal to shorten the applicable redemption period for nonagricultural real property other than primarily single-family residential property to three months. This proposal would have established a six-month redemption period for property that is primarily single-family residential property and a one-year redemption period for all other real property. Under this proposal, the redemption period would have commenced to run with the filing of the summons and complaint or at the time of first publication of the notice of foreclosure by advertisement. Also, this proposal contained a requirement that the mortgagor must have been in default for a period of not less than 60 consecutive days before the notice before foreclosure could be served.

The committee received testimony that it takes approximately 12 to 15 months on average to complete a real estate mortgage foreclosure action in North Dakota which is longer than in most, if not all, other states.

The committee also examined a proposal to require that the sheriff's sale be held at the expiration of the applicable redemption period. Indiana, Illinois, and California have enacted provisions that establish a redemption period prior to the sale of the property involved in the mortgage foreclosure action. Testimony indicated that the fact that the successful bidder must wait until the redemption period expires to take possession of the property depresses the amount bid at the sale and that the proposal could result in more competitive bidding at the sheriff's sale benefiting the mortgagor/borrower as well as the mortgagee/lender. The committee also received testimony that the proposal, although meritorious, may adversely affect the rights of junior lienholders.

The committee studied a proposal to enable the mortgagee or holder of the sheriff's certificate of sale to petition the court to determine whether the property that is the subject of the mortgage foreclosure action is abandoned. If the court determined that the real property is abandoned, the court would be empowered with authority to grant the mortgagee or holder of the sheriff's certificate possession and use of the property and all benefits and rents from the property throughout the redemption period. An alternative proposal considered by the committee would have allowed the mortgagor or party entitled to possession of the real property all the proceeds from the property in excess of the costs incurred by the purchaser in maintaining the property during the redemption period. Another alternative proposal would have allowed the court to reduce or terminate the redemption period if it found that the mortgagor or person entitled to possession of the property had left the state.

In North Dakota the debtor is entitled to the possession, rents, use, and benefit of the property sold at the sheriff's sale until expiration of the applicable redemption period. The committee learned that in some instances individuals with no intention of redeeming the property simply abandon it. Subsequently, the property may fall into a state of disrepair or be vandalized during the remainder of the redemption period.

The committee studied a proposal to omit the names of defendants other than those having an ownership interest in the property subject to foreclosure of a mortgage from the notice of sale. Under the proposal, a copy of the public notice would still have been mailed to the defendants whose names are omitted from the public notice. Testimony evinced that many defendants are perturbed by being joined as a defendant in a foreclosure action and having this information disseminated to the public through the publication of the notice of sale. This may lead members of the public to believe erroneously that the defendant is the debtor in the foreclosure action thus harm the defendant's business reputation when in fact the defendant is a creditor of the debtor.

The committee briefly reviewed a proposal to update the archaic language and delete the superfluous sections of Chapter 32-19, the chapter of the code governing the foreclosure of real estate mortgages by action. The committee did not study this proposal in depth due to the insufficient amount of time remaining in the interim when this proposal was presented to the committee and the extensive changes to Chapter 32-19 contemplated by the proposal.

Recommendations

The committee recommends House Bill No. 1050 to enable a mortgagee or holder of a sheriff's certificate of sale, if that person reasonably believes that the property is abandoned, to petition the court to determine abandonment. The mortgagee or holder of the sheriff's certificate would be required to notify the mortgagor or the party entitled to possession of the real property of the hearing by certified mail. Should the court determine that the real property is abandoned, the court could grant the mortgagee or holder of the sheriff's certificate immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The provisions of the bill concerning abandoned real property do not apply to agricultural property as defined by NDCC Section 57-02-01.

The committee recommends House Bill No. 1051 to provide that except for parties having an ownership interest in the real property subject to foreclosure of a mortgage under Chapter 32-19 or 32-19.1, the names of all defendants may be omitted from the public notice of sale.

GAME AND FISH LICENSE ISSUANCE STUDY

Senate Concurrent Resolution No. 4046 reflects the Legislative Assembly's concern regarding the issuance of game and fish licenses especially the role of county auditors in the issuance of game and fish licenses.

Existing State Law

North Dakota Century Code Section 20.1-03-17 provides for the issuance of game and fish licenses. This section states:

All hunting, fur-bearer, fishing, and taxidermists' licenses shall be issued by county auditors, the commissioner, deputy commissioner, and bonded game wardens. The deputy commissioner and each bonded game warden shall send the commissioner all license fees. For each license the county auditor issues, the county auditor shall collect the authorized charges and record them in the county auditor's record of cash received. The county auditor shall retain, as compensation, fifteen cents for the issuance of each resident hunting, fishing, or fur-bearer license; one dollar for the issuance of each nonresident hunting or fur-bearer license; twenty-five cents for the issuance of each nonresident fishing license; and ten cents for the issuance of each nonresident general game license.

The county auditor may appoint agents to distribute hunting and fishing licenses or

stamps. The agents may charge purchasers a service fee of fifty cents for each license. Service fees shall be retained by the agent. The remainder of the license fees shall be returned to the county auditor, for deposit with the county treasurer, at least once each month, and not later than three days after the close of the month. Deposits are to be accompanied by a report showing the amounts received from the sale of each type of license, the amount retained, and the net amounts deposited. The county treasurer shall credit the fees so deposited to a separate account and shall hold the fees, subject to warrant for payment thereof drawn by the county auditor in favor of the commissioner. The commissioner shall deposit all license or stamp fees received with the state treasurer to be credited to the game and fish fund.

North Dakota Century Code Section 20.1-03-19 requires county auditors to make a complete report of all license sales to the Game and Fish Commissioner and remit all moneys received from the sale of licenses to the commissioner. North Dakota Century Code Section 20.1-03-20 provides that the bond of a county auditor applies to all duties imposed on the auditor by Title 20.1, including liability for all moneys required to be collected or received by the auditor. In addition, NDCC Section 20.1-03-21 provides:

It shall be unlawful for a person to fail or refuse to turn over any moneys collected or authorized to be collected under this title, or to fail or refuse to turn over and deliver to the commissioner all applications, stubs, and mutilated and unused licenses and permits. The commissioner may take appropriate action to recover from the person so defaulting, or on his bond.

This section allows the Game and Fish Commissioner to recover all moneys collected or authorized to be collected under Title 20.1 or recover on that person's bond. Since county auditors are bonded under the state bonding fund, the commissioner may bring suit against the county auditor and the state bonding fund as codefendants. If the fund becomes liable, the fund would then be subrogated under NDCC Section 26.1-21-16 to the rights of the commissioner against the defaulting auditor. Thus, in either event, the county auditor is personally liable for any moneys collected or authorized to be collected that are not properly remitted to the Game and Fish Commissioner.

Other States' Laws

The committee examined the statutory schemes employed by South Dakota, Montana, and Minnesota to issue game and fish licenses. The South Dakota system is similar to that used in North Dakota. The South Dakota Department of Game, Fish and Parks is authorized to appoint agents to issue licenses on its behalf. In addition, South Dakota law provides that county treasurers may issue hunting and fishing licenses and may appoint agents for this purpose.

As is provided for county auditors in North Dakota, the county treasurer is liable for the licenses delivered to the treasurer and for the proceeds derived from the sale of licenses and is responsible for all licenses issued by the treasurer to, and license fees received by, the treasurer's agents. However, South Dakota law requires all agents of the county treasurer to be bonded or furnish security equal to or greater than the total value of the licenses issued to the agents. South Dakota law allows the issuing agent to retain the sum of 30 cents for each game, fish, or trapping license issued by that agent and an amount not to exceed 75 cents for the issuance of any nonresident small game or big game license.

The director of the Montana Fish, Wildlife and Parks Department is allowed to appoint agents to sell state hunting and fishing licenses, permits, and certificates as prescribed by the department. Montana law requires agents to furnish a corporate surety bond or other security as required by the department. In addition, the state has a preferred claim against the assets and estate of an agent for all money owed the state in cases of an assignment for the benefit of creditors, receivership, or bankruptcy. As compensation, Montana allows agents to retain a fee of 30 cents for each license sold.

Minnesota law charges the commissioner of the Minnesota Department of Natural Resources with the duty of issuing and selling game and fish licenses and county auditors are agents of the commissioner for this purpose. Also, the commissioner may require county auditors to provide a corporate surety bond in addition to the auditor's official bond. Minnesota law also allows county auditors to appoint residents to act as subagents for the auditor for the purpose of issuing and selling game and fish licenses. In addition, auditors may require subagents to provide a bond or pay for the licenses before furnishing them with the game and fish licenses. Minnesota law allows the auditor or subagent to retain an issuing fee of 75 cents or \$1, depending upon the type of license issued.

Testimony

Testimony received by the committee revealed that three primary problems exist with the present system of issuing game and fish licenses and stamps in North Dakota. One problem is the disparity in the compensation received by the auditors of larger counties for issuing game and fish licenses as compared to the compensation received by the auditors of smaller counties. In 1986-87 the Cass County auditor earned \$5,556.15 in commissions while the Slope County auditor earned \$38.60 and the Billings County auditor earned \$39.05 in commissions from the sale of game and fish licenses. Although auditors of smaller counties earn less in commissions from the sale of game and fish licenses than auditors of larger counties, they are still required to file the same reports with the Game and Fish Commissioner.

Another problem is that county auditors are personally liable for any moneys collected or authorized to be collected which are not properly remitted to the Game and Fish Commissioner. The committee received testimony from county auditors

that they are generally dissatisfied with this system because they do not possess the requisite enforcement powers to ensure that agents appointed by them properly remit license fees.

Another problem is that the present system whereby the county auditors are entitled to retain a portion of the license fee as compensation for issuing game and fish licenses causes friction with other county officials. The committee received testimony that some individuals believe that county auditors should not receive additional compensation for issuing game and fish licenses or stamps, or if money is retained it should be deposited in the county's general fund for use by the county. Finally, the committee received testimony cautioning that any solution to these problems contemplated by the committee must ensure that game and fish licenses and stamps are made readily available to the public and that public access to licenses is not restricted.

Committee Considerations

The committee studied a proposal to allow a county auditor who receives less than \$1,000 in commissions from the sale of hunting, fishing, fur-bearer, and general game licenses in any year to retain an additional 10 cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in the following year. Representatives of the State Game and Fish Department estimated that the annual cost of implementing this proposal would be approximately \$12,000. As an alternative, the committee studied a proposal to allow a county auditor who retains less than \$500 from the sale of hunting, fishing, fur-bearer, and general game licenses in any year to retain from the license fees collected an amount necessary to enable the auditor to retain \$500 for the sale of game and fish licenses. Representatives of the State Game and Fish Department estimated that the annual cost of implementing this proposal would be approximately \$4,000. The committee also studied a proposal to require county auditors to deposit all moneys retained by them from the sale of game and fish licenses in the county general fund. This proposal allowed the county auditor to be reimbursed from the county for all personal expenses incurred in issuing game and fish licenses.

The committee studied a proposal to allow county auditors to require agents to show evidence of adequate financial security before the agents could be appointed. Under the proposal, the agent could show adequate financial security by furnishing a letter of credit, cash deposit, or obtaining a bond. The agent could choose to be bonded through the state bonding fund or could obtain a bond through a private bonding company. If the agent opted to obtain a bond through the state bonding fund, the cost of the bond would be \$10 and the coverage afforded would be limited to \$5,000 per agent per year. An alternative proposal studied by the committee would have limited the amount of coverage to \$10,000 per agent per year. Other proposals considered by the committee concerning the liability of county auditors, included a requirement that license agents be covered under the bond of the county auditor, a proposal to provide county auditors with immunity, or to require that

agents pay for the licenses when they acquire them from the county auditor. County auditors opposed the proposal to include agents on the bond of the county auditor because any default on the part of the agent may adversely affect the bond rating of the county auditor. Several individuals and organizations testified that requiring license agents to purchase licenses in advance may discourage individuals from serving as agents and thus restrict the availability of licenses to the public.

Due to the fact that several committee members believed that any study of the issuance of game and fish licenses must be undertaken in conjunction with a comprehensive review of the state's game and fish laws and rules as well as testimony received by the committee concerning the complexity of the state's game and fish laws and rules, the committee studied a proposal to recommend that the Legislative Council study all of the state's game and fish laws and rules. This study should include a thorough review of the issuance of licenses, the feasibility of a central license issuing authority, public accessibility of game and fish licenses, level and use of fees, eligibility for licenses, and other areas of concern.

Recommendations

The committee recommends Senate Bill No. 2045 to provide that county auditors who receive less than \$1,000 in commissions from the sale of hunting, fishing, fur-bearer, and general game licenses in any year are entitled to retain, as compensation, 25 cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in the following year.

The committee recommends Senate Bill No. 2046 to provide that county auditors may require agents to show evidence of adequate financial security before the agents may be appointed. Adequate financial security may be evidenced by a letter of credit, cash deposit, or bond and agents may be bonded through the state bonding fund. The county auditor must file a claim against the state bonding fund within 60 days of the expiration of the reporting period provided in Section 20.1-03-17 or the claim is waived. The annual premium for a bond obtained by an agent through the state bonding fund would be \$10. The Commissioner of Insurance could reduce or waive the premium if the commissioner determined that revenues are sufficient to cover potential claims on the bonds of agents appointed to distribute hunting and fishing licenses or stamps. The commissioner could determine the conditions and qualifications of agents bonded under the state bonding fund and the amount of coverage afforded is limited to \$5,000 per agent per year. The bond applies to all duties required of the agent under Title 20.1, including liability for all moneys required to be collected or received by the agent for the issuance of licenses.

The committee recommends Senate Concurrent Resolution No. 4004 directing the Legislative Council to study the state's game and fish laws and rules and review the effect of any legislation enacted by the 1989 Legislative Assembly relating to the bonding of county auditors and agents appointed by county auditors to issue game and fish licenses or stamps.

PAYMENT OF ATTORNEYS' FEES IN WORKERS' COMPENSATION CASES STUDY

As the result of a request of the Attorney General, which pointed out the dramatic increase in attorneys' fees paid by the Workers Compensation Bureau during the past several years, the chairman of the Legislative Council directed the committee to undertake a study of the payment of attorneys' fees in workers' compensation cases.

Existing State Law

The North Dakota workers' compensation law is designed to provide sure and certain compensation for workers injured in the course of their employment to the exclusion of all other remedies. Under North Dakota law, workers' compensation claimants are entitled to representation in all proceedings before the bureau commencing after action by the bureau reducing or denying a claim. Also, the bureau is obligated to pay the claimant's attorney's fees regardless of the outcome of the claim.

Other States' Provisions

The committee examined the provisions of various other states concerning the payment of attorneys' fees in workers' compensation cases. Unlike North Dakota, where the workmen's compensation fund is the exclusive remedy for employees injured in the course of their employment, the workers' compensation systems of other states examined by the committee provide that the employer must secure the payment of compensation to injured employees by obtaining workers' compensation insurance or by providing self-insurance. Under South Dakota law attorneys and their clients are free to enter either contingency or hourly fee arrangements as long as the fee is approved by the South Dakota Department of Labor, the entity that administers and enforces the South Dakota workers' compensation law. Montana recognizes contingency fee arrangements and Minnesota allows a contingency fee of 25 percent of the first \$4,000 of compensation awarded to the employee and 20 percent of the next \$27,500 of compensation awarded to the employee. Unlike South Dakota, Montana, and Minnesota, New Mexico and Illinois have enacted statutory caps on the amount of attorneys' fees which may be awarded in workers' compensation cases. The statutory cap is 20 percent of the amount of compensation recovered and paid in Illinois and \$12,500 in New Mexico. However, New Mexico law requires that the employee pay one-fourth of the attorneys' fees with the employer paying the remaining three-fourths. However, New Mexico allows fees greater than the statutory maximum in cases where an employer has acted in bad faith in handling the injured worker's claim and the injured worker has suffered economic loss as a result. New Jersey restricts attorneys' fees to 20 percent of the judgment. However, if compensation was offered prior to the hearing, the attorney's fee is limited to a percentage of that part of the award in excess of the amount offered. If the amount recovered in excess of the amount offered is less than \$200, the attorney's fee is limited to \$50. Regardless of these provisions, the New Jersey workmen's compensation law provides that all counsel

fees must be approved by the Division of Workmen's Compensation whether or not allowed as part of a judgment.

Testimony

The committee reviewed statistics showing that attorneys' fees paid by the bureau increased from \$31,687.53 in 1977 to \$657,149.74 in 1987. Statistics also indicate there has been no corresponding increase in the number of claims, the amount of benefits paid by the Workers Compensation Bureau, or the number of claims reduced or denied by the bureau. A portion of the increase in attorneys' fees paid by the bureau was attributed to an increase in the hourly rate set by the bureau for attorneys' fees. Testimony presented to the committee indicated that a major portion of the increase in attorneys' fees is due to the complexity of the claims as well as an increase in the number of contested claims. Factors identified by the bureau for the increase in attorneys' fees paid by the bureau included increased awareness and knowledge of rights and entitlements on the part of claimants, inadequate staffing and funding of many bureau departments, and the fact that under North Dakota law the bureau is obligated to pay claimants' attorneys' fees regardless of the outcome of the claim. The committee also received a report from the Governor's Workers Compensation Advisory Committee concerning its activities. The advisory committee is formulating recommendations to protect the solvency of the workers' compensation fund including addressing the issues of medical costs, legal costs, and the possibility

of future rate increases.

During the course of the study, concerns relating to the solvency of the workers' compensation fund also were expressed to the committee.

Committee Considerations

The committee reviewed various proposals to reduce the amount of attorneys' fees paid by the bureau, including use of a contingency fee system for the payment of attorneys' fees and use of a fee arbitration system to compensate attorneys representing claimants before the bureau. Other proposals submitted to the committee included a proposal that the bureau solicit bids on a competitive basis from private law firms to provide representation for claimants before the bureau or that a semiautonomous agency be established within state government to represent workers' compensation claimants before the bureau.

Recommendation

Due to concerns relating to the solvency of the workers' compensation fund, the committee determined that the issue of the payment of attorneys' fees should be addressed in combination with other issues concerning the fund. The committee recommends that the Workers Compensation Bureau, in conjunction with the Workers Compensation Bureau Advisory Committee and the Attorney General, develop a proposal concerning the payment of attorneys' fees in workers' compensation cases and submit the proposal to the 1989 Legislative Assembly.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned three studies. Senate Concurrent Resolution No. 4022 directed a study of the criminal sentencing statutes for misdemeanor and felony cases. House Concurrent Resolution No. 3012 directed a study of the adequacy of the present procedures and standards for appeals for judicial review of decisions of county commissioners and other local governing boards, with emphasis on methods to improve those procedures and standards. House Concurrent Resolution No. 3095 directed the Legislative Council to establish a constitutional revision committee to study and make recommendations regarding revision of the Constitution of North Dakota. Instead of creating a separate committee for this purpose, the Legislative Council placed responsibility for studying and making recommendations regarding the state constitution with the Judiciary Committee. The chairman of the Legislative Council assigned to the committee a study of the legal issues associated with acquired immune deficiency syndrome (AIDS) in North Dakota. The Legislative Council also delegated to the committee the responsibility to review uniform laws recommended to the Legislative Council by the State Commission on Uniform State Laws under North Dakota Century Code (NDCC) Section 54-35-02. The Legislative Council also assigned to the committee the responsibility for statutory revision.

Committee members were Senators Wayne Stenehjem (Chairman), James A. Dotzenrod, Ray Holmberg, and Herschel Lashkowitz and Representatives Mike Hamerlik, Alvin Hausauer, William E. Kretschmar, Clarence Martin, Grant Shaft, R. L. Solberg, Bill Sorensen, and Janet Wentz.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

CRIMINAL SENTENCING STUDY Origins of Study

The goal of the criminal sentencing study was to remedy apparent inconsistencies or conflicts in statutory provisions governing sentencing in misdemeanor and felony cases, particularly when sentencing includes a combination of imprisonment and suspension or probation. These inconsistencies or conflicts were brought to light by the North Dakota Supreme Court's decision in *State v. Nace*, 371 N.W.2d 129 (N.D. 1985), which held that the combined total term of imprisonment and suspension or probation could not exceed the maximum term of imprisonment authorized by statute. The effect of *Nace* has been to create considerable doubt concerning the sentencing authority, and manner of sentencing, of judges under existing statutory provisions.

Background

A. Statutory Provisions

Statutory provisions governing sentencing in misdemeanor and felony cases are contained in two chapters of the North Dakota Century Code.

1. NDCC Chapter 12-53

Sections 12-53-01 through 12-53-12 govern suspended execution of sentences. A number of these sections are pertinent to the dilemma apparently caused by the decision in *State v. Nace*. Section 12-53-01 provides that "[w]hen a defendant has pleaded or has been found guilty of a crime for which the court or magistrate may sentence him either to the penitentiary or to the county jail, the court or magistrate may suspend the execution of the sentence imposed" Section 12-53-03 provides that when the defendant has been found guilty of a misdemeanor, the court "may suspend the execution of the sentence or may modify or alter the sentence in such manner as appears just and right" The section further provides that if a sentence for a misdemeanor has been suspended, an order for the recommitment of the person may not be made "more than eighteen months after the expiration of the maximum period of time for which such person might have been sentenced."

Section 12-53-03 appears to allow a substantial period of probation in misdemeanor cases. An order of recommitment may not be made more than 18 months after the expiration of the maximum period of time for which a defendant might have been sentenced. Thus, Section 12-53-03 indicates that a suspended sentence and probation may extend for one and one-half years after the maximum penalty has expired. Accordingly, pursuant to Section 12-53-03, it appears that a Class A misdemeanor could be sentenced to imprisonment of one year, that the sentence could then be suspended, and the misdemeanor could be placed on probation for up to two and one-half years. A Class B misdemeanor could be placed on probation for up to one year and seven months following the suspension of a 30-day sentence of imprisonment. It appears that different procedures apply depending upon whether the defendant is found guilty of a misdemeanor or a felony. If the defendant is found guilty of a felony, the court may "suspend the execution of the sentence imposed" If the defendant is found guilty of a misdemeanor, the court may "suspend the execution of the sentence or may modify or alter the sentence in such manner as appears just and right" The current statutory provisions relating to suspended execution of sentence have remained substantially the same since 1943, and a number of these provisions were present in North Dakota law as early as 1913. The 1943 code commission's note pertaining to suspended execution of sentence states:

Both of these sections provide for identical conditions under which the court or magistrate may suspend a sentence. Of course, different procedure after suspension is provided for misdemeanors and felonies, and these procedures will be shown in this chapter.

Section 12-53-04 provides that when the offense is a misdemeanor and execution of the sentence is suspended, the court may place the defendant on probation. If the offense is a felony, under Section 12-53-06 the court must place the defendant on

probation. Section 12-53-12 provides that, except in cases involving abandonment or nonsupport of a spouse or children, “[t]he length of the period of probation shall not be more than the maximum term for which [the defendant] might have been imprisoned” Thus, there appears to be a conflict between Section 12-53-12, which limits the period of probation to a term not greater than the maximum period of imprisonment, and Section 12-53-03, which appears to authorize a period of probation longer than the maximum term of imprisonment authorized for Class A or B misdemeanors. However, this conflict may be resolved by the rule of statutory interpretation under NDCC Section 1-02-07, which provides that in the event of conflicting statutory provisions, the more specific is to prevail over the more general. Thus, the more specific authorization for terms of probation in misdemeanor cases may be seen as an exception to the general limitation on terms of probation provided in Section 12-53-12.

Sections 12-53-13 through 12-53-18 provide for a suspended imposition of sentence. In such a case, a judgment of conviction is pronounced, but sentencing is held in abeyance. If the imposition of sentence is suspended, the offender must be placed on probation under the supervision of the Pardon Board, except in the case of a misdemeanor when the court specifically waives direct supervision by the board. Under Section 12-53-14, this period of probation may not exceed five years except in instances involving abandonment or nonsupport of a spouse or children. Under Section 12-53-17, the court retains jurisdiction over the offender in relation to revocation or modification of the probation. In contrast, if the execution of sentence is suspended under NDCC Sections 12-53-01 through 12-53-12, the sentence is imposed but the execution of the sentence is suspended.

2. NDCC Chapter 12.1-32

Chapter 12.1-32 provides the classification of offenses, penalties, and a broad array of sentencing alternatives available to the court. Section 12.1-32-01 provides the maximum fines and terms of imprisonment for offenses ranging from infractions to Class AA felonies. Section 12.1-32-02 provides sentencing alternatives including payment of costs of the prosecution, probation, a term of imprisonment, a fine, restitution, restoration of damaged property, and commitment to an appropriate institution for treatment of alcoholism, drug addiction, or mental disease or defect. Any one or a combination of the alternatives authorized under this section may be imposed by the court. Most pertinent for the purposes of the study, Section 12.1-32-02(1) provides in part that “[s]entences imposed under this subsection shall not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense.” Section 12.1-32-06 provides that the period during which a sentence to probation remains conditional and subject to revocation is five years for a felony and two years for a misdemeanor. This provision appears to conflict with that part of Section 12.1-32-02 which prohibits a sentence in excess of the maximum term of imprisonment

authorized by statute. This conflict has the greatest import for misdemeanor sentencing procedures. While Section 12.1-32-06(1)(b) provides that the period during which a sentence to probation in a misdemeanor case remains conditional and subject to revocation is two years, the maximum authorized imprisonment is one year for a Class A misdemeanor and 30 days for a Class B misdemeanor. The court, in Nace, did not consider the operation of Section 12.1-32-06 in reaching its decision; however, the court’s reasoning would appear to nullify the operation of this section, at least insofar as it applies to sentencing in misdemeanor cases.

B. State v. Nace

In State v. Nace, the defendant had been convicted of a Class C felony. He was sentenced to five years’ imprisonment, but the court went on to order suspension of execution of two years of the sentence portion of the judgment and to place the accused within the custody and control of the Parole Board pursuant to NDCC Chapter 12-53, for a period of three years following his release.

Nace’s principal argument was that the combined term of his imprisonment and probation could not exceed the maximum term for which he could have been imprisoned. The maximum penalty for Nace’s crime, a Class C felony, was five years’ imprisonment. The court examined Section 12.1-32-02(1) and noted that a sentence imposed under the section could not exceed in duration the maximum sentence of imprisonment provided by Section 12.1-32-01. The Nace court found that this sentencing limitation applied to combination sentences of imprisonment and probation as well as to sentences of imprisonment.

The court then examined Chapter 12-53, which provides for suspension of the execution of a sentence. Section 12-53-12 provides that the length of probation cannot be more than the maximum term for which a defendant might have been imprisoned. The court concluded that the combined term of Nace’s probation and imprisonment, even using the suspension provisions of Chapter 12-53, could not exceed five years.

C. Analysis of Nace

The court’s argument in Nace may be divided into two general categories—its interpretation and application of NDCC Chapter 12-53 and its interpretation and application of NDCC Chapter 12.1-32.

1. NDCC Chapter 12-53

Nace argued on appeal that he was sentenced under Chapter 12-53 and that the trial court did not have authority to suspend the execution of only a part of his five-year sentence. The criminal judgment setting forth Nace’s sentence stated Nace was sentenced to five years’ imprisonment and “[t]hat execution of two (2) years of the (sentence) portion of this Judgment is suspended and the accused is placed within the custody and control of the North Dakota Parole Board pursuant to Chapter 12-53, N.D.C.C.; for a period of three (3) years following his release” subject to conditions. If a defendant is sentenced to probation

pursuant to NDCC Chapter 12.1-32, the court retains jurisdiction over the probationer and may modify or enlarge the conditions, impose a sentence if conditions are violated, or transfer jurisdiction to another North Dakota court. The defendant so sentenced is not under the “custody and control of the North Dakota parole board” in the same manner as an individual whose execution of sentence is suspended pursuant to Chapter 12-53. The court, however, did not address Nace’s argument directly. Rather, the court construed Section 12.1-32-02, which authorizes combination sentences, and references to “probation” in Chapter 12-53 to mean that a “suspension” under Chapter 12-53 is a form of “probation” available under Section 12.1-32-02.

2. NDCC Chapter 12.1-32

The court, in explicating its analysis of Chapter 12.1-32, asserted that “Nace’s principal argument is that the combined term of his imprisonment and probation cannot exceed the maximum term for which he could have been imprisoned.” However, except for a passing reference and a minor argument in the alternative relating to the application of Section 12.1-32-02(1), the bulk of Nace’s argument on appeal was that the trial court did not have the authority to suspend the execution of part of his sentence. Nevertheless, the court determined that Section 12.1-32-02(1) was applicable; and because a Chapter 12-53 “suspension” was a form of “probation” available under the sentencing alternatives of Section 12.1-32-02, Nace’s sentence was governed by that part of the statute that provides “[s]entences imposed under this subsection shall not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01.” The court also held that a suspension imposed under Chapter 12-53 was similarly limited by Section 12-53-12, which provides in part that “[t]he length of the period of probation shall not be more than the maximum term for which [the defendant] might have been imprisoned” However, a reading of the plain wording of this provision may indicate that the length of probation in Nace’s case could not exceed five years, that is, the maximum term of imprisonment for a Class C felony. The court appears to have interpreted Section 12-53-12 to read that the length of probation plus imprisonment cannot exceed the maximum term of imprisonment allowed. As alluded to earlier, this interpretation could have a serious impact on the use of probation as a sentencing tool, particularly in the case of misdemeanors, since under the court’s interpretation of Section 12-53-12 the maximum period of probation plus any imprisonment for a Class A misdemeanor would be one year and for a Class B misdemeanor would be 30 days.

Nace also argued in his motion to the trial court for correction of sentence, that a suspended execution of sentence is not authorized under Section 12.1-32-02, since it is not one of the alternatives specified in that statute. Although this issue was not argued on appeal, the argument seems consistent with the North Dakota Supreme Court’s holding in State v. Siegel, 404 N.W.2d 469 (N.D. 1987). In Siegel, the court determined that the holding in Nace did not apply to

periods of probation imposed as part of the suspended imposition of sentence under Chapter 12-53 because a suspended imposition of sentence was not among the sentencing alternatives provided in North Dakota Century Code Section 12.1-32-02(1). The court noted that a suspended (deferred) imposition of sentence had in the past been listed as a sentencing alternative but subsequent legislative action had deleted that provision.

The court’s analysis in State v. Nace illustrates possible conflicts between a number of provisions in NDCC Chapters 12-53 and 12.1-32. There is an apparent conflict between Section 12.1-32-06, which provides that the period during which a sentence to probation is subject to revocation is five years for felonies and two years for misdemeanors, and Section 12.1-32-02(1), which provides that sentences imposed under that section may not exceed the maximum term of imprisonment authorized by statute. There is also a possible conflict between Section 12-53-12, which provides that a term of probation may not exceed the maximum term for which a defendant could be imprisoned, and Section 12-53-03, which appears to allow a period of probation in excess of the maximum term for which a defendant might have been imprisoned.

Present Sentencing Practices

The committee at the outset attempted to gain a perspective on current sentencing practices in criminal cases and the present effect of Nace on sentencing practices. The committee submitted a 12-question survey to 26 district court judges and 27 county court judges. Forty-two judges responded. The survey was intended to solicit information regarding how judges sentence and what statutory authority was used in support of sentencing decisions, particularly when sentencing decisions included a combined period of imprisonment and probation following the suspended execution of sentence. It was apparent from the responses that various judges relied upon numerous different statutory provisions in NDCC Chapters 12.1-32 and 12-53 to support a sentencing decision in any given case. Similarly, the judges cited widely varying periods of probation, ranging from one year to five years, that may be imposed in misdemeanor cases when the execution of a portion of a sentence is suspended. This is perhaps a reflection of the confused relationship between sentencing provisions found in Chapters 12.1-32 and 12-53. A recurrent theme expressed in the survey responses was that these chapters should be clarified and the inconsistencies resolved. It was often observed that consolidating the chapters and creating a single, unified criminal sentencing chapter would best serve sentencing practices in the state.

Testimony and Committee Considerations

Testimony received by the committee underscored the need to reexamine the relationship between Chapters 12-53 and 12.1-32 to address the potentially disrupting influence of Nace on sentencing practices and to reconcile conflicts and inconsistencies in the chapters. The situation most often cited as an example of the feared impact of Nace was the sentencing in

a typical case in which an individual is convicted of driving while under the influence of intoxicating liquor. It was noted that a typical second offense, a Class B misdemeanor, may include a \$500 fine and a 30-day commitment to the county jail with 26 days of the jail commitment suspended for one year upon the condition that the defendant commit no further violations of law, undergo evaluation by a certified addiction counselor, and comply with recommendations for treatment. For cases in which treatment is recommended, the timeframe from sentencing to evaluation through completion of treatment may be a period of several months. If the rationale of Nace were applied, the "period of probation" could not exceed 26 days as the maximum term of imprisonment for a Class B misdemeanor is 30 days. The effect of Nace upon felony sentencing practices has not been as obvious but apparently there has been a limiting influence, particularly in Class C felony cases.

Testimony received by the committee indicated that, in addition to addressing the impact of Nace, inconsistencies and conflicts in the sentencing statutes should be addressed to ensure that probation, whether imposed as a result of a suspended execution or deferred imposition of sentence or sentence to probation, has the same characteristics and application. In a similar vein, the committee reviewed the effect of the North Dakota Supreme Court's decision in State v. Jones, 418 N.W.2d 782 (N.D. 1988), upon suspended execution of sentences and probation imposed as a part of a suspended execution of sentence. North Dakota Century Code Section 12-53-11 provides that when the court imposes probation as a part of a suspended execution of sentence and the defendant violates the conditions of probation, the court may revoke probation and impose the sentence initially ordered by the court. North Dakota Century Code Section 12.1-32-07(4), however, provides that if probation is imposed and subsequently revoked for violation of conditions, the court may impose any other sentence available at the time of initial sentencing. Jones interpreted Section 12.1-32-07(4) in the context of a suspended execution of sentence and held that a court could impose any sentence available to it at the time of initial sentencing when the execution of sentence is suspended and probation imposed and revoked for a violation of probation conditions. Testimony indicated that Jones was illustrative of the impact of conflicting sentencing provisions in Chapters 12-53 and 12.1-32. Testimony further indicated that Jones represented an important change for sentencing practices in the state. Before Jones, it had been a long-established practice that a suspended execution of sentence represented a contract between the court and the defendant and if the defendant violated conditions of probation, the defendant would receive the sentence initially imposed. Testimony indicated that Jones, however, in failing to reconcile conflicting statutory provisions represents a potential change in this practice by allowing the court to impose any sentence initially available to the court.

Testimony received by the committee also indicated that under law there is inconsistent or disparate

treatment received by those convicted of a felony who receive and successfully complete a deferred imposition of sentence as compared to those convicted of a felony who receive and successfully serve a term of imprisonment of less than one year. In the latter case, the person's felony conviction is reduced to a misdemeanor and the person is relieved of most penalties and disabilities associated with a felony conviction. In the former case, regardless of the length of probation imposed and the successful completion of the probation and all terms of the deferment, the person's felony conviction remains a felony and that person suffers the penalties and disabilities associated with a felony conviction. It was suggested that simple equity and fairness would dictate that the individuals should be treated similarly.

In the course of reviewing inconsistencies and conflicts existing among present sentencing statutes and reviewing court interpretations that highlight these issues, the committee considered three bill drafts as vehicles for improving the sentencing statutes. The first bill draft, termed the "quick-fix," was directed solely at attempting to shelter misdemeanor sentencing by overruling the effects of Nace and allowing a probationary period beyond the maximum period of imprisonment, while ensuring that the alternatives under Chapters 12-53 and 12.1-32 remained as separate chapters. Testimony received regarding this bill draft indicated that it would address the narrower issues posed by Nace, but would not address the broader and more numerous issues relating to conflicts existing in the sentencing chapters. The committee also considered two alternative bill drafts designed to consolidate Chapters 12-53 and 12.1-32 while also addressing issues raised in Nace and Jones and reconciling conflicts within the chapters. The first alternative bill draft would have consolidated Chapters 12-53 and 12.1-32 by creating two new, lengthy sections within Chapter 12.1-32 to provide for suspended execution and deferred imposition of sentences. The second alternative bill draft consolidated Chapters 12-53 and 12.1-32 by incorporating the substantive provisions of Chapter 12-53 into Chapter 12.1-32. New sections were created for those provisions that were not amenable to easy or intelligible incorporation. The committee ultimately concluded that the second alternative bill draft provided the best vehicle for improving the sentencing statutes. As the committee neared completing consideration of the bill draft, it requested that the Supreme Court's Court Services Administration Committee submit the bill draft to county and district court judges within the state for their final comments. While a small number of suggestions were received, testimony received by the committee indicated that the bill draft was generally well received by the judges.

Recommendation

The committee recommends House Bill No. 1052 to consolidate NDCC Chapters 12-53 and 12.1-32 by incorporating the substantive provisions of Chapter 12-53 into existing sections of Chapter 12.1-32 and creating new sections for those sections not capable of simple incorporation. The bill would also, among

other things, clarify a court's authority to impose a sentence if conditions of probation are violated following the suspended execution of a sentence and would clarify the status of a person receiving a deferred imposition of sentence. The bill would also address the issues raised in Nace by establishing clear and uniform maximum periods of probation that may be imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence. The bill also addresses conflicts and inconsistencies existing in present sentencing statutes.

APPEALS PROCEDURES STUDY

Origins of Study

In 1983 the North Dakota Supreme Court's Court Services Administration Committee became aware of an increasingly pressing problem relating to appeals from local governing bodies. The North Dakota Century Code provides for the appeal or review of decisions of many agencies, boards, and commissions. Most state agencies, boards, and commissions come within the jurisdiction of the Administrative Agencies Practice Act, NDCC Chapter 28-32, but some state agencies and all local level entities do not. For those that do not, there is little guidance or procedure articulated for the prosecution of appeals from the reviews of these entities' decisions. The Court Services Administration Committee subsequently appointed a Subcommittee on Non-APA Agency Appellate Review Procedure to study the issue and make recommendations regarding possible solutions. After completing its study the subcommittee concluded that an equitable, practical, and uniform method for resolving the problem would be to propose an amendment to Rule 9.1 of the North Dakota Rules of Court to provide procedures for appeals. The proposed change would have established two appellate review procedures—one for entities whose decisions are required by statute to be appealed "de novo," and one for those entities whose decisions are required by statute to be appealed on the record. The subcommittee made its recommendation to the Court Services Administration Committee, which in turn submitted the proposed amendment to Rule 9.1 to the North Dakota Supreme Court. The Supreme Court reviewed the proposal but deferred action and referred the matter to the Legislative Assembly for resolution. The Legislative Assembly thereafter passed House Concurrent Resolution No. 3012 and the study was assigned to the Judiciary Committee. However, the study was limited to procedures for appeals from the decisions of boards of county commissioners and other local governing bodies.

Background

There are approximately 29 statutory provisions authorizing appeals from the decisions of local governing bodies. These local governmental bodies include boards of county commissioners, township supervisors, soil conservation districts, and water resource districts, and various city boards and commissions. All of the statutes authorizing appeals provide for appeal to district court with one exception,

which provides for appeal to county court as well as district court.

There are several problems and uncertainties presented by these various statutes. There is little, if any, guidance or procedure articulated for the prosecution of appeals or reviews of the decisions of the local governing body. It is unclear whether a record of the proceedings before the governing body is required, and if a record is required or available, what role the record plays upon an appeal of the decision to district court. The statutes are not uniform regarding the nature and extent of the district court's scope of review. There is a broader, constitutional question, which has occupied the North Dakota Supreme Court's attention in recent cases, regarding the propriety of empowering the district court to undertake a "de novo" review of a local governing body's decision.

Review of Applicable Statutes

The statutes authorizing appeal from the decision of a local governing body may be divided into three broad categories. Several statutes authorize a "de novo" review or appeal in district court. An appeal de novo or trial de novo is regarded as a proceeding undertaken in the appellate court as if no action whatever had been instituted in the tribunal below. A small number of statutes authorize an appeal to the district court in the form of a "trial anew." The remaining statutes have been designated as "unclassified." There is no clear indication in these statutes regarding the nature of the district court's review, procedures required in prosecuting the appeal, or the requirement or applicability of a record.

While some statutes authorize a de novo appeal, case law has limited the district court's authority to "retry" the entire proceeding. Other statutes describe the district court's review authority in simple, general terms. A few statutes provide that findings of fact by the affected governmental body are conclusive if supported by the evidence or by substantial evidence.

It is a general rule that in the absence of a statute so providing, a court is confined on review proceedings to the record made in the proceeding below, and may not hear new or additional evidence unless the proceeding is a trial de novo. The general rule limiting review to the record made before the agency, however, is not always observed and is not without its exceptions. The absence of essential findings of fact or sufficient information to disclose the basis for the agency's action may require the court to permit the admission of evidence that was not before the agency. With regard to a trial or appeal de novo, where a statute provides that an appeal shall be heard de novo, the hearing is in no sense a review of the hearing previously held, but is a complete trial of the controversy as if no previous hearing had ever been held. The scope of a de novo review, however, may vary with the subject matter of the review or the function of the agency or governmental body being appealed from. Therefore, in a de novo appeal, which is commonly understood to entail a complete reexamination of the issues considered in the proceeding below, the appellate court may consider the record before the agency, accord a presumption of

correctness or proper deference to the agency findings and conclusions, and refrain from substituting its discretion or judgment for that of the agency. This limited form of the de novo appeal has been adopted by the North Dakota Supreme Court and thus limits the scope of review under those statutes that authorize a de novo appeal to district court.

The North Dakota Supreme Court, in Shaw v. Burleigh County, 286 N.W.2d 792 (N.D. 1979), addressed the issue of a district court's scope of review under NDCC Section 11-11-43, which authorizes a de novo appeal from a decision of a board of county commissioners. The board of county commissioners had denied Shaw's application for a special use permit, and Shaw appealed to the district court, which upheld the board's decision. The district court, in reaching its conclusion, held that Section 11-11-43, in providing for the appeal from a decision of the board of county commissioners to be heard de novo in district court, was an unconstitutional delegation of nonjudicial power to the district court to review legislative acts. The North Dakota Supreme Court reviewed this issue on appeal.

The court noted that "[i]t is a fundamental principal that the legislature cannot invade the province of the judiciary, nor may it impose upon the judiciary non-judicial duties." The court described the boards of county commissioners as legislative bodies empowered by statute to enact certain zoning regulations. Consequently, the court concluded that to grant the district court authority to review completely or retry the legislative determinations made by the board of county commissioners would be to grant the district court the authority to make a legislative determination. The court noted "[i]t is not the function of the judiciary to act as a super board of review." The court noted that under a prior decision the court had allowed district courts to hear testimony, receive exhibits, and make a decision as it would in any trial, without regard to the findings and decision of the board of county commissioners. The practical reason for such a grant of authority, the court noted, was that there was often no complete record of the board's proceedings. However, in light of the constitutional issues, the court limited the scope of review of the district court and held:

The district courts shall be permitted to continue to hear testimony and receive exhibits, but that evidence must be viewed in light of the findings, if any, the decision, and the reasons given therefore by the boards of county commissioners.

Thus a de novo hearing under NDCC Section 11-11-43 means a hearing to determine whether the board of county commissioners acted arbitrarily, capriciously, or unreasonably.

Therefore, while a number of statutes expressly or implicitly provide for a de novo hearing in district court upon appeal from the decision of a local governing body, the scope of the de novo hearing will likely be limited. This is similar to the previously stated position that there may be a de novo hearing in which the court must consider the record of the proceeding below, accord a presumption of correctness or proper deference to the findings and conclusions

set forth in the record, and refrain from substituting its discretion or judgment for that of the local agency appealed from.

Testimony and Committee Considerations

The committee reviewed the many statutes authorizing appeals of decisions from local governing bodies and also reviewed the proposed amendments to Rule 9.1 of the North Dakota Rules of Court submitted to the Supreme Court by the Court Services Administration Committee.

The committee considered a resolution draft urging the North Dakota Supreme Court to adopt the proposed amendments. Testimony received by the committee indicated, however, that the resolution draft may be less effective than addressing the broader substantive questions relating to the kinds of appeals available under existing statutes and the manner in which the procedures for the prosecution of those appeals may be most reasonably provided.

The committee also considered a bill draft based upon the proposed amendments to Rule 9.1. The bill draft provided procedures for the appeals from local governing bodies whose decisions are required to be appealed de novo and provided procedures for appeals if the statute authorizing the appeal does not designate a trial de novo as well as appeals from those local governing bodies whose decisions are required by statute to be reviewed on the record. Testimony received by the committee indicated that, in light of Shaw, providing procedures for appeals required to be appealed de novo would be unnecessary. It was suggested that a designation, under statute, of an appeal as "trial de novo" or "trial anew" is misleading in that there really is no such review available under most of the statutes. Testimony indicated that the statutes authorizing a de novo review should be amended to remove references to de novo review. The statutes would then accurately reflect the impact of the court's decision in Shaw and the exact nature of the appeal authorized would be clear.

Testimony received by the committee from representatives of local government also indicated the desire to retain the arbitrary and capricious standard of review and allow local governing bodies to make essentially political, discretionary decisions without the threat of a substantive, de novo review by the court if an appeal is taken from the governing body's decision. Testimony also indicated a concern regarding the burden of recordkeeping if appeals on the record became the standard method of appeal.

Recommendation

The committee recommends Senate Bill No. 2047 to establish uniform procedures for appeals from the decisions of local governing bodies. The bill would designate all appeals from the decisions of local governing bodies, with certain exceptions, as appeals on the record and would remove all references in affected statutes to appeals in the form of trials de novo. Court reviews by writ of certiorari are excepted from the provisions of the bill. Specific requirements are provided regarding the time period within which an appeal may be filed, the notice of appeal, the filing of the record on appeal by the appellee, the deposit

of the estimated cost of the transcript by the appellant, and the procedures for submitting certain evidence. Procedures are also established by which the court may, under certain circumstances, order the presentation of additional evidence.

CONSTITUTIONAL REVISION STUDY

House Concurrent Resolution No. 3095 directed the Legislative Council to establish a constitutional revision committee to study and make recommendations regarding revision of the Constitution of North Dakota. Instead of creating a separate committee for this purpose, the Legislative Council placed responsibility for studying and making recommendations regarding the state constitution with the Judiciary Committee. The committee reviewed information summarizing recent successful and unsuccessful attempts to revise portions of the state constitution. The committee received and considered information and recommendations relating to the status of the Lieutenant Governor as presiding officer of the Senate, executive reorganization, and the effective dates of legislation.

Removal of the Lieutenant Governor as Presiding Officer of the Senate

The office of Lieutenant Governor has grown in executive responsibility and has evolved into a full-time position. Testimony received by the committee was to the effect that the Senate should have control in selecting its presiding officer, as does the House of Representatives in selecting its Speaker. Opposing testimony indicated that it is to the benefit of the Senate to have a person as presiding officer who is not attached to either legislative party caucus, and who could approach legislative matters from the perspective of parliamentarian rather than a partisan leader. It was also asserted that allowing the Senate to select its presiding officer from among its members may result in the district of the member who was selected being left without adequate representation in the Senate, although this contention was disputed by those supporting the removal of the Lieutenant Governor as presiding officer.

Executive Reorganization

The committee reviewed 1987 Senate Concurrent Resolution No. 4013, as introduced and as amended, relating to the organization of the executive branch departments of state government. The resolution, as introduced, required the Legislative Assembly to allocate the executive power among not more than 15 principal departments. The Governor was afforded authority to make changes in the statutory allocation of functions, powers, and duties within and among the departments. As amended, Senate Concurrent Resolution No. 4013 provided that, with exceptions for constitutional officers, all executive and administrative offices, boards, bureaus, agencies, commissions, and instrumentalities of state government must be allocated within not more than 12 principal departments. The Governor would have been vested with authority similar to that provided under the introduced version of the resolution. The committee considered information indicating that

there are principally three methods of achieving executive reorganization — adoption of a constitutional provision, reorganization by legislative enactment, or reorganization by the Governor under a broad grant of authority to reorganize executive departments through an executive order or reorganization plan. The committee also received and reviewed information regarding the operation and effect of Article IV, Section 8, of the South Dakota Constitution and Article VI, Section 7, of the Montana Constitution, upon which Senate Concurrent Resolution No. 4013 was based. Committee members expressed concern about executive reorganization provisions that either allowed the Governor to make reorganization changes irrespective of existing law or that did not clearly define the role of the Legislative Assembly if the Governor were to submit findings and recommendations regarding reorganization changes that affected existing law. The committee also reviewed Article 5, Section IV, of the New Jersey Constitution which does not explicitly confer upon the Governor the authority to reorganize the executive branch but, rather, requires that all executive administrative offices, departments, and instrumentalities of state government be allocated by law among and within not more than 20 principal departments. As a vehicle for discussion, the committee considered a resolution draft based upon the New Jersey constitutional provision.

Effective Dates of Legislation

Prior to December 1, 1986, the Constitution of North Dakota provided that, except for emergency bills, no Act of the Legislative Assembly took effect until July 1 after the close of the session.

A new legislative article of the constitution took effect on December 1, 1986, and provides, in part, that laws take effect on July 1 or 90 days after filing with the Secretary of State.

Under the Constitution of North Dakota a referendum petition may be submitted only within 90 days after the filing of a measure with the Secretary of State. The submission of a petition suspends the operation of any measure enacted by the Legislative Assembly except emergency measures and appropriation measures for the support and maintenance of state departments and institutions.

During the 1987 legislative session, legislators were concerned because the new effective date language could result in appropriation bills and bills changing tax rates becoming effective at different dates during the month of July. As a result of that concern, a constitutional amendment was passed by the Legislative Assembly and approved by the people at a special election March 18, 1987. As a result, appropriation measures for support and maintenance of state departments and measures changing tax rates are effective on July 1 after filing.

Of the 763 bills passed by the 1987 Legislative Assembly, 209 were filed after April 2 and thus became effective after July 1 unless determined to be an appropriation or tax measure. Of these 209 bills, 77 were determined to be appropriations or tax measures within the meaning of the constitutional language and therefore had a July 1 effective date.

The Legislative Council staff received numerous telephone calls during and after the 1987 session from persons trying to determine effective dates of bills. Publications by organizations in the state were observed that were still using the old July 1 effective date or an incorrect subsequent date on bills that were filed after April 2 and were neither appropriation nor tax measures, with the result that inconsistent information was distributed.

Testimony received by the committee also indicated that an effective date later than July 1 for most laws except tax and appropriation measures would be helpful in ensuring the timely publication of laws.

The committee was also concerned with establishing an effective date that addresses difficulties posed by a reconvened session of the Legislative Assembly, especially with a reconvened session in November similar to the 1981 reconvened session for legislative reapportionment purposes. The committee considered the following three resolution drafts relating to the effective dates of legislation:

1. A resolution draft to amend the state constitution to provide an August 1 effective date rather than a July 1 or 90 days after filing effective date.
2. A resolution draft to amend the state constitution to require the Legislative Assembly to establish by statute the effective date of legislation so long as that date is not earlier than 90 days after adjournment of the legislative session during which the law is enacted.
3. A resolution draft to amend the state constitution to provide an August 1 effective date for all laws passed during the regular session. Measures filed with the Secretary of State after August 1 and before January 1 of the following year would be effective 90 days after filing with the Secretary of State.

Recommendations

The committee recommends Senate Concurrent Resolution No. 4005 to propose a constitutional amendment to remove the Lieutenant Governor as presiding officer of the Senate and allow the Senate to select the presiding officer from among its members.

The committee recommends House Concurrent Resolution No. 3005 to propose a constitutional amendment to provide an August 1 effective date for all laws passed during a regular session of the Legislative Assembly. Measures filed with the Secretary of State on or after August 1 and before January 1 of the following year would be effective 90 days after filing with the Secretary of State. The effective date of appropriation measures and tax measures changing tax rates would remain as July 1.

The committee makes no recommendation with respect to executive reorganization.

STUDY OF LEGAL ISSUES ASSOCIATED WITH AIDS IN NORTH DAKOTA

Background

A. Origins of Study

Acquired immune deficiency syndrome, more commonly known as AIDS, presents a host of unique and pressing social, political, and legal problems that were, until recently, largely unknown. It has broad social implications for public health as well as for civil rights and personal freedoms. In light of these problems and with the awareness that AIDS-related issues would likely emerge as areas of concern during the 1989 legislative session, the chairman of the Legislative Council assigned to the committee a study of the legal issues associated with AIDS in North Dakota. The assignment followed a determination that public hearings during the interim would provide a timely forum for consideration of this complex problem and possible responses. The committee held public hearings in Grand Forks, Fargo, Williston, and Minot in an attempt to gather a wide spectrum of information and public comment regarding the presence and impact of the disease in North Dakota. During these hearings and meetings in Bismarck, the committee received testimony from many diverse sources including representatives of the health care profession, such as physicians, nurses, and dentists; education; corrections; local government; law enforcement; local and state health departments; and the general public. The committee also received and reviewed a report published by the State Department of Health and Consolidated Laboratories entitled "AIDS in North Dakota: A Plan for Action." The report is a resource document that provides detailed information regarding AIDS and the human immunodeficiency virus (HIV) and the disease's presence and impact, both current and future, within North Dakota.

B. Nature of the Disease

Acquired immune deficiency syndrome is a debilitating and lethal disease of the immune system. The first recognized cases of AIDS appeared in the United States in 1981 when a Los Angeles physician reported five unusual instances of pneumocystis carinii pneumonia, a rare parasitic infection of the lungs, in young homosexual men. The disease is thought to be relatively new to man. Epidemiological data suggests that the disease first may have appeared in central Africa during the 1960s. Acquired immune deficiency syndrome is widely considered a viral disease involving the breakdown of the body's immune system. Medical researchers have concluded that AIDS is caused by infection with the HIV. The HIV is a human retrovirus, distinguished from other viruses by chromosome structure and mode of replication, which penetrates chromosomes of certain human cells that combat infection throughout the body. When the virus enters the body it begins to attack certain white blood cells (T-lymphocytes), which are an integral part of the human immune system. The disease destroys, and generates qualitative abnormalities in, the victim's T-helper/inducer cells, which enable other components of the immune system

to function. The virus thereby weakens the victim's immune system.

The Centers for Disease Control have developed a classification of HIV infection. Group 1 of this classification includes individuals with acute HIV infection. This syndrome is characterized by a mononucleosis-like syndrome and these individuals typically have fever, muscle pain, sweats, joint pain, tiredness, sore throat, nausea, vomiting, and headaches. Such symptoms usually develop within three to six weeks after the presumed exposure and development of a positive HIV antibody test. Group 2 of the classification describes individuals who can be detected as positive only on evaluation with an antibody test or a viral culture. Group 3 of the classification includes individuals with swelling of the lymph nodes at two or more sites which persist for three or more months in the absence of any other illness. Group 4 of the classification includes other HIV disease including symptoms such as fever or diarrhea, neurologic disease, and secondary infectious diseases. Even without symptoms of AIDS or less severe illness, HIV infection adversely affects the hemic, lymphatic, and reproductive systems. The presence of the virus results in a heightened risk of future symptomatic illness, illness that would manifest itself if the virus became active. In addition, when the virus is not active a carrier can exhibit several asymptomatic but diagnosable abnormal immune functions that indicate an impaired ability to fight infection and therefore an increased risk of future symptomatic disability. An individual afflicted with AIDS or the HIV infection may exhibit a wide spectrum of conditions which increase in severity as the disease progresses.

Acquired immune deficiency syndrome is difficult to acquire and the weight of medical evidence indicates that the HIV is not transmitted by social or casual contacts. Research has shown that the virus is transmitted by intimate sexual contact or through the exchange of infected blood and blood products. Transmission of the virus occurs most commonly through sexual intercourse and the sharing of intravenous needles. Transmission may also occur during transfusion of blood and blood products before 1985, when HIV antibody testing of blood and blood products was initiated. Another important route of transmission is perinatal—that time around birth. The perinatal transmission of the virus may occur in three different ways—intrauterine, i.e., the virus transferring directly from the mother's blood supply to the fetal blood supply across the placenta; at birth, perhaps through ingestion of amniotic fluid by the infant during birth; and after birth, primarily through breastfeeding. Persons infected with the virus remain carriers for life, but research indicates that numerous or substantial exposures to infected body fluids are necessary to cause the infection.

There are two widely used serologic methods of detecting antibodies, i.e., exposure to the virus. The Enzyme Linked Immunosorbent Assay (ELISA) is a simple, rapid blood test that screens for antibodies to the HIV. Originally licensed to screen blood supplies, the ELISA is considered statistically conservative; that is, a negative test result almost always is correct

and the results are reliable. Using this screening test, more people are likely to test positive than actually have antibodies to the virus. If the first ELISA yields a positive result, the test is usually repeated to confirm the presence of the antibodies. If the second test is positive, the more specific Western Blot test is performed for confirmation. This test uses radioactive proteins that attach to the HIV antibodies. If this test yields positive results, HIV antibodies are assumed to be present. A person is considered to be seronegative, meaning that the presence of HIV antibodies cannot be confirmed, if the initial ELISA is negative, the initial ELISA is positive and the following ELISA is negative, or both ELISAs are positive and the Western Blot test is negative.

As of October 31, 1988, nationwide, there have been a total of 76,932 cases of AIDS reported to the Centers for Disease Control. In over one-half of these cases diagnosed since June 1981, the infected individual has died. Since April 1, 1985, almost 6,300 tests for the antibodies to the HIV have been conducted in North Dakota. As of September 30, 1988, 58 individuals have been diagnosed and reported as infected with the HIV and 10 individuals have died. The State Department of Health and Consolidated Laboratories estimates that by 1991 North Dakota could have as many as 7,500 people infected with the HIV.

Committee Considerations

The committee reviewed a report on AIDS in North Dakota compiled by the State Department of Health and Consolidated Laboratories. The committee also reviewed a report published by the Intergovernmental Health Policy Project at George Washington University which summarized over 500 pieces of legislation introduced and considered in the various states by mid-1987. Since the committee's initial AIDS-related meeting in December 1987, scores of additional legislative measures have been considered in the various states, and the committee reviewed some of the most recent of these measures in addressing AIDS-related issues in North Dakota. The committee received considerable testimony on diverse aspects of the disease and its impact and ultimately focused its attention on issues relating to mandatory testing, reporting of cases of AIDS and HIV infection, confidentiality of AIDS-related information, discrimination, criminal penalties for the knowing transfer of the HIV, and public health control measures. The committee also received testimony regarding AIDS and education. However, as the committee's primary focus was legal issues associated with AIDS, the committee's recommendation regarding education is limited in scope.

A. Mandatory Testing

Issues related to HIV antibody testing are multifaceted and center on which populations are to be tested. Issues range from testing the general populace and blood products to voluntary versus mandatory testing to testing of specific populations, such as marriage license applicants or prison inmates. Testimony received by the committee underscored the

complexity of addressing issues relating to testing for the presence of the HIV.

The Department of Health and Consolidated Laboratories, in its report, and representatives of the department in testimony before the committee, recommended that HIV antibody testing be required for patients with sexually transmitted diseases; marriage license applicants; blood and tissue donors; State Penitentiary inmates; and those convicted of prostitution, sexual offenses, or illegal drug use. The committee received testimony on and considered each of these issues.

1. Persons With Sexually Transmitted Diseases

Testimony received by the committee indicated that testing persons with sexually transmitted diseases is appropriate for a variety of reasons. In the near future it is quite certain that the number of HIV cases will increase, and this increase will occur primarily in groups at risk for other sexually transmitted diseases. The Centers for Disease Control has recommended that individuals seeking treatment for sexually transmitted diseases should routinely be counseled and tested for the HIV antibody. There is also a projected increase in the occurrence of sexually transmitted disease due to the increase in the number of sexually active young adults. Those who questioned the wisdom of testing persons with sexually transmitted diseases for the HIV antibody testified that these individuals should be counseled about the risk of AIDS and should be offered HIV antibody testing on a voluntary basis. Mandating such testing, it was alleged, could simply result in driving the reporting of sexually transmitted diseases underground.

2. Marriage License Applicants

It is often argued that testing marriage license applicants for the HIV antibody gives each partner the opportunity to know in advance that the potential spouse has been exposed to the HIV and provides couples with an opportunity to make an informed decision on whether to have children. Moreover, such testing is said to provide the state with a tool for identifying and determining the number of carriers of the HIV.

Testimony by representatives of the Department of Health and Consolidated Laboratories indicated that the department's tentative support for such testing is based upon whether, in the future, there is a significant breakthrough of the infection into the heterosexual population. If such a breakthrough occurs, there are limited means by which to track the disease and determine how many people are acquiring the virus. Thus, marriage license applicant testing is regarded as a potentially valuable tool in determining the presence of the disease in the state. Further testimony in favor of testing marriage license applicants indicated that many homosexual and bisexual men have returned to North Dakota and have married without being tested at any time.

Testimony opposing the imposition of marriage license applicant testing indicated that it is not cost effective and there is a potential for high false positive

test results. It was noted, for example, that if an HIV antibody test has a false positive rate of only .1 percent and it is used to screen a population in which the prevalence of the disease is only .01 percent, which is considered as being true of marriage license applicants in North Dakota, then the probability that an individual with a positive test result will in fact be infected is only approximately 10 percent.

The committee also considered the experience of Illinois, which recently enacted legislation requiring testing of marriage license applicants. The cost of the test has escalated to in excess of \$100 and has resulted in an exodus of couples to neighboring states to obtain marriage licenses. Illinois is considering whether to retain the testing requirement.

3. Blood and Tissue Donors—Anatomical Gifts

The primary area in which states have been willing to require HIV antibody testing is in the testing of blood, plasma, blood byproducts, and donated tissues, organs, and semen. States that have either considered or adopted such a requirement include California, Illinois, Indiana, Louisiana, New York, Oklahoma, Rhode Island, Tennessee, Washington, and Wisconsin. Testimony received by the committee indicated that North Dakota blood bank services are currently screening all blood donors for antibodies to the HIV. However, it was recommended that such screening plus the testing of anatomical gifts be required by law.

4. Penitentiary Inmates

Testing of inmates is often supported because of the reported high levels of homosexual activity and intravenous drug abuse in the inmate population. It is thought that testing may help prevent unchecked transmission of the virus by identifying inmates who require special management, health services, or isolation. A number of states have initiated various forms of inmate testing. The Florida Department of Health is authorized to enter any state or local detention facility to test inmates for sexually transmitted diseases, including AIDS. The Delaware Department of Corrections is authorized to perform laboratory tests as are deemed important. Inmates in Iowa who bite, cause exchange of bodily fluid, or cause any bodily secretion to be cast on another are required to submit to withdrawal of a bodily fluids specimen for testing for the presence of HIV antibodies.

Testimony by representatives of the Department of Health and Consolidated Laboratories indicated that mandatory testing of inmates would serve a valuable purpose in identifying and tracking the presence of the HIV in what is regarded as a high risk environment. It was noted that voluntary testing, as opposed to mandatory testing, poses the risk of missing those who are in fact infected and refuse to submit to voluntary testing. The department has received anecdotal information, admittedly difficult to document, indicating the incidence of aggressive sexual behavior by some inmates within the Penitentiary. Testimony by representatives of the State Penitentiary disputed this contention and stated that prison rape is not a problem at the Penitentiary and that interviews with a large portion of the inmate

population indicated that homosexual activity was not and would not be tolerated by inmates within the facility. Representatives of the Penitentiary opposed mandatory testing of the inmate population stating that the voluntary testing program currently in place has worked well. Intensive education and counseling efforts has resulted in all inmates submitting to testing without incident. It was also noted that not knowing if a particular inmate was infected may have a limiting influence on the behavior of some inmates. Testimony indicated that two Penitentiary inmates have tested positive for the virus. One has been released and one has been segregated from the general prison population.

Testimony received by the committee from representatives of regional correctional facilities also expressed opposition to mandatory testing of facility inmates. It was noted that inmates are generally not held in the facilities for a long period of time and testing would impose significant costs on the county as well as require greater staff time in attending to the testing of inmates.

5. Those Convicted of Prostitution, Sexual Offenses, or Illegal Drug Use

Testimony received by the committee indicated that intravenous drug users are a population likely to be at high risk to spread the HIV to heterosexual individuals, either through their sexual or needle sharing partners. Similarly, prostitutes may use intravenous drugs, have numerous sexual partners, or practice high-risk sexual behaviors; thus providing a conduit for spreading the disease to the heterosexual population. Sexual offenders may also be considered a population at risk for transmission of the virus. Testimony also indicated that testing of drug abusers should be limited to those involved in intravenous drug abuse.

It was stressed by both those supporting and opposing mandatory testing that, if mandatory testing is adopted, stringent requirements regarding confidentiality must be adopted and vigorously enforced.

B. Cost of Testing

Testimony received by the committee indicated that the cost to the Department of Health and Consolidated Laboratories for an ELISA is approximately \$8 and the cost of the Western Blot test is approximately \$20 to \$30. Testimony indicated that, based upon 1985 statistics, there were approximately 15 arrests in the state for suspected prostitution; approximately 1,500 arrests for sexual offenses; approximately 50 arrests for forceable rape; and approximately 900 arrests for drug use related offenses, although it was uncertain how many of these arrests involved intravenous drug abuse. The department estimated a yearly total of approximately 2,000 cases of sexually transmitted diseases. The annual average Penitentiary inmate population available for testing is approximately 500. The approximate yearly cost of testing these groups would be \$35,000. The department estimated a yearly cost of approximately \$145,000 for testing inmates held in city and county jails, based upon a yearly

population of approximately 27,000 inmates. Testimony indicated that the cost for testing of blood, plasma, blood byproducts, tissue, organs, and other anatomical parts used for anatomical gifts is absorbed by individuals or third-party payors.

C. Reporting of AIDS and HIV Cases— Confidentiality of AIDS-Related Information

Representatives of the Department of Health and Consolidated Laboratories indicated that all cases of HIV infection occurring in North Dakota should be reported to the department. Such reporting is required by administrative rule but requiring reporting by statute is regarded as being of greater benefit in the long term. Although all 50 states have statutes or rules requiring the reporting of confirmed cases of AIDS, testimony indicated that North Dakota is one of only 12 states that require reporting of the HIV infection.

Confidentiality requirements in the context of those who have AIDS or the HIV infection emphasize the often difficult line that must be drawn between protecting and providing services for those with threatening diseases and protecting the health and well-being of the general public. The civil rights issues related to the confidentiality of HIV test results and diagnoses raise critical questions for health care professionals, employers, families, and patients. Victims of other diseases, including leprosy, tuberculosis, venereal diseases, epilepsy, and cancer have been subject to fear and social stigma for centuries. These problems have been exacerbated for AIDS since some of the major risk groups themselves, such as homosexuals and intravenous drug users, are often stigmatized and subject to legal sanctions. Some view the maintenance of confidentiality as fundamental in preventing discrimination and encouraging early detection through testing. In the health care setting, the belief that a physician will not disclose confidential information encourages patients to share freely personal information about health topics as sensitive as sexuality and drug use. Thus, the confidentiality of HIV test results and other personal medical records is considered critical to the success of any public health endeavor to prevent the transmission of the HIV infection and to develop systems of care for those infected with the HIV.

Representatives of the Department of Health and Consolidated Laboratories indicated the department would oppose mandatory testing unless there is a concomitant strengthening or enactment of statutes dealing with confidentiality. It was asserted that there should be a severe penalty for anyone who breaches confidentiality with regard to a person's HIV status or a person being afflicted with AIDS. Testimony also indicated that a lack of confidentiality seriously hampers the efforts of counselors to work with infected individuals and obtain names for the purposes of contact tracing. Additionally, it was feared that without adequate confidentiality measures, individuals will not present themselves for testing, thus frustrating efforts to counsel infected individuals and forestall the transmission of the disease. Testimony indicated that maintaining the

confidentiality of AIDS-related information is a serious problem in the state. A government employee is subject to a Class C felony if that person discloses confidential information acquired as a public servant and it was suggested that a similarly severe penalty should be considered for those who breach confidentiality regarding a person's HIV infection status.

The committee, in the course of reviewing measures to address the confidentiality issue, considered a bill draft adopting the Uniform Health Care Information Act. The bill draft would have established comprehensive provisions governing the release, transfer, and confidentiality of patient medical information and records. Testimony in support of the bill draft indicated that it represented a workable, common sense solution to the problem of adequately protecting confidentiality and clarified under what circumstances patient information could be shared with other health care professionals. The committee also reviewed information relating to the experience the state of Montana has had in implementing the Act. Montana is the only state that has adopted the Act. Information received from the Montana Hospital Association, Montana Nurses Association, and Montana Council of Mental Health Centers indicated that the Act sets out fairly clear rules regarding the release, transfer, and confidentiality of patient information and records and has worked well. Testimony in opposition to the bill draft adopting the uniform Act indicated that there was no need for such legislation because NDCC Chapter 43-17 controls the confidentiality of health care information and governs the release of medical records if release is required.

The committee also reviewed various state statutes more narrowly directed at AIDS-related situations which establish the confidentiality and methods for release of HIV test results.

D. Discrimination

An important aspect of issues centering on civil rights and confidentiality is the issue of discrimination against HIV carriers and those with AIDS or AIDS-related complexes (ARC) in jobs, housing, education, and medical care. This discrimination results primarily from the social stigma associated with AIDS. The majority of states have statutory provisions that generally prohibit discrimination against handicapped individuals. North Dakota's prohibition against such discrimination is found in North Dakota Century Code Chapter 14-02.4. Some state laws have been interpreted to prohibit discrimination against individuals with AIDS, ARC, and the HIV infection. States in which AIDS has been declared a handicap either by court decision or a finding by the state agency enforcing antidiscrimination laws include California, Colorado, Connecticut, Delaware, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Mexico, Oregon, Texas, Washington, and Wisconsin. In addition, California, Florida, and Wisconsin have prohibited the use of AIDS tests to assist in screening for, determining the suitability for, or discharging a person from employment. California statutes protect realtors or property owners from having to disclose

to prospective tenants or owners that previous occupants of the property were infected with the HIV. Hawaii prohibits the requirement that, as a condition for using or maintaining housing, an individual must consent to the release of confidential information identifying the person as someone who has or may have any condition related to a sexually transmitted disease. The federal Rehabilitation Act of 1973, which applies to recipients of government contracts and grants and government agencies, also prohibits discrimination against those with handicaps and has been consistently interpreted by federal courts as extending protection to those with AIDS and ARC. Some federal courts have also interpreted the Rehabilitation Act as providing protection against discrimination on the basis of a person's HIV positivity status.

Representatives of the Department of Health and Consolidated Laboratories strongly recommended that North Dakota law should clearly prohibit discrimination against individuals with the HIV infection in the areas of housing, education, transportation, public accommodation, employment, and health care. This action is regarded as a vital component of any coherent effort to address the presence of the disease in the state and to prevent discriminatory acts that are occurring and will continue to occur unless effective state action is undertaken. Testimony received by the committee regarding individual instances of discrimination against those with the HIV illustrated that discriminatory practices are occurring in the area of housing, health care services, and employment. Testimony indicated that less than 12 percent of the dentists in the state are willing to provide dental services for a person with AIDS, ARC, or the HIV infection, although this contention was disputed by testimony indicating that as many as 40 percent of the dentists in the state have indicated a willingness to provide services for infected individuals. It was explained that the hesitancy on the part of dentists to provide services was based not on the fear of contracting AIDS in the dentist's office, but rather on the fear of what might happen to a dentist's practice in a community if it became known that the dentist was treating an individual with AIDS.

The most pressing issue posed to the committee was whether NDCC Chapter 14-02.4 should be amended to prohibit discrimination on the basis of an individual's HIV infection status. The chapter provides a broad spectrum of protection to ensure that all individuals are afforded equal opportunity and to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical handicap, or status with respect to marriage or public assistance. The chapter is intended to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions. In the course of examining this issue, the committee considered the following bill drafts:

1. A bill draft to amend NDCC Chapter 14-02.4 to prohibit discrimination on the basis of actual or perceived HIV infection status.

2. A bill draft to provide that a health care facility that receives state funds from whatever source may not discriminate in the provision of health care services on the basis of an individual's actual or perceived HIV infection status.
3. A bill draft to provide that it is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental handicap.

Testimony received by the committee indicated that it is uncertain whether an asymptomatic HIV infected person is protected under the category of physical or mental handicap as provided in Chapter 14-02.4. It was noted that interpretations of federal law and some state laws appear to clearly indicate that a person with AIDS would be regarded as having a handicap and would therefore be protected against discrimination. However, it was asserted that it is uncertain as a matter of federal or state law whether protections would extend to a person who is infected with the HIV and is asymptomatic, that is, does not overtly exhibit the handicapping conditions commonly associated with AIDS. It was recommended that a definition of disability or handicap be provided in Chapter 14-02.4 and that the definition include a specific reference to the HIV infection as a handicapping condition.

The committee, in an effort to address issues regarding the scope of the coverage provided by Chapter 14-02.4, reviewed the legislative history of the chapter's enactment and recent federal and state court decisions and the decisions of state agencies charged with enforcing antidiscrimination laws relating to the scope and meaning applied to "handicap." The committee concluded that Chapter 14-02.4 was intended to be broadly applied and therefore would provide protection against discrimination on the basis of AIDS, ARC, or a person's HIV infection status. The committee also concluded that amending Chapter 14-02.4 to provide a definition of handicap would be appropriate.

On the broader issue of the coverage of Chapter 14-02.4, the committee concluded that its actions on this issue would provide some evidence regarding legislative intent in this area. The committee concluded that nothing need be done legislatively because Chapter 14-02.4 as presently constituted provides protection for those infected with the HIV, including those with AIDS, ARC, and those who are asymptomatic.

E. Criminal Penalties for the Knowing Transfer of the HIV – Public Health Control Measures

Representatives of the Department of Health and Consolidated Laboratories indicated that criminal penalties should be adopted for persons infected with the HIV who persist in at-risk behavior capable of transmitting the virus. It was noted that in the extreme case such a penalty may be necessary to curtail the activities of a person who refuses to modify that person's behavior.

Testimony received by the committee further indicated that an effective mechanism short of

criminal sanctions is needed to deal with the individual who continues to engage in at-risk behavior after testing positive for the HIV. It was noted that existing quarantine statutes are woefully antiquated and inadequate in their failure to provide proper guidelines and due process safeguards in the event isolation of an individual is required. A properly constituted isolation procedure must be the least restrictive available and must respect the rights and liberties of those who continue to engage in at-risk behavior after testing positive while allowing public health authorities to institute appropriate measures to protect the public health.

The committee reviewed quarantine provisions under North Dakota law as well as quarantine and isolation provisions enacted in other states. The committee also discussed the advisability of providing isolation procedures specific to individuals with the HIV who continue to engage in at-risk behavior after testing positive as well as modernizing North Dakota quarantine statutes as they relate generally to communicable and infectious diseases.

F. Education

Testimony received by the committee indicated that every school district should implement a policy governing the disposition of children with the HIV in schools and employees of schools who are infected with the HIV. It was strongly urged that such a policy allow flexibility to the school districts to ensure that each district is able to address its own unique needs. The committee also reviewed proposed draft legislation relating to a comprehensive health education curriculum that was developed by the Department of Health and Consolidated Laboratories and the Department of Public Instruction.

Recommendations

The committee recommends Senate Bill No. 2048 to provide for mandatory testing for the presence of antibodies to the HIV of anatomical parts used for anatomical gifts, including blood, body tissue, and organs; inmates of grade 1 or 2 jails, regional correctional facilities, and the State Penitentiary; and individuals, whether imprisoned or not, who are convicted of certain drug and sexual offenses. The bill does not contain an appropriation for the estimated cost of testing.

The committee recommends Senate Bill No. 2049 to require physicians and certain other individuals to report cases of HIV infection, establish confidentiality of the reports, and provide a Class C felony penalty for those required to report HIV cases who violate the confidentiality of those reports.

The committee recommends Senate Bill No. 2050 to establish the confidentiality of the results of a test for the presence of the antibodies to the HIV. The bill would establish limited exceptions to the confidentiality requirement and would provide civil liability and a Class C felony penalty for the unlawful disclosure of HIV test results.

The committee recommends Senate Bill No. 2051 to provide that it is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person

with a physical or mental handicap. The bill would also add a definition of handicap to Chapter 14-02.4. The definition is essentially the same as that contained in the federal Rehabilitation Act of 1973, which has been consistently interpreted as including HIV infection status as a handicapping condition. The committee was concerned that listing a specific condition as a handicap may result in future issues concerning whether a particular condition is included in the definition if it is not specified. Thus, the definition does not include a specific reference to HIV infection.

The committee recommends Senate Bill No. 2052 to provide that a person who, knowing that that person is or has been afflicted with AIDS, afflicted with ARC, or infected with the HIV, willfully transfers any of that person's body fluid to another person is guilty of a Class A felony. An affirmative defense to a prosecution would be available if the transfer was by sexual activity and the sexual activity took place between consenting adults after full disclosure of the risk of such activity. The bill would also provide public health procedures and due process safeguards for dealing with those individuals who are infected with the HIV and are considered to be a threat to public health. The bill would establish procedures for court hearings and participation by the affected individual. At the individual's request, the court hearing would be closed and all reports, transcripts, records, or other information relating to the court hearing would be kept confidential.

The committee recommends Senate Bill No. 2053 to establish isolation measures and procedures for those individuals with a contagious or infectious disease who are determined to be a threat to public health. The bill is intended to modernize North Dakota quarantine and isolation law by providing adequate due process safeguards and guidelines for the isolation of individuals determined to be a threat to public health.

The committee recommends Senate Bill No. 2054 to require school districts to adopt a policy concerning students, employees, and independent contractors who are diagnosed as having the HIV infection. Guidelines for the policy would be adopted by the Department of Health and Consolidated Laboratories with the advice of the Superintendent of Public Instruction. The bill would require that the policy adopted by a school district must be in substantial compliance with the guidelines but the school district could accommodate the individual requirements of the school district.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of eight members and is statutorily established by NDCC Section 54-55-01. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The national conference consists of representatives of all states and its purpose is to promote uniformity in state law on all subjects where uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under NDCC Sections

54-35-02 and 54-55-04, the state commission must submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Council for its review and recommendation during the interim between legislative sessions.

The state commission recommended 11 uniform Acts to the Legislative Council for its review and recommendation. These Acts range from minor amendments to existing uniform Acts adopted in North Dakota to comprehensive legislation on subjects not covered by existing state law. The 11 Acts were the Uniform Law on Notarial Acts; Uniform Statutory Rule Against Perpetuities; Uniform Custodial Trust Act; Uniform Conservation Easement Act; Uniform Commercial Code, Article 2A-Leases; Uniform Condominium Act; Uniform Anatomical Gift Act (1987); and proposed amendments to the Uniform Limited Partnership Act, Uniform Trade Secrets Act, Uniform Federal Lien Registration Act, and Uniform Probate Code.

Uniform Law on Notarial Acts

The National Conference of Commissioners on Uniform State Laws recommended the Uniform Law on Notarial Acts to the various states for adoption in August 1982. The American Bar Association approved the uniform law in February 1983. The uniform law is recommended by the National Conference as a replacement for the Uniform Recognition of Acknowledgments Act, which was enacted in North Dakota and is codified as North Dakota Century Code Sections 47-19-14.1 through 47-19-14.8.

The committee received and reviewed information comparing North Dakota law, NDCC Sections 47-19-14.1 through 47-19-14.8, with the Uniform Law on Notarial Acts.

Testimony in support of the Uniform Law on Notarial Acts indicated that the uniform law would update, simplify, and streamline many provisions currently found in NDCC Sections 47-19-14.1 through 47-19-14.8. There was no testimony in opposition to the Act.

Uniform Statutory Rule Against Perpetuities

The National Conference of Commissioners on Uniform State Laws recommended the Uniform Statutory Rule Against Perpetuities to the various states for adoption in August 1986. The American Bar Association approved the uniform statutory rule in February 1987.

The committee received and reviewed information comparing North Dakota law, NDCC Section 47-02-27, with the Uniform Statutory Rule Against Perpetuities. In *Nantt v. Puckett Energy Co.*, 382 N.W. 2d 655, 661 (N.D. 1986), the North Dakota Supreme Court said:

A "second look" or "wait and see" doctrine [regarding the rule against perpetuities] has developed in modern times. . . . While this rule is still evolving and is not yet a prevailing rule, it is a basic common sense approach to "perpetuities" today. It is an alternative better than condemning modern commercial transactions for conflicting with ancient rules of property.

It is essentially this "wait and see" method that the National Conference has recommended in the form of the Uniform Statutory Rule Against Perpetuities to the various states for adoption.

Testimony in explanation of the Uniform Statutory Rule Against Perpetuities indicated that the rule would create a "wait and see" test based on a 90-year period for determining the validity or vesting of future interests in property. This test would replace the current rule that extinguishes or validates present interests on the basis of some possible future event. Committee members suggested that the uniform rule should be studied further.

Uniform Custodial Trust Act

The National Conference of Commissioners on Uniform State Laws approved the Uniform Custodial Trust Act in August 1987. The Act was approved by the American Bar Association in February 1988. The Act would allow the creation of a statutory trust for the management of property for the support of adult persons and would provide an alternative to management of assets by a court-appointed conservator or guardian, or an agent under a durable power of attorney.

The committee received and reviewed information comparing North Dakota law, NDCC Chapter 30.1-29 (concerning appointment of a conservator), with the Uniform Custodial Trust Act.

Testimony in explanation of the Uniform Custodial Trust Act indicated that the Act would provide an additional option for those seeking to establish a trust for the management of their property for their support. There was no testimony in opposition to the Act.

Uniform Conservation Easement Act

The National Conference of Commissioners on Uniform State Laws recommended the Uniform Conservation Easement Act to the various states for adoption in August 1981. The American Bar Association approved the Act in January 1982.

The 1983 Legislative Assembly enacted amendments to NDCC Section 55-10-08 to authorize the state and other instrumentalities of government to acquire a historic easement. This legislation incorporated significant portions of the Uniform Conservation Easement Act, although the legislation was directed at historic easements.

The committee received and reviewed information comparing North Dakota law, NDCC Section 55-10-08, with the Uniform Conservation Easement Act.

Testimony in explanation of the Uniform Conservation Easement Act indicated that, given current statutory provisions, there may be no need for adoption of the Act at the present time.

Uniform Commercial Code, Article 2A-Leases

The Uniform Commercial Code, Article 2A-Leases was approved by the National Conference of Commissioners on Uniform State Laws in March 1987 and approved by the American Law Institute in May 1987.

The committee received and reviewed information comparing North Dakota law, NDCC Chapter 47-15,

with the Uniform Commercial Code, Article 2A-Leases.

Testimony in explanation of Article 2A indicated that North Dakota law governing personal property leasing is antiquated and is not adequate to the needs of modern personal property leasing practices. There was no testimony in opposition to the article.

Uniform Condominium Act

The National Conference of Commissioners on Uniform State Laws approved the Uniform Condominium Act in August 1977, and approved amendments in August 1980. The American Bar Association approved the Act in February 1978.

The committee received and reviewed information comparing North Dakota law, NDCC Chapter 47-04.1, with the Uniform Condominium Act.

Testimony in explanation of the Uniform Condominium Act indicated that North Dakota condominium law appears inadequate to address current issues in this area. Testimony in opposition to the Act indicated that the Act is complex and detailed and does not recognize the unique problems associated with condominium development in North Dakota as opposed to the needs of larger, more populated states such as Florida, New York, and California.

Uniform Anatomical Gift Act (1987)

The National Conference of Commissioners on Uniform State Laws recommended the Uniform Anatomical Gift Act (1987) to the various states for adoption in August 1987. The Act was approved by the American Bar Association in February 1988. The Act is recommended by the National Conference as a replacement for the Uniform Anatomical Gift Act, which was enacted by the Legislative Assembly in 1969 and is codified as NDCC Chapter 23-06.1. The 1987 Act retains and rearranges many of the provisions found in North Dakota Century Code Chapter 23-06.1 and proposes several new sections.

The committee received and reviewed information comparing North Dakota law, NDCC Chapter 23-06.1, with the Uniform Anatomical Gift Act (1987).

Testimony in support of the Uniform Anatomical Gift Act (1987) indicated that the Act would provide more options to facilitate the making of anatomical gifts. It was noted that the Act's provisions governing procurement and utilization of anatomical gifts and prohibiting the knowing purchase or sale of body parts were valuable and much needed additions to the law governing anatomical gifts. Further testimony indicated that the Act appears to establish a presumption in favor of the making of an anatomical gift, which was regarded as an important addition to current law given the urgent and pressing need in many cases for anatomical gifts. There was concern expressed, however, that such a presumption may lead to abuses. There was no testimony in opposition to the Act.

Amendments to the Uniform Limited Partnership Act

In 1976 the National Conference of Commissioners on Uniform State Laws adopted and recommended to

the states a revision of the Uniform Limited Partnership Act. The revised Act was enacted by the Legislative Assembly in 1985 and is codified as NDCC Chapter 45-10.1. The National Conference approved and recommended amendments to the Act in August 1985. The American Bar Association approved the Act and amendments in February 1986.

The committee received and reviewed information comparing North Dakota law, NDCC Chapter 45-10.1, with the proposed amendments to the Uniform Limited Partnership Act.

Testimony in support of the amendments to the Uniform Limited Partnership Act indicated that many of the proposed changes would have the effect of providing the limited partners in a partnership with greater control. Additionally, it was noted that the changes would expand the protection provided to limited partners who do not hold themselves out to be nor act as general partners. There was no testimony in opposition to the amendments.

Amendments to the Uniform Trade Secrets Act

In 1979 the National Conference of Commissioners on Uniform State Laws recommended the Uniform Trade Secrets Act to the various states for adoption. The Act was approved by the American Bar Association in February 1980. The Act was enacted by the Legislative Assembly in 1983 and is codified as NDCC Chapter 47-25.1. In 1985 the National Conference recommended amendments to those sections governing injunctive relief, damages, effect on other law, and the effective date of the Act. The amendments were approved by the American Bar Association in February 1986. The affected North Dakota laws are, respectively, NDCC Sections 47-25.1-02, 47-25.1-03, and 47-25.1-07, and Section 9 of Chapter 508 of the 1983 Session Laws, relating to the effective date of the Act.

The committee received and reviewed information comparing North Dakota law with the proposed amendments to the Uniform Trade Secrets Act.

Testimony in support of the amendments to the Uniform Trade Secrets Act indicated that the amendments would, in part, codify the holdings in recent court decisions. It was further noted that the amendments would provide some protection for innocent third parties who acquire knowledge of trade secrets and through no fault of their own are using the trade secrets to their benefit. There was no testimony in opposition to the amendments.

Amendments to the Uniform Federal Lien Registration Act

In 1978 the National Conference of Commissioners on Uniform State Laws recommended the Uniform Federal Lien Registration Act to the various states for adoption. The Act was approved by the American Bar Association in February 1979 and was enacted by the Legislative Assembly in 1979 and is codified as NDCC Chapter 35-29. In 1982 the National Conference recommended amendments to the section of the Act governing the place of filing notices of federal liens upon personal property and certificates and notices affecting the liens.

The committee received and reviewed information

comparing North Dakota law, NDCC Section 35-29-02, with the proposed amendments to the Uniform Federal Lien Registration Act.

Testimony in support of the amendments to the Uniform Federal Lien Registration Act indicated that the amendments would generally affect where a person would file a federal lien against personal property and would codify the present practice of filing federal liens with the Secretary of State.

Amendments to the Uniform Probate Code

The National Conference of Commissioners on Uniform State Laws recommended the Uniform Probate Code to the various states for adoption in 1969. The probate code was approved by the American Bar Association in August 1969. The probate code was enacted by the Legislative Assembly in 1973 and is codified as NDCC Title 30.1. The National Conference, in July 1987, approved amendments to the Uniform Probate Code and recommended the amendments to the various states for adoption.

The committee received and reviewed information comparing North Dakota law, NDCC Title 30.1, with the proposed amendments to the Uniform Probate Code.

Testimony in explanation of the proposed amendments to the Uniform Probate Code indicated that most of the amendments are basic measures designed to clarify and update current statutory provisions. There was no testimony in opposition to the amendments.

Recommendations

The committee recommends adoption of the Uniform Law on Notarial Acts. The Act would streamline and update current law governing notarial acts.

The committee recommends adoption of the Uniform Commercial Code, Article 2A-Leases. The article would provide clear statutory guidance for modern personal property leasing practices.

The committee recommends adoption of the amendments to the Uniform Limited Partnership Act. The amendments would provide greater control and protections to limited partners in a partnership.

The committee recommends adoption of the amendments to the Uniform Trade Secrets Act. The amendments would codify recent court decisions and would provide additional protection for third parties who innocently acquire trade secrets and use the trade secrets to their benefit.

The committee recommends adoption of the amendments to the Uniform Federal Lien Registration Act. The amendments would codify present practice relating to filing federal liens.

The committee recommends adoption of the amendments to the Uniform Probate Code. The amendments would clarify and update provisions of the Uniform Probate Code in light of current practice.

The committee recommends that the Uniform Statutory Rule Against Perpetuities not be adopted. Further study should be made before determining whether the statutory rule should be adopted.

The committee recommends that the Uniform Condominium Act not be adopted. The Act appears

to be too complicated and burdensome for current condominium development practices in the state.

The committee makes no recommendation with respect to the Uniform Custodial Trust Act and the Uniform Conservation Easement Act.

Recommended Bill

The committee recommends Senate Bill No. 2055 to adopt the Uniform Anatomical Gift Act (1987). The Act provides needed improvements in the area of procurement and utilization of anatomical gifts and further expands methods by which anatomical gifts can be made.

STATUTORY REVISION

The committee was assigned revision responsibilities relating to resolving conflicts between statutes, clarifying the application of statutes, and amending statutes that have been invalidated or otherwise substantively affected by court decisions. The committee's revision responsibilities also include making technical corrections that eliminate inaccurate or obsolete name and statutory references and superfluous language.

Motor Vehicle Equipment Violations—Recommendation

In Opinion 87-25, dated December 28, 1987, the Attorney General considered whether a violation of NDCC Chapter 39-21 is punishable as an infraction as apparently provided by Section 39-21-46(1) or whether the violation is a noncriminal offense subject to the procedures provided in NDCC Section 39-06.1-02. The Attorney General concluded that a violation of Chapter 39-21 is an infraction unless another penalty is specifically provided. In reaching this conclusion, the Attorney General noted the apparent conflict between Section 39-21-46(1), which classifies violations of Chapter 39-21 as infractions, and provisions of Chapter 39-06.1, which indicate that violations of various sections of Chapter 39-21 are noncriminal traffic offenses. After a review of the relevant sections of Chapters 39-21 and 39-06.1 and related statutory provisions, the committee concluded that there is a clear conflict between these provisions regarding whether violations of Chapter 39-21 are considered infractions or noncriminal traffic offenses.

The committee recommends House Bill No. 1053 to amend all pertinent North Dakota Century Code sections to clarify which violations of Chapter 39-21, governing motor vehicle equipment are infractions and which violations are noncriminal traffic offenses.

Notice to Creditors—Recommendation

In a recent decision, Tulsa Professional Collection Services, Inc. v. Pope, _____ U.S. _____, 99 L.Ed. 2d 565 (1988), the United States Supreme Court considered the validity of a statute requiring notice only by publication to creditors who may have claims against a decedent's estate. At issue was a "nonclaim statute" that generally barred creditors' claims arising upon a contract where the claims had not been presented to the executor or executrix of a decedent's estate within two months of the publication of a notice advising creditors of the beginning of probate

proceedings. The court held that the Oklahoma statute violated the due process clause of the 14th Amendment to the United States Constitution because, although the statute provided solely for notice by publication, due process required that actual notice be given to known or reasonably ascertainable creditors of the decedent by mail or other means as certain to ensure actual notice. The court reasoned that a creditor's claim, as a cause of action against the estate for an unpaid bill, was an intangible property interest protected by the due process clause and that the operation of the Oklahoma statute could adversely affect a creditor's protected property interest by barring untimely claims and causing probate proceedings to extinguish such claims.

North Dakota Century Code Section 30.1-19-03 is essentially similar to the Oklahoma provision invalidated by the court. Section 30.1-19-03 provides in part that all claims against a decedent's estate which arose before the death of the decedent and are founded on contract are barred against the estate unless presented within three months after the date of the first publication of notice to creditors if notice is given in compliance with Section 30.1-19-01. Section 30.1-19-01 provides:

Unless notice has already been given under this section, a personal representative upon his appointment may publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within three months after the date of the first publication of the notice or be forever barred.

Section 30.1-19-01 is virtually identical to the Oklahoma statute that establishes the general notice requirements for creditors' claims against a decedent's estate.

The committee recommends House Bill No. 1054 to amend Section 30.1-19-01 and related sections to provide that if a personal representative elects to publish a notice to creditors, the personal representative must mail a copy of the notice to those creditors whose identities are known to the personal representative or are reasonably ascertainable and who have not already filed a claim.

Juries in Felony Cases—Recommendation

North Dakota Century Code Section 29-17-12 provides that in all felony cases a jury must consist of six qualified jurors unless the defendant makes a timely written demand for a jury of 12. The North Dakota Supreme Court, in State v. Hegg, 410 N.W.2d 152 (N.D. 1987), declared Section 29-17-12 unconstitutional insofar as it violated a defendant's state constitutional right to a jury of 12 in felony cases.

The committee recommends House Bill No. 1055 to amend NDCC Section 29-17-12 to provide for a jury of 12 in felony cases.

Appointment of a Guardian Ad Litem—Recommendation

North Dakota Century Code Section 30.1-28-03 requires a court to appoint a guardian ad litem for an allegedly incapacitated person if the person is not represented by counsel and a petition for a finding of incapacity has been filed. North Dakota Century Code Section 30.1-28-09(2), however, provides that the representation of the alleged incapacitated person by a guardian ad litem at a proceeding for the appointment or removal of the person's guardian is not necessary. Testimony received by the committee indicated that the apparent conflict between these sections relating to the appointment of a guardian ad litem has resulted in uncertainty regarding the application of the sections and inconsistent application by some courts.

The committee recommends House Bill No. 1056 to require the appointment of a guardian ad litem in any proceeding under Section 30.1-28-09(2) to appoint or remove a guardian of an incapacitated person.

Bad Check Collection—Recommendation

The North Dakota Supreme Court, in State v. Ohnstad, 392 N.W.2d 389 (N.D. 1986), considered the application of NDCC Section 6-08-16, which governs issuing a check without sufficient funds or credit. At issue, in part, was the notice of dishonor sent by Cass County specifying that if a bad check had not been redeemed within 10 days the state's attorney would consider criminal charges. In Cass County the majority of those persons whose checks came to the attention of the state's attorney for prosecution responded to the notices of dishonor and were not prosecuted; the vast majority of persons charged with violations of Section 6-08-16 were people who received the notice but did not pay the check; and in most cases they were not prosecuted if they paid the check. The court found that Section 6-08-16 was not, on its face, defective, but when combined with the practice used in Cass County resulted in an impermissible method of prosecuting bad check offenses.

The committee considered a bill draft that would have deleted the notice of dishonor contained in North Dakota Century Code Section 6-08-16 and Section 6-08-16.2, which governs issuing a check without an account or sufficient funds. Testimony received by the committee indicated that this change was unnecessary and, if adopted, may deter merchants from sending notices of dishonor and thereby reduce the number of cases resolved short of criminal prosecution. However, testimony did indicate that Section 6-08-16.1, which governs issuing a check or draft without an account, was deficient in applying only to banks while Sections 6-08-16 and 6-08-16.2 apply to both banks and depositories. It was noted that it may not be possible, under Section 6-08-16.1, to prosecute a person for drafts drawn on a closed credit union account because credit unions are not regarded as banks. Credit unions, however, appear to be classified as depositories.

The committee recommends House Bill No. 1057 to amend NDCC Section 6-08-16.1 to include a reference to depositories to correct the disparity and ensure that

credit unions are protected against those who may issue a draft without an account.

Technical Corrections—Recommendation

The committee recommends Senate Bill No. 2056 to make technical corrections throughout the Century Code. The bill would eliminate inaccurate or obsolete name and statutory references or superfluous language. The following table lists the sections affected and describes the reasons for the change:

North Dakota Century Code

<u>Section</u>	<u>Reason for Change</u>
4-10-19	The reference change corrects an improper statutory reference.
6-09.11-04	The change in subsection 7 corrects a typographical error.
10-19.1-116(3)	1987 Senate Bill No. 2267, introduced at the request of the Workmen's Compensation Bureau, changed the name of the Workmen's Compensation Bureau to the Workers Compensation Bureau. The bill did not give the Legislative Council authority to make changes to references other than with respect to the name of the bureau. This change would make the references uniform.
11-10-10(2)	This change eliminates the "void" with respect to counties with a population of 8,000 people.
11-13-18	The reference to Section 39-06-39 is deleted because Section 39-06-39 was repealed by S.L. 1987, ch. 461, Section 4.
12.1-12-02	The reference to Section "14" is changed to Section "9" because Section 14 of Article IV was renumbered as Section 9 of Article IV effective December 1, 1986.
12.1-12-09	See explanation for Section 12.1-12-02.
13-03.1-15(1)	Section 13-03.1-03 provides that persons licensed under the chapter may engage in the business of lending in amounts of more than \$1,000. This change makes the two sections compatible. Chapter 13-03 applies to loans of \$1,000 or less.
14-09-09.10(3)	See explanation for Section 10-19.1-116(3).
16.1-15-06	The reference change corrects an improper statutory reference.
19-18-04	This section as originally enacted in S.L. 1943, ch. 182, Section 4, contained the word "or" in the last sentence. The "or" was inadvertently deleted in later publications and is reinstated by this change.
20.1-01-07	The addition of "land" completes the sentence.
21-10-06	See explanation for Section 10-19.1-116(3).

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Section	Reason for Change
23-01-09	The word "include" is superfluous.
23-07-01.1(2)	The reference to Section 39-06-39 is deleted because Section 39-06-39 was repealed by S.L. 1987, ch. 461, Section 4.
23-07.1-03	See explanation for Section 10-19.1-116(3).
23-13-02.3(2)	1987 Senate Bill No. 2542 changed references in Section 39-01-15 from physically handicapped to mobility impaired and added several new subsections.
24-01-22.1	The reference to Section 14 is changed to Section 16 because Section 14 of the constitution was renumbered in 1981 as Section 16 of Article I.
25-03.1-26(1)	The change of "to" to "of" makes the sentence understandable.
25-04-06	1985 House Bill No. 1062, effective July 1, 1989, transferred control of Grafton State School to the Department of Human Services. The references to mentally deficient were changed to developmentally disabled.
25-04-07	See explanation for Section 25-04-06.
25-04-11.1	See explanation for Section 25-04-06.
25-04-14	See explanation for Section 25-04-06.
25-04-15(2)	See explanation for Section 25-04-06.
25-04-16(3)	See explanation for Section 25-04-06.
26.1-09-09	This change corrects an improper statutory reference.
26.1-25-02(4)	See explanation for Section 10-19.1-116(3).
26.1-30.1-01	See explanation for Section 10-19.1-116(3).
26.1-36-01	See explanation for Section 10-19.1-116(3).
26.1-36-04(2)(i) (j)	See explanation for Section 10-19.1-116(3).
26.1-39-10	See explanation for Section 10-19.1-116(3).
26.1-41-08	See explanation for Section 10-19.1-116(3).
26.1-41-13(1)	See explanation for Section 10-19.1-116(3).
28-01-44(1)	This change removes obsolete language.
30.1-12-05	Section 3-105 of the Uniform Probate Code, the basis for Section 30.1-12-05, specifies that the court "has concurrent jurisdiction of any other action . . . including actions to determine title to property alleged to belong to the estate . . ."

**North Dakota
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Section	Reason for Change
34-13-01(4)	See explanation for Section 10-19.1-116(3).
36-01-21	The insertion of the comma clarifies the meaning of subsection 1.
37-17.1-16	See explanation for Section 10-19.1-116(3).
38-14.1-14(3)	See explanation for Section 10-19.1-116(3).
38-14.1-40(4)	See explanation for Section 10-19.1-116(3).
39-03.1-26	See explanation for Section 10-19.1-116(3).
39-04-10.2	See explanation for Section 23-13-02.3.
39-06.1-06(7)	See explanation for Section 23-13-02.3.
39-07-07.1	See explanation for Section 23-13-02.3.
39-16.1-11(5)	See explanation for Section 10-19.1-116(3).
40-23.1-13	The reference change corrects an incorrect statutory reference.
40-40-15	The reference to Section 40-40-17 is deleted because Section 40-40-17 was repealed by S.L. 1987, ch. 497, Section 3.
43-07-01(5)	See explanation for Section 10-19.1-116(3).
43-07-04	See explanation for Section 10-19.1-116(3).
43-07-11	See explanation for Section 10-19.1-116(3).
43-32-10	The references to Sections 43-17-09 and 43-17-10 are deleted because Sections 43-17-09 and 43-17-10 were repealed by S.L. 1987, ch. 525, Section 13. Reference to Chapter 28-32 is inserted as Chapter 28-32 provides procedures for the subpoena of witnesses by administrative agencies.
50-06-01.3	The reference to Section 44-01-06 is deleted because Section 44-01-06 was repealed by S.L. 1987, ch. 537, Section 1. Section 44-01-06 required most elected and appointed state officials to be bonded.
50-06.3-05	See explanation for Section 10-19.1-116(3).
51-04-01	The insertion of a comma corrects a typographical error.
52-01-02	See explanation for Section 10-19.1-116(3).
52-06-01(3)	See explanation for Section 10-19.1-116(3).
52-06-27	See explanation for Section 10-19.1-116(3).

North Dakota Century Code	
Section	Reason for Change
54-27-20.2(2)	The reference to Section 54-27-20.1 is deleted because Section 54-27-20.1 was repealed by S.L. 1987, ch. 35, Section 5.
54-27-20.3	See explanation for Section 54-27-20.2(2).
54-52-17(4)(e)	See explanation for Section 10-19.1-116(3).
54-52.1-01(4)	See explanation for Section 10-19.1-116(3).
55-10-08(6)	The reference to Section 39-29-02 is deleted because Chapter 32-29 was repealed by S.L. 1987, ch. 408, Section 23. Present provisions relating to arbitration are found in Chapter 32-29.1. The new language on execution of the submission is taken from former Section 32-29-02.
57-38-01(10)	The reference to Chapter 57-38.2 is deleted because Chapter 57-38.2 was repealed by S.L. 1987, ch. 694, Section 11. The general reference to any section of the Code makes the specific references unnecessary.
59-01-03	This change places the citations in proper form.
61-01-01	The change in subsection 4 corrects improper language usage.
61-01-26	Although the bill draft creating this section referred to chapter it was referring to Session Laws chapter. The correct reference after publication is to section.
61-03-20	This change with respect to "oftener" corrects improper language usage.
61-04.1-16(2)(e)	See explanation for Section 10-19.1-116(3).
61-16.1-06	The reference to Section 61-16.1-13 is deleted because Section 61-16.1-13 was repealed by S.L. 1985, ch. 678, Section 2.
61-16.1-20	The change of "city" to "county" corrects a typographical error.

North Dakota Century Code	
Section	Reason for Change
61-31-09	The reference to Section 61-16.1-41 is deleted and replaced with Section 61-32-03 because Section 61-16.1-41 was repealed by S.L. 1987, ch. 642, Section 13, and present provisions relating to a drainage permit are found in Section 61-32-03.
65-01-01	See explanation for Section 10-19.1-116(3).
65-01-02(9)(13)	See explanation for Section 10-19.1-116(3).
65-01-05	See explanation for Section 10-19.1-116(3).
65-01-11	See explanation for Section 10-19.1-116(3).
65-02-01	See explanation for Section 10-19.1-116(3).
65-04-02	See explanation for Section 10-19.1-116(3).
65-04-04.1	See explanation for Section 10-19.1-116(3).
65-04-27.1(1)	See explanation for Section 10-19.1-116(3).
65-04-29	See explanation for Section 10-19.1-116(3).
65-05-09.1	See explanation for Section 10-19.1-116(3).
65-05.1-01	See explanation for Section 10-19.1-116(3).
65-05.1-03(1)	See explanation for Section 10-19.1-116(3).
65-05.1-07	See explanation for Section 10-19.1-116(3).
65-05.2-01	See explanation for Section 10-19.1-116(3).
65-05.2-04	See explanation for Section 10-19.1-116(3).
65-06.2-02(3)	See explanation for Section 10-19.1-116(3).
65-06.2-03	See explanation for Section 10-19.1-116(3).
65-08-02	See explanation for Section 10-19.1-116(3).
65-08-03	See explanation for Section 10-19.1-116(3).
65-08-04	See explanation for Section 10-19.1-116(3).

LAW ENFORCEMENT COMMITTEE

The Law Enforcement Committee was assigned four studies. Senate Concurrent Resolution No. 4010 directed a study of alternative means of providing protective services for vulnerable adults who are subject to abuse, neglect, self-neglect, or exploitation. Senate Concurrent Resolution No. 4017 directed a study of the reporting, investigation, prosecution, and treatment procedures of child abuse and neglect cases and to determine whether state law protects the interests of justice and of all parties involved in those cases. Senate Concurrent Resolution No. 4026 directed a study of the state's role in the handling, assisting, or funding of victims of and witnesses to crimes. Senate Concurrent Resolution No. 4031 directed a study of the Uniform Juvenile Court Act, child abuse and neglect laws, other state and federal laws, and current administrative rules and practices between the juvenile courts and other state departments, agencies, and institutions regarding the confidentiality of records, the flow and management of information contained in those records, and the exchange and use of records and information relating to services provided to minors.

Committee members were Representatives John T. Schneider (Chairman), Jim Brokaw, Connie L. Cleveland, Judy L. DeMers, Kenneth Knudson, Tom Kuchera, Dale Marks, Marshall W. Moore, David O'Connell, Cathy Rydell, Archie R. Shaw, Dan Ulmer, and Adella J. Williams and Senators Rick Maixner, Jim Maxson, Donna Nalewaja, and Jerry Waldera.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

ADULT PROTECTIVE SERVICES STUDY

Adult Protective Services Demonstration Project

The 1987 Legislative Assembly, in addition to directing a study of alternative means of providing protective services for vulnerable adults, enacted legislation requiring the North Dakota Department of Human Services to develop, design, and manage an adult protective services demonstration project (demonstration project) through June 30, 1989. The Department of Human Services was directed to develop the demonstration project pursuant to the objectives of (1) developing cost estimates and a statewide model for the delivery of protective services to vulnerable adults; and (2) identifying the number of abused, neglected, self-neglected, or exploited vulnerable adults in the project area; the basic and emergency services necessary for, and existing services available to, vulnerable adults; and those services not being provided to vulnerable adults in the project area. For purposes of the demonstration project, the legislation defined a vulnerable adult as an "adult impaired because of mental illness, developmental disability, physical illness or disability, or chronic use of drugs or alcohol to such an extent that the adult is unable or unlikely to report or seek the help of proper authorities in situations of abuse, neglect, self-neglect, or exploitation." The department was also directed to encourage the voluntary reporting

of abuse, neglect, self-neglect, and exploitation of vulnerable adults and to implement policies for the receipt and investigation of those reports.

As a component of the adult protective services study, the committee was directed to receive information and research data obtained by the Department of Human Services through activities of the demonstration project. The committee monitored the development and implementation of the demonstration project by receiving periodic progress reports, information and research data, and recommendations that were reviewed by the committee prior to drafting and considering proposed adult protective services legislation.

Demonstration Project Activities

For the purpose of ascertaining the model of intervention appropriate to best meet the needs of vulnerable adults in North Dakota, the Department of Human Services selected three sites for developing the demonstration project.

The counties of Burleigh and Morton were selected to demonstrate the effectiveness of delivering adult protective services utilizing a law enforcement intervention model, which focused on the legal system as the primary mode of delivering adult protective services. Under this model, reports of the abuse, neglect, self-neglect, or exploitation of vulnerable adults were received and thereafter investigated by a law enforcement officer in a manner similar to law enforcement investigations of assault complaints. In each case the law enforcement officer took necessary legal action or referred the case to another agency.

Cass County Social Services was selected to demonstrate the effectiveness of the advocacy intervention model, which emphasized the provision of outreach services and a nonjudgmental, problem-solving approach to dealing with vulnerable adults while maintaining each vulnerable adult's right to accept or refuse adult protective services if the vulnerable adult was mentally competent to do so.

The Lake Region Human Service Center was selected to demonstrate the effectiveness of delivering adult protective services on a regional, rather than county, basis. The Lake Region Human Service Center served the counties of Benson, Cavalier, Eddy, Ramsey, Rolette, and Towner and also two Indian reservations—the Turtle Mountain Band of Chippewa and the Devils Lake Sioux Tribe. The provision of adult protective services at this site was facilitated through cooperative agreements entered into between the Lake Region Human Service Center and the various tribal governments and counties. Although this regional approach utilized an intervention model more consonant with the advocacy, rather than the law enforcement, intervention model, the site was nevertheless unique in that it utilized a multidisciplinary "team" approach to making case decisions. The multidisciplinary team was composed of representatives of the community, including representatives of law enforcement and legal assistance agencies, nursing and nutrition services, social services agencies, and others, who met on a

monthly basis to review reports and investigation findings relating to suspected adult maltreatment and to participate in case planning.

All three demonstration project sites assessed reports of alleged maltreatment of vulnerable adults, provided other adult protective services, and conducted public education campaigns. The three demonstration project sites served a combined population consisting of approximately 34 percent of the state population.

The Department of Human Services contracted with the Consortium on Gerontology at the University of North Dakota to conduct research concerning the provision of adult protective services in other states, to receive case data from the demonstration project sites for the purpose of compiling demographic information, and to develop cost estimates and identify trends relating to the provision of adult protective services.

Demonstration Project Findings

In their final report dated August 30, 1988, representatives of the demonstration project indicated that almost all states have enacted legislation that addresses the issue of elder abuse or the provision of adult protective services; however, elder abuse and adult protective services laws lack uniformity from state to state as many variations and permutations exist giving each state's law a special characteristic. Although many of these variations within states' laws probably reflect, in part, different governmental structures at the state and local level as well as prevailing attitudes toward spending public funds, other variations appear to reflect philosophical differences that exist with respect to the appropriate level of intrusiveness and scope of adult protective services and appropriate intervention model. For example, representatives of the demonstration project indicated that other states' laws vary in defining the population of persons eligible to receive adult protective services. Many states' laws provide coverage for persons 18 years of age or older, while many other states' laws are more elder specific in only providing adult protective services to persons 65 years of age or older, or to disabled or incapacitated adults. Some states have adopted adult protective services laws that cover a wide range of adult maltreatment, including physical and psychological abuse, neglect, self-neglect, and various forms of exploitation, while other states' laws include only one or two of these categories. The method of reporting is another subject of which substantial variance exists between other states' elder abuse or adult protective services laws. Representatives of the demonstration project indicated that only seven states provide for voluntary reporting as the sole method of reporting the suspected maltreatment of vulnerable adults, while a majority of states provide for some form of mandatory reporting. However, in those mandatory reporting states the persons or categories of persons required to report vary widely. Some states require all persons who have reasonable cause to suspect the maltreatment of vulnerable adults to make reports, while many other states provide that only specified categories of professional persons, such as physicians

and other health care providers, are required to make reports.

The committee reviewed information and research data obtained from representatives of the demonstration project for the period October 1, 1987, through July 31, 1988, which indicate that many vulnerable adults in North Dakota are abused, neglected, or exploited by others or are neglected by themselves. During that 10-month reporting period, the three demonstration project sites received a total of 277 reports of persons who were believed to be in need of adult protective services. From this experience, a total incidence ratio for the demonstration project sites was calculated at one reported incident for every 464 adult residents. The contents of the report were considered "substantiated" or "strongly suspected" in 77 percent of the cases.

The committee received information and research data indicating that the most frequent source of reports were social service, law enforcement, health care, or legal assistance agencies, while the second most frequent reporting source included individuals such as neighbors of alleged vulnerable adults, court officials, attorneys, and members of the clergy. Other sources of reports included relatives of alleged vulnerable adults and vulnerable adults who reported themselves. Anonymous reports were received in only two percent of the cases.

The committee also received information and research data describing the characteristics of maltreated vulnerable adults. The average victim was female (56 percent), white (91 percent), approximately 66 years of age, who lived in her or his own home (75 percent), and suffered from a physical impairment (50 percent). Many victims lived alone (32 percent), and few were living in the homes of relatives or others (12 percent). The victim was reported to have experienced one or more of the following maltreatments: self-neglect (56 percent), exploitation (27 percent), neglect (15 percent), physical abuse (14 percent), deprivation (12 percent), emotional abuse (11 percent), confinement (four percent), and sexual abuse (four percent). A representative of the demonstration project indicated that the fact that the category of "self-neglect" was the largest reported category is similar to the experience of other states, and that those self-neglect situations raise the ethical question of whether people have the right to live the way they want to live even if they live in an environment that is unsafe to themselves or others.

The information and research data received by the committee further indicated that the person allegedly responsible for the maltreatment was a son or daughter of the vulnerable adult in approximately 33 percent of the reported cases, and was the spouse of the vulnerable adult in approximately 25 percent of the reported cases. In cases for which information was available, 58 percent of the persons allegedly responsible for the maltreatment of vulnerable adults had a history of alcohol abuse. There were no reported barriers to the investigation or assessment of the report in 27 percent of the reported cases while in other cases the alleged vulnerable adult was either uncooperative, denied that a problem existed, could not be located, refused access, or had a serious physical

or mental impairment of such magnitude that the investigation or assessment proved difficult. Representatives of the demonstration project indicated that although services needed by vulnerable adults were generally available in the community, some potential clients could not access those services due to factors such as long waiting lists or inadequate funds or transportation. Services were refused by vulnerable adults in 19 percent of the cases. The committee was also informed that referral, information, and case management services were the most frequent services provided to vulnerable adults, while legal assistance, home health care, and counseling and therapy services were provided on a less frequent basis but nevertheless in a substantial number of cases. The criminal prosecution of persons allegedly responsible for adult maltreatment occurred in only one percent of the reported cases.

For the purpose of gaining a broader perspective concerning the level and scope of adult maltreatment in North Dakota, the committee received statistical data concerning adult protective services provided by North Dakota programs designed to help victims of domestic violence, the Protection and Advocacy Project supervised by the executive committee of the Governor's Council on Human Resources, and the state long-term care ombudsman program. The statistics indicated that 1,641 reports of abuse were filed in 1987 with local domestic violence programs which impacted the families of 2,063 children. Only two percent of those reports involved abuse victims who were over 55 years of age. A representative of the North Dakota Council on Abused Women's Services indicated that local domestic violence programs in the state provide intervention services to approximately 40 to 50 people every month who may be considered vulnerable adults in that they are unable or unlikely to protect themselves. The Protection and Advocacy Project is designed to serve the needs of persons who are developmentally disabled and persons in residential care and treatment facilities who are mentally ill. The statistics received by the committee indicated that during the period October 1, 1986, through September 30, 1987, there were 387 incidents of the abuse, neglect, or exploitation of developmentally disabled persons reported to the Protection and Advocacy Project. The state long-term care ombudsman is required by North Dakota Century Code (NDCC) Section 50-10.1-03 to investigate and resolve complaints about administrative actions that adversely affect the health, safety, welfare, or personal or civil rights of persons residing in and receiving personal care in long-term care facilities, including nursing homes, skilled nursing facilities, and boarding homes for the aged and infirm. The statistics received by the committee indicated that 30 complaints were filed during the period October 1, 1986, through September 1987, with the state long-term care ombudsman. Those complaints were investigated and verified or partially verified in 24 percent of the reported cases.

Demonstration Project Recommendations and Cost Projections

In their final report representatives of the demonstration project provided recommendations to

the committee concerning the development and implementation of a statewide program of protective services for vulnerable adults. Their primary recommendation was that legislation be enacted to establish a statewide adult protective services program designed to serve all adults over the age of 18 who reside in the state, and to provide adequate means for intervention in cases of self-neglect, physical neglect, physical abuse, emotional neglect, financial exploitation, and sexual abuse or exploitation. They recommended that the legislation incorporate the protective services functions of the Protection and Advocacy Project and the state long-term care ombudsman program as part of the proposed adult protective services program. They also recommended that the legislation provide for a system of voluntary reporting until adult protective services become better known and available in the state, at which time the Legislative Assembly could impose reporting requirements on certain categories of professional persons.

The advocacy intervention model was the choice of representatives of the demonstration project as the appropriate model for use on a statewide basis. Testimony indicated that law enforcement agencies, because of the high number of cases in the counties of Burleigh and Morton that were referred to social service agencies, would be better utilized as collateral support agencies or represented on multidisciplinary adult protective services teams rather than as lead agencies in the provision of adult protective services. Therefore, the representatives of the demonstration project recommended that the Department of Human Services be designated as the lead agency to receive and assess reports and provide case management services under the proposed adult protective services program, but that the actual organizational unit to provide those services be determined by the Department of Human Services in conjunction with the county social service boards. Representatives of the demonstration project suggested that investigation and assessment services could be provided effectively by larger social service boards or by special units formed by any number of county social service boards. However, they further recommended that persons be allowed to file reports with law enforcement agencies and that law enforcement agencies be authorized to assist, or in certain cases investigate, reported cases. The representatives of the demonstration project also recommended that a general fund appropriation be made to the Department of Human Services for the development and implementation of a program of adult protective services for the 1989-91 biennium, that the proposed legislation provide for an intensive public education program, and that a sufficient period of time be provided subsequent to the enactment of the proposed legislation to develop the program prior to its implementation.

The representatives of the demonstration project estimated the cost of developing and implementing a statewide program of protective services for vulnerable adults at \$787,160 for the 1989-91 biennium. The estimate was based on a projection that 994 reports of alleged vulnerable adults in need of

protective services would be made during each of the first two years of the program, and on other assumptions, including the assumption that an average of 12.4 hours would be expended by adult protective services staff in client-related activities per report. They also indicated that the development and implementation of a statewide program of adult protective services would more than likely result in the need to increase funding for and the availability of other services, including certain home and community-based services such as homemaker services, respite care, and case management, as well as specialized services such as legal assistance and guardianships.

Testimony and Committee Considerations

In addition to reviewing the report, testimony, and recommendations of representatives of the demonstration project, the committee received testimony expressing the need and indicating general support for the development and implementation of a program of protective services for vulnerable adults from representatives of the Mental Health Association of North Dakota, North Dakota Council on Abused Women's Services, Protection and Advocacy Project, North Dakota Association of County Social Services Directors, various county social service boards, and other interested organizations and persons. This general support, however, was tempered by concerns that the program be adequately structured and funded. A representative of the North Dakota Association of County Social Services Directors suggested that the county social service boards not be assigned the role of receiving and investigating reports of the maltreatment of vulnerable adults, but rather be allowed to continue to provide those home and community-based services needed by vulnerable adults. The county social services directors also predicted that the implementation of a program of adult protective services would result in the higher utilization of home and community-based services provided by counties which could jeopardize the adequate provision for these services. These same concerns were echoed by other representatives of county social service boards and the North Dakota Association of Counties.

The committee considered four alternative bill drafts relating to the establishment of a program of protective services for vulnerable adults. All four bill drafts proposed a similar statutory framework for the provision of adult protective services; however, each bill draft proposed one or more concepts not provided for in the other bill drafts which raised, in addition to the more general issue of the appropriate level of state intrusiveness into the lives of vulnerable adults and others, some very specific issues for consideration by the committee, i.e., whether to require persons or certain categories of persons to report suspected maltreatment of vulnerable adults or to provide for a system of voluntary reporting, whether to create a new agency separate from the Department of Human Services to administer all the state's protective services programs, whether to incorporate as part of the adult protective services program the protective services functions of the long-term care ombudsman

program and the Protection and Advocacy Project, and whether to provide a specific general fund appropriation.

The proposed statutory framework for the provision of adult protective services as contained in the bill drafts considered by the committee required the Department of Human Services, with the advice and cooperation of county social service boards, to develop and administer a program of protective services for vulnerable adults who consent to and accept those services. The bill drafts defined an adult as a person 18 years of age and over, including a minor emancipated by marriage, and defined adult protective services as "remedial, social, legal, health, mental health, and referral services provided for the prevention, correction, or discontinuance of abuse or neglect which are necessary and appropriate under the circumstances to protect an abused or neglected vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse or neglect, and promote self-care and independent living." The bill drafts defined a vulnerable adult as an adult who has a substantial mental impairment—a substantial disorder of thought, mood, perception, orientation, or memory—or a substantial functional impairment—a substantial incapability, because of physical limitations, of living independently or providing self-care—and defined the various categories of maltreatment as recommended for inclusion in legislation by representatives of the demonstration project.

The bill drafts required the Department of Human Services or the department's designee to receive, evaluate, and assess reports of alleged maltreatment of vulnerable adults and authorized the coordination of the evaluation or assessment of reports and the provision of other adult protective services with various state or local agencies, including the Protection and Advocacy Project, or private agencies, organizations, or professionals. With respect to the scope of these evaluations or assessments, the bill drafts authorized the Department of Human Services or the department's designee to interview the alleged vulnerable adult and any other persons, to enter any premises of which the alleged vulnerable adult is an occupant with the consent of the alleged vulnerable adult or the vulnerable adult's caregiver, and to have access to records of the alleged vulnerable adult under certain circumstances. The bill drafts also provided for participation by law enforcement agencies by allowing them to receive reports and refer those reports to the Department of Human Services or its designee and to investigate cases involving alleged criminal conduct or situations in which an alleged vulnerable adult is in imminent danger of serious physical injury or death. The bill drafts addressed the issue of access to vulnerable adults in cases in which an alleged vulnerable adult or the vulnerable adult's caregiver refuses to permit access or otherwise consent to an evaluation or investigation of a report by providing for the issuance of a search warrant by a magistrate upon a showing of probable cause to believe that the maltreatment of a vulnerable adult has occurred. Furthermore, the bill drafts authorized a law enforcement officer to make a reasonable entry

of the premises without a search warrant or the consent of an alleged vulnerable adult or the vulnerable adult's caregiver for the purpose of rendering assistance if the officer has probable cause to believe that the delay of entry would cause the alleged vulnerable adult to be in imminent danger of serious physical injury or death.

The bill drafts authorized the Department of Human Services or its designee to pursue alternatives in cases in which a vulnerable adult is unable to consent and accept, or the vulnerable adult's caregiver refuses, the provision of adult protective services determined by the department or its designee to be necessary. The committee discussion concerning this provision reflected the committee's intent that the Department of Human Services or its designee not initiate any further action if a vulnerable adult, who is capable of consenting to and accepting adult protective services, refuses those services. In other cases, however, the department or its designee would be able to pursue, with the assistance of a state's attorney if requested, any administrative, legal, and other remedies authorized by law which are necessary and appropriate under the circumstances to protect the vulnerable adult and prevent further maltreatment, including the appointment or removal of a guardian or conservator, the issuance of a restraining order, the provision of appropriate voluntary or involuntary treatment under the state's commitment laws, or the criminal prosecution of an individual responsible for the maltreatment of the vulnerable adult.

The bill drafts placed the responsibility for the cost of providing adult protective services on the vulnerable adult, except for those costs related to the receipt, evaluation, and assessment of reports, only if the vulnerable adult is financially capable of paying for those services. Likewise, the bill drafts did not mandate the placement of the burden of adult protective services costs on the Department of Human Services or the department's designee unless the provision of those services is specifically provided by law and funding exists to provide the services.

Other general provisions of the proposed statutory framework contained in the bill drafts included a provision granting immunity from civil or criminal liability to certain persons involved in the provision of adult protective services, a provision for the imposition of a criminal penalty and civil liability for making a false report, provision prohibiting an employer from retaliating against an employee solely because the employee filed a report in good faith or is a vulnerable adult with respect to whom a report was made, a provision providing for the confidentiality of all records and information obtained or generated from reports of adult maltreatment with specific exceptions, and a provision requiring the Department of Human Services to establish a public information and education program, and a program of education and training for persons who provide adult protective services.

The committee considered a mandatory reporting provision that would have required any person who had reasonable cause to believe that a vulnerable adult was subject to abuse involving physical injury

or sexual abuse or exploitation to make a report, and would have required any accountant, attorney, conservator, guardian, trustee, or other person responsible for any action concerning the use or preservation of a vulnerable adult's property, who in the course of fulfilling that responsibility discovered a reasonable basis to believe that financial exploitation had occurred, to make a report. The committee also considered an alternative provision allowing, but not requiring, any person to report suspected adult maltreatment. Although testimony before the committee indicated some support for the mandatory reporting provision, a representative of the demonstration project indicated that mandatory reporting would not be appropriate until adult protective services become better known and available throughout the state. Testimony indicated that under a system of mandatory reporting some vulnerable adults would be less inclined to seek protective services or other services if they were aware that the persons providing those services are required by law to report suspected maltreatment, and that reported cases of unsubstantiated maltreatment would probably be greater under a system of mandatory reporting because mandated reporters would tend to report borderline cases in light of a penalty that would be imposed for the willful failure to report.

The committee also considered a proposal to create a single protective services agency within state government, separate and distinct from the Department of Human Services, to administer a program of protective services for vulnerable adults and other protective services provided by the state, i.e., child protective services and the protective services functions of the state long-term care ombudsman program and the Protection and Advocacy Project. Although considerable committee discussion resulted from this proposal, some committee members opposed the proposal because its inclusion as part of any legislation to establish a program of adult protective services might be so controversial as to diminish any prospects for the successful enactment of adult protective services legislation.

Testimony from a representative of a demonstration project site indicated the existence of a possible statutory barrier to effective prosecutions, in cases involving the financial exploitation of vulnerable adults, for violations of NDCC Section 12.1-23-07, which defines the criminal offense of misapplication of entrusted property, because violations of that statute constitute a Class A misdemeanor in all cases notwithstanding the value of the property misapplied. For a Class A misdemeanor, state law provides that a maximum penalty of one year's imprisonment, a fine of \$1,000, or both, may be imposed. Testimony indicated that the classification of the offense as a Class A misdemeanor in all cases does not provide a "meaningful" penalty in cases in which entrusted property of substantial value is misapplied.

Although some committee members suggested that many cases involving the alleged financial exploitation of vulnerable adults could possibly be prosecuted as theft offenses, the committee considered a bill draft providing for additional classifications for the grading of the offense of misapplication of

entrusted property depending on the value of the property misapplied. The additional classifications would generally follow the classifications used for the grading of theft offenses under NDCC Section 12.1-23-05 insofar as theft offenses are graded according to the value of the property stolen. The bill draft provided that misapplication of entrusted property is a Class B felony if the value of the property misapplied exceeds \$10,000, for which a maximum penalty of 10 years' imprisonment, a fine of \$10,000, or both, may be imposed; a Class C felony if the value of the property misapplied exceeds \$500 but does not exceed \$10,000, for which a maximum penalty of five years' imprisonment, a fine of \$5,000, or both, may be imposed; a Class A misdemeanor if the value of the property misapplied exceeds \$250 but does not exceed \$500; and a Class B misdemeanor in all other cases, for which a maximum penalty of 30 days' imprisonment, a fine of \$500, or both, may be imposed.

The committee was advised that the present distinction between the classification of the offense of misapplication of entrusted property as a Class A misdemeanor and the grading of theft offenses based on property value and other factors appears to be based on differences between the key elements of those offenses. According to the final report of the National Commission on Reform of Federal Criminal Laws, from which the North Dakota Criminal Code was derived, the offense of misapplication of entrusted property is part of a three-step approach to the problems posed by the mishandling of property by persons in a fiduciary relationship. The first step in the approach taken in the proposed federal code and the North Dakota Criminal Code is to define "deprived," a key element in the offense of theft but not an element of the offense of misapplication of entrusted property, to include only those misapplications of property in which restoration of the property is unlikely. The offense of misapplication of entrusted property constitutes the second step in this approach to mishandling of property by persons in a fiduciary relationship in that any disposition of entrusted property which is not authorized and which exposes the property to a risk of loss or detriment is treated as a misdemeanor. The third step in the approach provides that any other breach of duty with regard to entrusted property, regardless of risk of loss, be treated as a regulatory offense outside the Criminal Code.

Recommendations

Based primarily on the findings and recommendations of representatives of the demonstration project, the committee recommends House Bill No. 1058 to establish a program of protective services for vulnerable adults to be developed, administered, and caused to be implemented by the Department of Human Services with the advice and cooperation of county social service boards. The bill is designed to provide the Department of Human Services with adequate flexibility to implement a program in a manner that is best suited for any particular county or region of the state. The bill would allow for the implementation of a system of receiving and assessing or investigating

reports filed voluntarily by persons who have reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, self-neglect, or exploitation. Although the bill would allow for the coordination of adult protective services with all state or local agencies, including the Protection and Advocacy Project, and private agencies, organizations, and professionals, the bill does not incorporate the protective services function of the state long-care ombudsman program with respect to residents of long-term care facilities.

The bill would provide a general fund appropriation of \$787,160 to the Department of Human Services to implement a program of protective services for vulnerable adults for the biennium beginning July 1, 1989, and ending June 30, 1991, and would require that the vulnerable adult share a portion of the financial responsibility for providing most adult protective services if the vulnerable adult is financially capable of paying for those protective services. Most of the provisions of the bill would become effective on January 1, 1990, to allow a sufficient period of time to phase in the program.

The committee recommends House Bill No. 1059 to provide for additional classifications for the grading of the offense of misapplication of entrusted property under NDCC Section 12.1-23-07, depending on the value of the property misapplied, which follow the classifications used for the grading of theft offenses.

CHILD ABUSE AND NEGLECT STUDY Background

Child abuse and neglect only recently has been recognized as a problem of devastating proportions and wide social impact. The concept of a child abuse reporting statute was first explored at a conference called by the Children's Bureau of the federal Department of Health, Education and Welfare. In 1963 the Children's Bureau promulgated a model reporting statute, and in 1965 two other models were developed by the American Medical Association and the Council of State Governments. By 1967 all 50 states had enacted some form of legislation requiring specified professionals to report suspected cases of child abuse. The first generation of reporting statutes was narrow in scope, mandating certain professionals to report suspected cases of abuse. Later refinements generally broadened both the class of persons required to report and the requirements governing the reporting of suspected child abuse or neglect cases.

The 1965 Legislative Assembly enacted North Dakota's first child abuse reporting law, which generally required physicians, chiropractors, and public health nurses to make reports in cases in which they had reasonable cause to believe that a child coming before them had suffered "serious injury or physical neglect" not accidental in nature. The state's present child abuse and neglect reporting law, NDCC Chapter 50-25.1, is a product of the 1975 Legislative Assembly. The purpose of the reporting law, as explained in NDCC Section 50-25.1-01, is "to protect the health and welfare of children by encouraging the reporting of children who are known to be or suspected of being abused or neglected and to encourage the provision of services which adequately provide for the protection and treatment of abused and neglected

children and to protect them from further harm." The present reporting law is much broader in scope than the 1965 Act, in providing for mandatory reporting by various health care, education, social work, and law enforcement professionals, and for voluntary reporting by all other persons who have knowledge or reason to suspect child abuse or neglect. The present law also defines more extensively the types of reportable maltreatments, including traumatic, sexual, and serious physical abuse, and physical, educational, or emotional neglect.

Testimony and Committee Considerations

The committee generally concentrated its study efforts on the reporting and investigation aspects of child abuse and neglect cases and, prior to considering proposed legislation, received testimony from various sources concerning the system of child protective services in North Dakota and several perceived problems with the state's child abuse and neglect reporting law and the application of that law.

The protection of children in North Dakota is accomplished primarily through the receipt and investigation of reports and the provision of appropriate remedial services. The child protective services system in North Dakota, as administered by the Department of Human Services, receives reports of known or suspected child abuse and neglect through the department's eight regional human service centers and the 53 county social services offices. The Department of Human Services employs one full-time equivalent staff person for administration of the child abuse and neglect program at the state level, while each regional human service center employs a staff member whose responsibilities include supervising the provision of child protective services on a regional basis. County social services offices utilize approximately 33 full-time equivalent positions for the actual investigation and assessment of child abuse and neglect reports.

Testimony indicated that a child protective services social worker begins the investigation process with a review of the allegations and information contained in the report, upon which the social worker makes decisions regarding the type and number of interviews and other inquiries needed to complete the investigation and assessment process. Although interviews are the primary tool used by the social worker to gather information, a variety of professionals are available to assist the social worker at any stage during the investigation and assessment. The social worker's primary consultant in making decisions is the social worker's immediate supervisor or the regional supervisor of child protective services. Other likely sources of consultation include members of multidisciplinary child protection teams, local law enforcement officers, state's attorneys, hospitals and physicians, and other social services staff. In fact, if it appears that the alleged child abuse or neglect is sufficiently severe to suggest that a criminal offense has occurred, an investigation by a law enforcement agency is usually requested. After an initial assessment is completed by the social worker, the case is brought to a multidisciplinary child protection team, composed of professionals representing a broad

spectrum of agencies and disciplines including social work, law enforcement, education, medicine, and the judicial system, which assists in making the determination of whether or not probable cause exists to believe that child abuse or neglect is indicated. The regional supervisor of child protective services is responsible, however, for making the final probable cause determination.

Testimony indicated that if it is determined that probable cause does not exist to believe that child abuse or neglect is indicated, services may nevertheless be offered to the child's family. The Department of Human Services, through the county social services offices, provides a wide variety of treatment services for children and families including counseling, therapy, foster care, homemaker and home health aides, day care, evaluation, referral, and parenting education classes. However, if it is determined that probable cause does exist, the report is referred to the juvenile court. The juvenile court has several choices. It may take no action, particularly in cases in which the child's family is availing itself of offered services. As an alternative, the juvenile court through the juvenile supervisor or other court officer may give counsel and advice to, and impose nonbinding conditions on, the child's family with a view toward an informal resolution or adjustment of the case. Finally, the case may involve a formal deprivation proceeding in which the juvenile court must determine whether the child is deprived. If that determination is made, the court may make any order of disposition best suited to the protection and welfare of the child, which may include permitting the child to remain with the child's parents or custodian under conditions and limitations prescribed by the court, transferring temporary legal custody of the child, and requiring the child's parents or custodian to participate in any treatment ordered for the child.

The committee reviewed statistics compiled by the Department of Human Services which indicate a rising trend in the filing of child abuse and neglect reports. Those statistics indicate that there were 767 reports of child abuse received during the period July 1, 1975, through June 30, 1976; 1,685 reports were received during the period July 1, 1980, through June 30, 1981; 3,023 reports were received during the period July 1, 1985, through June 30, 1986; and 3,330 reports were received during the period July 1, 1987, through June 30, 1988. Probable cause was indicated in 49.3 percent of the reported cases during the one-year period ending June 30, 1985, and in 47.5 percent of the reported cases for which determinations were known during the one-year period ending June 30, 1988.

The administrator of child protective services for the Department of Human Services expressed concern with the low level of experience, high turnover, and increasing caseload responsibilities of child protective services social workers; the increasing number of false or marginal reports being filed in the context of child custody disputes; a rising trend in reports of sexual abuse of children; and the general unavailability of physicians trained to provide examination and diagnostic services and testimony in child sexual abuse cases. The administrator indicated that misuse

of the child protective services system may be prevented, in part, by educational programs designed to provide the public with practical guidance about what should or should not be reported as suspected child abuse or neglect.

Representatives of the North Dakota chapter of Victims of Child Abuse Laws (VOCAL), a national organization of individuals who believe that they or their families or friends were victimized by child abuse laws, expressed to the committee their concern that North Dakota's child abuse and neglect reporting law, although basically good in purpose in that it is designed to protect children, is vague and does not provide individuals who are falsely accused of child abuse or neglect with adequate due process protections. They expressed the view that although current trends indicate that a rising number of reports of alleged child abuse or neglect are made each year, the number of reports subsequently found to be unsubstantiated is also rising thereby indicating a trend that more and more individuals are being falsely accused of child abuse or neglect each year. They claimed that the rising trend in the filing of child abuse and neglect reports has resulted in the imposition of excessive responsibilities on some social workers who, faced with limited resources, have become overzealous in their attempt to assess adequately and promptly those reports and are inclined to presume immediately the guilt of the person allegedly responsible for the abuse or neglect.

Representatives of VOCAL suggested that child protective services place more emphasis on removing the alleged perpetrator from the residence of the child rather than removing the child. They suggested that interviews of children at school be conducted only with the prior consent of the child's parents, that a representative of the child's parents be present at the interview, and that the interview be tape recorded to provide accountability on the part of the interviewer. They suggested further that an objective review board be established for persons allegedly responsible for child abuse or neglect to present their grievances about the investigation process, and that uniform administrative practices be established by county social service boards concerning the investigation of reports of child abuse or neglect.

To gain a perspective on the adequacy of the state's child abuse and neglect reporting law, the committee reviewed the statutes of other states relating to the reporting and investigation of child abuse or neglect, including definitions of abuse, neglect, and probable cause; education, training, and guidelines for child protective services social workers; employer retaliation against employees who report child abuse or neglect; investigations of reports of child abuse or neglect, including the scope of the investigations, time requirements imposed concerning the completion of investigations, the necessity of parental consent to interview alleged victims of child abuse or neglect, and interviews of children at schools; removal of the person allegedly responsible for child abuse or neglect from the child's residence; content requirements of child abuse or neglect reports; and procedures for the review of child abuse or neglect determinations and investigations. Based on testimony and its review of

other states' statutes, the committee considered several bill drafts relating to reporting and investigation aspects of child abuse and neglect cases.

Investigations

North Dakota Century Code Section 50-25.1-05 requires the Department of Human Services to "forthwith investigate, or cause to be investigated, any report of child abuse or neglect made directly to the department, including the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect." The committee reviewed statutes of many other states which define more fully the scope of child abuse or neglect investigations, including the process of interviewing children.

The committee considered a bill draft, substantially incorporating a Minnesota statute (Minn. Stat. § 626.556), which specifically clarified the process by which the Department of Human Services or its designee and law enforcement agencies may interview children. The bill draft authorized the Department of Human Services or its designee and law enforcement agencies, on a discretionary basis, to conduct interviews of allegedly abused or neglected children, or other children who reside with the person allegedly responsible for the abuse or neglect, without the consent and outside the presence of a person responsible for the child's welfare, including the child's parents, guardian, or foster parent. The bill draft required that the child's parents, guardian, or foster parent be notified of the occurrence of the interview no later than the conclusion of the investigation. However, to provide the necessary flexibility to protect the child depending on the severity of the circumstances of each case, the bill draft authorized the juvenile court to order, upon an ex parte motion supported by reasonable cause, that the notification not be made to the child's parents, guardian, or foster parent. The bill draft provided an additional procedure for conducting an interview of a child on school premises upon notification to the school principal or other appropriate school administrator by the Department of Human Services or its designee or an appropriate law enforcement agency of its intent to conduct the interview. The bill draft allowed the school administrator to set reasonable conditions as to the time and place for the interview in most cases but authorized the interviewers to determine who may attend the interview.

Testimony in favor of the bill draft from a representative of the Department of Human Services indicated that the bill draft would clarify, and not markedly change, existing investigative practices. The committee was informed that parents of allegedly abused or neglected children are notified of investigative efforts as soon as possible if reasonable under the circumstances of each case. Other proponents of the bill draft indicated that the bill draft would clarify some of the more vague aspects of the reporting law and encourage more consistent investigative practices across the state. Testimony in opposition to portions of the bill draft indicated it would be more appropriate that the parents of a child

who is interviewed be notified of the interview immediately or within a specific period of time after its occurrence and expressed a preference that a third party participate in some manner in the interview process to act in the place of and for the protection of the parents of the child and to protect the child and the interviewer.

The committee considered a proposed amendment to the bill draft which required that an interview of a child take place in the presence of a disinterested adult if the child is interviewed without the prior notification of and approval of the child's parents, guardian, or foster parent. This concept of providing third-party participation in the interview process received support from representatives of the North Dakota Education Association, North Dakota School Boards Association, and VOCAL. Representatives of the Department of Human Services questioned the appropriateness of third-party participation in the interview process and indicated that the presence of a third party may be contradictory to the confidential nature of information obtained as a result of reports of child abuse or neglect. They also expressed the need for clarification of the role and qualifications of the participating third party.

The committee also considered a bill draft that provided general parameters concerning the scope of investigations of reports of child abuse or neglect and what is expected of the investigation process. The bill draft required that the investigation include (1) an identification of the nature, extent, and cause of the abuse or neglect to the child named in the report and the person apparently responsible for that abuse or neglect; (2) a determination of the condition of other children residing in the same home or residence as the child named in the report; and (3) an evaluation of the home environment and the relationship of the child named in the report, and any other child who currently resides in the same home or residence, to persons responsible for the welfare of the child named in the report. Committee discussion indicated that although the bill draft would not markedly change existing practice, it would provide some general guidance for child abuse or neglect investigations and would specifically extend the scope of the investigation to determining the condition of other children residing in the same residence as the child named in the report.

Continuing Education

Various organizations, including the North Dakota chapter of the National Association of Social Workers, indicated that the issue of training social workers is of paramount concern. Testimony indicated that child protective services social workers in North Dakota must be licensed; however, licensure does not necessarily mean that a social worker has had any specific training in providing child protective services. The committee was informed that the Department of Human Services, in conjunction with the Children and Family Services Training Center at the University of North Dakota, has developed a child welfare practitioner certification program for the purpose of training social workers engaged in providing child protective services and increasing

consistency in child protective services practices throughout the state. The program provides 15 days of training on the primary areas of knowledge and skill in child protective services; however, the program only focuses on social workers beginning child protective services duties.

The committee reviewed statutes of many other states that mandate training and instruction courses for child protective services staff and other persons. For example, a Minnesota statute (Minn. Stat. § 626.559) requires all child protection workers or social services staff having responsibility for child protective duties to receive 15 hours of continuing education or inservice training each year.

The committee considered a bill draft that required the Department of Human Services to establish a program of continuing education or inservice training, similar to that required in Minnesota, for child protective services staff of the Department of Human Services and each county. The bill draft required that each child protective services staff member receive 15 hours of continuing education or inservice training each year in various areas of child protective services.

Administrative Review Procedure

The committee heard considerable testimony concerning the need for implementation of an administrative review procedure to provide persons with a forum to present grievances concerning the investigative process or determinations of probable cause relating to reports of child abuse or neglect. The committee reviewed statutes of several other states providing procedures for the review of decisions or complaints arising from or concerning child abuse or neglect investigations. Those statutes vary widely in their approach to providing a review procedure, with some states authorizing judicial review of administrative decisions made pursuant to those states' child abuse or neglect reporting laws.

The committee considered a bill draft that required the Department of Human Services to adopt rules establishing policies and procedures to resolve complaints and conduct reviews relating to child protective services investigations and probable cause determinations. The bill draft required an informal review of a child abuse or neglect case if a person responsible for a child's welfare is implicated by a report of alleged child abuse or neglect and, during the investigation, either requests a clarification of the status of the investigation or files a complaint relating to the conduct of child protective services staff or policy. The informal review would be conducted by the immediate supervisor of the child protective services social worker conducting the investigation. The bill draft required the immediate supervisor to clarify the status of the case or resolve the complaint no later than 14 days after receipt of the request for review of the complaint. The bill draft also provided a procedure for the review of cases in which a person responsible for a child's welfare disputes a probable cause determination implicating that person as responsible for the abuse or neglect of the child or cases in which a person is aggrieved by the results of the informal review conducted by the immediate supervisor of the child protective services social

worker of that person's complaint or request for review of the status of the investigation. In those cases, the Department of Human Services would be required to conduct within 45 days of the request an administrative review of the probable cause determination and the findings underlying that determination or the status of the investigation or complaint and to sustain, modify, or reverse the disputed determination or informal decision. The bill draft provided that the review procedure conducted by the Department of Human Services is subject to the Administrative Agencies Practice Act, which provides an adjudicatory procedure to be followed by administrative agencies and for appeals from administrative agency decisions to the judicial system.

Testimony in favor of the concept embraced by the bill draft indicated that the establishment of an administrative review procedure would strengthen and promote a spirit of accord and respect for the rights of children and give persons an opportunity to respond to the facts, allegations, and final probable cause determination. It was indicated that an administrative review process would provide a better forum than the news media for debating aspects of child abuse or neglect cases. Although testimony indicated that the implementation of an administrative review procedure would aid in the protection of the privacy of children and their families, representatives of the Department of Human Services suggested that the review procedure extend not only for the benefit of persons allegedly responsible for child abuse or neglect but also to other persons, including the child, and that the process be available in cases in which probable cause was determined not to exist.

Removal of Alleged Sexual Offenders

Representatives of VOCAL expressed concern with some instances in which children were allegedly removed from their families. They indicated that this abrupt removal is traumatic to children and destroys a child's trust in the child's parents. The committee considered a bill draft that substantially incorporated an Iowa statute (Iowa Code § 232.82) authorizing the juvenile court to enter an ex parte order requiring that an alleged sexual offender vacate the child's residence upon a showing that probable cause exists to believe that the sexual offense has occurred and that substantial evidence exists to believe that the presence of the alleged offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health. The bill draft provided the alleged sexual offender with the opportunity for a subsequent hearing on the matter at the request of the alleged sexual offender or on the court's own motion.

Employer Retaliation and False Reports

North Dakota Century Code Section 50-25.1-09.1 prohibits an employer from imposing any form of employee discipline against an employee solely because the employee reported having reasonable cause to suspect that a child was abused or neglected. A person violating the statute is guilty of a Class B misdemeanor. North Dakota Century Code Section

50-25.1-13 prohibits the making of false reports or providing false information which causes a report to be made. A person violating that statute is guilty of a Class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a Class A misdemeanor. The committee reviewed other states' statutes that impose not only criminal liability, but also civil liability for employer retaliation or the making of false reports.

The committee considered a bill draft that provided for civil liability of an employer who retaliates against an employee because of a report of child abuse or neglect, or of a person who willfully makes a false report of child abuse or neglect or provides false information that causes a report to be made. The bill draft created a rebuttable presumption that certain "adverse action," such as discharge from employment, demotion or reduction in remuneration for services, transfer from a place of employment, or restriction or prohibition of access to any place of employment, within 90 days of a report is retaliatory.

Recommendations

The committee recommends Senate Bill No. 2057 to clarify the scope of interviews of children by child protective services social workers or law enforcement officials. The bill would provide the Department of Human Services or its designee and appropriate law enforcement agencies with discretionary authority to interview an alleged abused or neglected child without the consent of the child's parents, guardian, or foster parent, or any other person responsible for the child's welfare. The bill would require, however, that the department or law enforcement agency notify the child's parents, guardian, or foster parent no later than three weeks after the interview of the occurrence of the interview unless the department or its designee or law enforcement agency persuades the juvenile court to withhold that notification. The bill would require that a disinterested adult, such as a teacher, nurse, or member of the clergy, be included in any interview in which the child's parents, guardian, or foster parent is not notified prior to the interview that the interview will take place. The bill would also provide a specific procedure governing interviews of children on school premises, including notification of the appropriate school administrator that the interview will take place, and would authorize the school administrator to set reasonable conditions in most cases as to the time and place for the interview.

The committee recommends Senate Bill No. 2058 to provide general parameters concerning the scope of investigations of reports of child abuse or neglect, including the requirement that the investigation include an identification of the nature, extent, and cause of the abuse or neglect to the child named in the report and the person apparently responsible for that abuse or neglect; a determination of the condition of other children residing in the same residence as the child named in the report; and an evaluation of the home environment and the relationship of the child named in the report, and any other child who currently resides in the same residence, to persons

responsible for the welfare of the child named in the report.

The committee recommends House Bill No. 1060 to require the Department of Human Services to establish a program of continuing education or inservice training for child protective services staff of the Department of Human Services and each county.

The committee recommends Senate Bill No. 2059 to require the Department of Human Services to adopt rules establishing policies and procedures to conduct reviews and resolve complaints relating to investigations of reports of child abuse or neglect and determinations of probable cause to believe that child abuse or neglect is indicated if requested by a person responsible for a child's welfare who is alleged to be or is implicated as responsible for the abuse or neglect of the child.

The committee recommends Senate Bill No. 2060 to provide a procedure for the removal of an alleged sexual offender from the residence of a child. The bill would authorize the juvenile court to remove an alleged sexual offender from a child's residence if probable cause exists to believe that a sexual offense against or with the child has occurred and if substantial evidence exists to believe that the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or health.

The committee recommends Senate Bill No. 2061 to provide for the availability of a civil remedy against an employer who retaliates against an employee because of a report of child abuse or neglect or against a person who makes a false report of child abuse or neglect or provides false information that causes a report to be made.

VICTIMS AND WITNESSES OF CRIME STUDY

Background

Legislative initiatives by states responding to the needs of victims and witnesses of crime are numerous and may be divided into three broad categories. The first category includes laws providing some form of financial assistance, including victim compensation, restitution, witness fees, and employment protection for victims and witnesses. The second category includes laws that recognize the rights of victims and witnesses and attempts to protect them and help them to understand the criminal justice process and their role in it. Victim and witness notification and intimidation laws and laws permitting victims to participate in criminal proceedings against the defendant fall into this category. The third category includes laws directed at special classes of particularly vulnerable victims such as children, the elderly, and victims of sexual offenses.

The North Dakota Legislative Assembly has responded to the needs of victims and witnesses through various initiatives, including the Uniform Crime Victims Reparation Act, which authorizes the Workers Compensation Bureau to administer the awarding of reparations funded through general fund appropriations to applicants for economic loss arising directly from criminally injurious conduct. The provision of restitution, witness compensation, and

employment protection are additional examples of financial assistance and protection provided to victims and witnesses in the state. Specific victim and witness rights and duties were recognized and defined in legislation enacted by the 1987 Legislative Assembly as a means of securing a meaningful role for victims and witnesses in the criminal justice system. These victim and witness fair treatment standards are designed to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended by the legislation to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants. State law provides similar fair treatment standards for child victims and witnesses to accord children with additional rights and protections during their involvement with the criminal justice system. Other state laws are directed at special classes of victims. For example, a program designed to assist victims of domestic violence was enacted by the 1981 Legislative Assembly to provide grants from a domestic violence prevention fund to private, nonprofit organizations engaged in providing emergency housing for victims of domestic violence and their dependents. The program is administered by the Department of Health and Consolidated Laboratories and the domestic violence prevention fund is maintained through a supplemental fee of \$19 received from marriage license applicants. Other examples of state laws directed at a special class of victims include legislation enacted by the 1987 Legislative Assembly providing for arrest procedures, guidelines, and training for law enforcement officers in the handling of incidents of domestic violence, providing protection by judicial intervention for victims of domestic violence, and providing for the appointment of a guardian ad litem for a minor who is a material or prosecuting witness in the prosecution of a sex offense.

Testimony and Committee Considerations

The committee was informed that in early 1986 the North Dakota Council on Abused Women's Services contracted with the North Dakota Attorney General to pilot several victim and witness advocacy projects throughout the state. These projects are currently located and serve victims and witnesses in Burleigh County, Williams County, Mercer and McLean Counties, Walsh County, Cass County, and the city of Grand Forks. The projects employ advocates who work with victims of and witnesses to crime to provide a number of pretrial, trial, and posttrial services. Testimony indicated that current sources of federal funding for the projects will be eliminated and, therefore, new sources of funding will be needed to continue the projects.

The committee received testimony from representatives of private, nonprofit victim programs, including the North Dakota Council on Abused Women's Services and the Coalition Against Sexual Assault in North Dakota. The North Dakota Council on Abused Women's Services is a coalition of 15 local nonprofit domestic violence crisis intervention and

advocacy programs that offer emergency shelter, advocacy, and community education and prevention services. These local programs receive approximately 11 percent of their funding from state grants provided through the domestic violence prevention fund, which generates approximately \$114,000 annually; however, many other sources of funding from counties, fraternal and religious organizations, businesses, and memberships have been decreasing. These local domestic violence programs have responded to nearly 9,000 incidents of domestic violence during the past three years.

The committee also received testimony from a representative of the Coalition Against Sexual Assault in North Dakota, which is a private, nonprofit network of rape crisis centers that seek to prevent sexual assault and promote dignified, professional, and sensitive treatment of victims of sexual assault. This is accomplished through public education and working cooperatively with direct service providers in developing and providing educational programs and training. Local rape crisis centers provide free crisis intervention and advocacy services to sexual assault victims, and public and professional education for local schools, organizations, and medical, legal, and social service providers. In 1987 these centers provided services to 359 sexual assault victims. Testimony indicated that no state funds are available for these sexual assault services provided by the rape crisis centers which are funded primarily from local donations, federal grants, and private grant sources.

The committee concentrated its study efforts on the issue of providing a funding mechanism for victim and witness programs and services. The committee was informed that several states have made some provision for ensuring that victim or witness services and compensation are provided at the local level and that the trend has been to fund victim services and compensation through penalty assessments, fees, or fines imposed on convicted offenders. The committee considered a bill draft that provided counties and cities with the option of funding victim and witness advocacy programs or victim and witness services through fees assessed as part of criminal sentences imposed in county or municipal courts. The bill draft substantially incorporated a 1987 legislative proposal, House Bill No. 1547, which was defeated in the Senate. The bill draft authorized the governing body of a county or city to require that a fee of not more than \$25 be assessed as part of a sentence imposed on a defendant who pleads guilty or is convicted of any crime in a county or municipal court; however, the fee could not be imposed on indigent defendants who are unable to pay the fee. The bill draft required that all fees collected by the county or municipal court be deposited monthly in the county or city treasury for allocation to a victim and witness advocacy program or for the support of victim and witness services.

The committee was advised that in North Dakota the imposition of a fee as part of a criminal sentence for the funding of victim and witness programs or services would raise the question whether those fee assessments would violate Article IX, Section 2, of the Constitution of North Dakota which requires that

“the net proceeds of all fines for violation of state laws” be used and applied for the benefit of the common schools of the state. The committee was advised that the plain, ordinary, and commonly understood meaning of the word “fine” as used in the constitutional provision and the historical context within which the provision was adopted would arguably support a definition of “fines” as pecuniary exactions prescribed as punishment for crime. A decision of the North Dakota Supreme Court and decisions of courts in other jurisdictions, however, appear to emphasize an apparent distinction between fines imposed for the purpose of punishment, and sums recovered which are in the nature of compensation to injured individuals or entities, whereby a fee in the nature of compensation would not constitute the imposition of a “fine” as that word is used in the constitutional provision. The committee was advised that a fee assessment imposed on a person convicted of a criminal offense for the purpose of funding victim and witness programs or services, although arguably punitive in nature to the defendant, would also be compensatory in nature to victims of and witnesses to crime who would receive assistance and hopefully benefit from those victim and witness programs or services. The committee was further advised that it appears well settled that fines for “violation of state laws,” as that phrase is used in Article IX, Section 2, of the Constitution of North Dakota, does not include fines assessed for violations of city ordinances. It is also firmly established that all Acts of the Legislative Assembly are presumed to be constitutional unless clearly shown to be unconstitutional.

Recommendation

The committee recommends House Bill No. 1061 to authorize counties and cities to fund victim and witness advocacy programs or victim and witness services through fees assessed as part of criminal sentences imposed in county or municipal courts.

MINORS' RECORDS STUDY

Background

This study was undertaken as a result of concerns expressed by the Governor's Commission on Children and Adolescents at Risk, which was directed to study, coordinate, and promote functions, services, and resources of the state's juvenile justice and human service delivery systems in order to determine appropriate means of treatment and placement services to meet the needs of minors. In its final report dated July 1, 1986, the commission expressed concern that adequate referral and research of records and information relating to services provided to minors is hampered by state laws and administrative rules and practices relating to the confidential sharing of those records and information among juvenile courts, state agencies, and other service providers.

Testimony and Committee Considerations

The committee reviewed state confidentiality laws pertaining to records and information relating to services provided to minors. Within the Uniform Juvenile Court Act, NDCC Section 27-20-51

authorizes the juvenile court to disclose court files and records to persons, agencies, or institutions that have a "legitimate interest" in the proceeding or in the work of the court. Law enforcement records are authorized to be disclosed under NDCC Section 27-20-52 to "officers of public institutions or agencies to whom a child is committed." Disclosure of information contained in records of the Department of Human Services is governed by NDCC Section 50-06-15, which generally prohibits the disclosure of information contained in records or information concerning persons applying for or receiving assistance or services under any program administered by or under the supervision and direction of the department, except that those records and information may be used "in the administration of any such program, and as specifically authorized by the rules and regulations of the department."

Although the committee did not devote a substantial

amount of time to this study, testimony indicated that many of the problems purportedly associated with the exchange and use of records and information relating to services provided to minors involved the misunderstanding of the applicable law or administrative rules by those individuals involved in the exchange and use of that information. A representative of the Department of Human Services indicated that the appropriate corrective measure is probably education and not statutory revision. The Department of Human Services developed confidentiality policies that were issued during the interim which advised department employees concerning the handling of confidential records and information.

Conclusion

The committee makes no recommendation as a result of its study of minors' records.

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 committee was created “[f]or 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 this state.” (NDCC Section 54-35-02.1)

In setting forth the committee’s specific duties and functions, the Legislative Assembly said “[i]t 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 auditors in regard to such reports, and when necessary, 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 Section 54-35-02.2)

The Lieutenant Governor by law serves as chairman of the Legislative Audit and Fiscal Review Committee. In addition to Lt. Governor Lloyd Omdahl, other committee members were Representatives Lynn W. Aas, Patricia DeMers, Richard Kloubec, Dave Koland, Theodore A. Lang, Charles Linderman, Olaf Opedahl, and Wilbur Vander Vorst and Senators Duane Mutch, Allen Richard, Harvey D. Tallackson, and Stan Wright.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

During the interim the State Auditor and independent accounting firms presented 84 audit reports. An additional 110 audit reports were filed with the committee but were not formally presented. The committee’s policy is to hear only audits of major agencies and audit reports containing major recommendations; however, an audit not formally presented could be heard at the request of committee members.

The committee was assigned House Concurrent Resolution No. 3049 which directed a study of methods of reducing losses incurred by the Comprehensive Health Association. The committee also had the following duties and responsibilities:

- Receive annual reports on the status of accounts receivable at the State Hospital.
- Receive periodic reports from the Public Service Commission on the identification of certain railroad rights of way in the state which may be sold, transferred, or leased.
- Monitor fine revenues deposited in the common schools trust fund.

- Receive the audit reports of corporations receiving ethyl alcohol or methanol production subsidies.
- Contract for the audit of the State Auditor’s office.

COMPREHENSIVE HEALTH ASSOCIATION OF NORTH DAKOTA STUDY Background

House Concurrent Resolution No. 3049 directed a study to consider and develop methods of reducing losses incurred by the Comprehensive Health Association. The study was to include a review of the association’s premium levels and its required benefits range.

The Comprehensive Health Association was created by the 1981 Legislative Assembly as a pool of insurance companies to provide health insurance coverage to persons who cannot receive coverage elsewhere. The Comprehensive Health Association’s participating membership consists of those insurers doing business in North Dakota with an annual premium volume of accident and health insurance contracts amounting to at least \$100,000 for the previous calendar year. All insurance companies must maintain membership in the association as a condition for writing accident and health insurance policies in North Dakota. The association consists of a 10-member board of directors, one from each of the 10 largest participating member insurance companies based on annual premium volumes. To be eligible for enrollment a person has to be rejected for accident and health insurance by one company, or coverage restrictions or preexisting conditions limitations are required by one company. Also, the person has to have been a resident of the state for at least six months. The Comprehensive Health Association plan premium charged eligible persons is limited to 135 percent of the average premium rates charged by the five largest insurance companies in the state. The benefits provided through the plan include deductible options of \$150, \$500, and \$1,000.

Committee Review

House Concurrent Resolution No. 3049 directed a study to consider and develop methods of reducing losses incurred by the Comprehensive Health Association because of the association’s increasing operating losses. The association operating losses from 1981 through 1987 are as follows:

1981	\$ 0
1982	63,103
1983	232,558
1984	638,724
1985	867,045
1986	1,650,470
1987	1,936,389
Total	\$ 5,388,289

The association’s participating members that are liable for state income tax or state insurance premium

tax must share the plan's operating losses, but can offset the assessments as a credit to either the member's insurance premium tax liability or state income tax liability. The credits to the tax liabilities result in a reduction to state general fund revenues.

One reason the association's losses are increasing is that the number of plan participants is increasing. The number of participants in the plan for each year since the association's inception is:

Year	Participants
1981	0
1982	78
1983	245
1984	615
1985	983
1986	1,131
1987	1,430

The committee considered the following options that could reduce the losses of the Comprehensive Health Association plan:

1. Increase the premiums charged eligible participants (e.g., premium cap at 150 percent rather than 135 percent of average rate).
2. Increase the participant's maximum out-of-pocket expenses (presently \$3,000).
3. Require a nine-month benefit waiting period for all enrolling participants (presently a six-month benefit waiting period).
4. Increase the deductible levels the plan offers (i.e., eliminate the \$150 deductible option).
5. Do not provide a maternity benefit for eligible members (presently participants are provided maternity benefits after the six-month benefit waiting period).
6. Change the manner in which losses are covered (such as a general fund appropriation rather than a general fund tax credit).
7. Base premiums on an ability to pay scale.

The committee received information comparing North Dakota's Comprehensive Health Association plan to the plans in Minnesota, Montana, and Wisconsin. The comparison included information that North Dakota has the only plan that provides for a \$150 deductible option and that North Dakota's premium rates are less than the rates in the other three states. Fifty-two percent of the plan participants were enrolled in the \$150 deductible option as of May 1, 1987. The committee also received testimony stating that since the state subsidizes the funding of the association through tax credits, the composition of the association's board should be changed so that the state has more control over decisions involving the association's plan, premiums, and benefits.

Recommendation and Consideration

The committee recommends Senate Bill No. 2062 that provides for the following changes to current law:

1. Provide for an eight-member board of directors consisting of the Commissioner of Insurance, the State Health Officer, the director of the Office of Management and Budget, one senator, one representative, and three individuals from participating member insurance companies. (The present board consists of 10 individuals

from member insurance companies.)

2. Eliminate the \$150 annual deductible options and require the annual deductible options to be at least \$500 and \$1,000.
3. Increase the plan's premiums from 135 percent to 150 percent of the average premium rates charged by the five largest insurers in the state.
4. Allow the association to charge a higher premium rate than the 150 percent average for those people who are able to pay a higher premium rate.
5. Lengthen the preexisting condition waiting period from six to nine months and do not allow a waiver of the preexisting condition waiting period for those participants who had continuous coverage under another policy for the immediately preceding 12-month period.

The changes made in the bill would reduce the plan's annual losses by approximately the following amounts:

Change	Annual Loss Reduction
Elimination of the \$150 deductible option	\$ 40,000
Increase the premiums from 135 to 150 percent	200,000
Lengthen the preexisting condition waiting period	200,000
Total	\$440,000

The committee considered a bill draft that would have provided for the same changes as the recommended bill to the association's board of directors, deductible options, and preexisting condition waiting period and in addition would have provided for the following changes:

1. Create a Comprehensive Health Association fund that receives the insurance premium tax collections on health insurance premiums and health care benefit fees.
2. Provide a \$4 million 1989-91 biennium appropriation from the Comprehensive Health Association fund for the Comprehensive Health Association's operations.
3. Eliminate the credits provided to health insurance companies for the assessments of the Comprehensive Health Association losses.
4. Provide the association authority to establish the association plan premium rates and benefit levels.

The \$4 million appropriation is the same level as the association's fiscal year 1987 losses. The amount collected from the insurance premium tax on health insurance premiums is approximately \$4.5 million.

The committee did not recommend this bill draft because it would change the structure of the present plan and because it would limit the state's funding for the association during the 1989-91 biennium. Limiting the amount of state funding could result in a premium rate increase that could make the program unaffordable to persons who rely on the program for medical insurance.

STATE AUDITOR

Audit of the State Auditor's Office

North Dakota Century Code Section 54-10-04 requires the Legislative Assembly to provide for an audit of the State Auditor's office. The Legislative Council contracted with Eide Helmeke and Company, Certified Public Accountants, for an audit of the State Auditor's office for the two-year period ending June 30, 1987. The firm presented its audit report at the committee's October 1987 meeting. The report stated that by implementing prior audit recommendations, the improvement by the State Auditor's office in the quality of its audit practices is commendable. The report recommends that the State Auditor's office improve its audit reports and procedures by:

1. Expanding the notes to the financial statements to include:
 - a. A summary of the budget process.
 - b. A report of the appropriations that do not lapse.
 - c. The expenditures that exceed the appropriated amount.
2. Develop an audit program to assure an entity's electronic data processing system is examined properly during the audit.

Suggested Guidelines for Performing Audits of State Agencies

In previous bienniums the Legislative Audit and Fiscal Review Committee adopted guidelines for auditors performing audits of state agencies. During the 1987-88 interim, the guidelines were revised to conform with present auditing and accounting standards.

The committee reaffirmed that audits performed by the State Auditor's office and independent certified public accountants are to be in compliance with the revised guidelines. The guidelines require that the auditor in the audit reports is to make specific statements regarding:

1. Whether expenditures are made in accordance with legislative appropriations and other state fiscal requirements and restrictions.
2. Whether revenues were properly accounted for.
3. Whether financial controls and procedures are adequate.
4. Whether the system of internal control was adequate and functioning effectively.
5. Whether financial records and reports reconciled with those of state fiscal officers.
6. Whether there was compliance with the statutes, laws, rules, and regulations under which the agency was created and is functioning.
7. Whether there was evidence of fraud or dishonesty.
8. Whether there were indications of lack of efficiency in financial operations and management of the agency.
9. Whether actions have been taken by agency officials with respect to findings and recommendations set forth in the audit reports for the preceding periods.
10. Whether all activities of the agency were encompassed within appropriations of specific amounts.

University of North Dakota Accounts Receivable

The University of North Dakota's June 30, 1986, and June 30, 1987, audit reports recommended improvements to the university's collection policies due to the sharp increase in the university's past due accounts receivable. The University of North Dakota's reserve for doubtful accounts receivable was \$688,000 in 1985, \$796,000 in 1986, and \$717,000 in 1987. It was reported to the committee that the University of North Dakota, during the 1987-88 interim, made the following improvements to its collection policies:

1. The departments providing the services are involved in making collections.
2. If payments are not made on the receivables after a set period of time, services are discontinued.
3. Local banks are involved in making student loans.

The committee received reports on the university's accounts receivable for the periods ending June 30, 1986 and 1987, and January 31, 1988. The university wrote off accounts receivable amounting to \$495,982 during fiscal year 1987 and \$137,972 from July 1987 through January 1988.

The committee considered a bill draft to require the State Board of Higher Education to present to the Legislative Assembly's Appropriations Committees a report on each higher education institution's accounts receivable. The committee did not recommend the bill draft since the committee can request information on an institution's accounts receivable if questions arise when the committee is reviewing an audit report.

Mill and Elevator Accounts Receivable

The Mill and Elevator's June 30, 1985 and 1986, audit report included doubtful accounts expense in the selling division of \$17,000 in 1985 and \$206,000 in 1986. It was reported to the committee that the Mill and Elevator wrote off \$206,000 of accounts receivable in 1986, due mainly to writing off \$176,000 owed by a Puerto Rico business that discontinued business because of damage it incurred in a hurricane. The Mill and Elevator did not write off any accounts receivable during fiscal year 1987.

The committee did not take any action regarding the Mill and Elevator's doubtful accounts expense since the only large amount of accounts receivable written off during fiscal years 1985 through 1987 was due to a circumstance that is unlikely to reoccur.

Job Service Audit Reports

Prior to the 1987-88 interim, the Legislative Audit and Fiscal Review Committee did not receive the Job Service audit reports. The committee recommended that it receive the future Job Service audit reports. The Job Service audit report for the years ended September 30, 1986 and 1987, was presented to the committee at its March 1988 meeting.

Audit Recommendations Reviews

In previous interims the committee requested the State Auditor to determine whether agencies have complied with the auditor's recommendations within six months after an audit report has been presented to the committee. The auditor's office presented

reports of the agencies that had not implemented prior audit recommendations. The agencies that did not implement all the auditor's recommendations were the Agriculture Products Utilization Commission, Highway Department, State Penitentiary, Workers Compensation Bureau, and Dairy Promotion Commission. These agencies responded that the recommendations had either been implemented or were in the process of being implemented.

The committee recommends that future audit reports include the date that the unimplemented prior recommendation was originally made.

STATEWIDE ACCOUNTING AND MANAGEMENT INFORMATION SYSTEM

Background

Beginning during the 1979-80 interim, the Legislative Audit and Fiscal Review Committee monitored the changes and implementation of the statewide accounting and management information system (SAMIS). The accounting portion of the system began operations at the beginning of the 1987-88 interim, and the reporting portion of the system is being implemented during the interim. When the reporting system is fully implemented it will provide statewide comprehensive financial statements.

Committee Review

The committee received progress reports regarding the development of the accounting and management information reporting system. The following tasks were completed or will be completed during the 1987-88 interim:

- Provide overview of financial reporting concepts.
- Define the reporting entity.
- Review and evaluate existing fund structure.
- Develop accounting policies.
- Prepare a pro forma financial report.
- Review organization structure.
- Prepare an implementation plan.
- Prepare a summary report.

In order for the statewide accounting and management information system to produce statewide comprehensive financial statements, the following enhancements with their related designing and programming costs will have to be implemented:

Enhancement	Estimated Designing and Programming Cost
Automated fixed assets system	\$150,000
Automated investment system	200,000
Automated inventory system	300,000
On-line system for transmittal of financial data from the Bank of North Dakota, Mill and Elevator Association, Job Service North Dakota, and higher education system	200,000
Total	\$850,000

The amount of these designing and programming

costs will be included in the Office of Management and Budget's 1989-91 biennium budget request.

Recommendation

The committee reaffirmed its prior goals that the necessary action should be taken by the Office of Management and Budget to have a statewide accounting and management information system that provides for annual comprehensive financial statements that include fixed asset records, investment records, inventory records, and an on-line system for the transmittal of financial data from the Bank of North Dakota, Mill and Elevator Association, Job Service North Dakota, and the higher education system.

The committee also recommended that the Office of Management and Budget familiarize new agency management and accounting personnel with state budgeting, accounting, and auditing requirements.

COMMON SCHOOLS TRUST FUND FINE REVENUES

Background

The Legislative Council assigned the Legislative Audit and Fiscal Review Committee the responsibility during the 1987-88 interim to monitor fine revenues deposited in the common schools trust fund. The Constitution of North Dakota requires the net proceeds of fines imposed for the violation of state laws to be deposited in the common schools trust fund for the maintenance of the common schools. The 1985-86 interim Education Finance Committee reviewed the disposition of fine revenues to the common schools trust fund and determined that some counties were not remitting all fines to the common schools trust fund and that some county judges were levying court costs rather than fines. North Dakota Century Code Section 29-27-02.1 requires that all fines and penalties prescribed for violation of state law be remitted for deposit in the common schools trust fund and allows court costs and forfeitures to be deposited in the county general fund.

Committee Review

It was reported to the committee that during the 1985-86 interim, the Education Finance Committee asked the Attorney General and the State Auditor's office to take the necessary action to ensure that fine revenues are deposited in the common schools trust fund.

The Attorney General's office reported that it sent correspondence to and met with county officials informing them of the mandatory fines and that all fines must be deposited in the common schools trust fund. Since the legislative committees began monitoring the disposition of fine revenues to the common schools trust fund in November 1985, the amount deposited each month increased an average of approximately \$11,000. The following schedule shows the total amount of fine revenues deposited in the common schools trust fund and the average monthly deposit amounts for calendar years 1984 through 1987:

<u>Year</u>	<u>Total Amount Deposited</u>	<u>Average Monthly Deposit</u>
1984	\$ 873,371	\$ 72,781
1985	869,615	72,468
1986	1,005,167	83,764
1987	999,680	83,307

The State Auditor's office expanded its audit procedures during its normally scheduled audits to ensure that the state was receiving all funds the counties should be remitting to the common schools trust fund. The expanded audit procedures discovered that approximately \$30,000 was owed to the common schools trust fund. The counties owing the moneys were notified and the entire amount owed is expected to be deposited into the common schools trust fund.

The committee does not recommend legislation or further action regarding the monitoring of common schools trust fund fine revenues since it appears that the Attorney General and the State Auditor are taking the necessary action to assist the common schools trust fund in receiving fine revenues.

PUBLIC SERVICE COMMISSION'S REPORTS ON IDENTIFICATION OF CERTAIN RAILROAD RIGHTS OF WAY

Background

North Dakota Century Code Section 49-09-10.1 requires the Public Service Commission to report periodically to the Legislative Audit and Fiscal Review Committee identifying operating railroad rights of way in the state which may be sold, transferred, or leased.

Committee Review

The Public Service Commission reported to the committee that all operating railroad rights of way in the state are potentially subject to sale, transfer, or lease. Any future sales will likely involve groupings of lines that generate enough traffic to make a short line or regional carrier financially feasible. The committee received a copy of the Burlington Northern abandonment map. The map includes the following North Dakota lines that the firm will probably file for abandonment application within the next three years.

<u>Line</u>	<u>Length</u>
East Fairview-Watford City	36.46 miles
Linton-Zeeland	30.06 miles
McCanna-Conway	16.69 miles
Glasston-Neche	19.23 miles
Towner-Newburg	35.04 miles
Granville-Lorraine	54.18 miles
Starkweather-Hansboro	41.79 miles
Rogers-Dazey	7.69 miles
Fargo-Horace	8.07 miles
Total	249.21 miles

The Soo Line abandonment map was not available to the committee during the interim but is expected to include 50 to 60 miles of lines. The lines expected to be on the Soo Line abandonment map include approximately 40 miles of line in north central North

Dakota, from Drake to Baker, and lines from Oakes, North Dakota, to Aberdeen, South Dakota, and Linton, North Dakota, to Zeeland, North Dakota.

The committee reviewed North Dakota Century Code Section 49-09-10.2 relating to acquisition of railroad rights of way. Section 49-09-10.2 does not make it necessary for railroads to comply with the section's requirements regarding the acquisition of operating railroad rights of way. The Public Service Commission prefers that the statute be changed to require railroads to comply with the requirements in the section regarding the acquisition of railroad rights of way.

Recommendation

The committee recommends Senate Bill No. 2063 to repeal North Dakota Century Code Section 49-09-10.1. Section 49-09-10.1 requires the Public Service Commission to report periodically to the Legislative Audit and Fiscal Review Committee identifying certain railroad rights of way that may be sold, leased, or transferred. The committee recommends the bill since a report that all railroad rights of way are subject to sale, transfer, or lease is not of sufficient use to the committee or to the Legislative Assembly to justify a formal reporting process.

The bill also amends North Dakota Century Code Section 49-09-10.2 to require all acquisitions of railroad rights of way to be made in accordance with the requirements included in that section. Presently the section does not mandate railroads to follow the requirements included in the section. The section's requirements are that when an operating railroad right of way is sold, transferred, or leased:

1. Each party intending to acquire a railroad right of way must file a notice with the Public Service Commission.
2. The notice must include the identity of the acquiring party, the identity of the divesting carrier, and a description of the line involved.

OTHER ACTION AND DISCUSSION State Hospital Accounts Receivable

North Dakota Century Code Section 50-06.3-08 requires that the State Hospital present a detailed report to the Legislative Audit and Fiscal Review Committee on the status of accounts receivable for each fiscal year. The report must include an aging by recipient classification of accounts remaining unpaid and the amounts by recipient classification by which accounts were reduced or written off for reasons other than payment during that fiscal year.

The amount of the State Hospital's accounts receivable and the amounts that were written off for fiscal years 1986 through 1988 are as follows:

<u>Fiscal Year</u>	<u>Amount of Accounts Receivable</u>	<u>Amounts Written Off</u>
1986	\$38,163,703	\$35,452,203
1987	29,827,543	23,221,921
1988	34,494,162	11,272,965

State of North Dakota Outstanding Indebtedness

North Dakota Century Code Section 54-10-01 requires the State Auditor to prepare annually a report identifying all outstanding bonds and other evidences of indebtedness of the state of North Dakota. The committee received the State Auditor's office's state of North Dakota outstanding indebtedness reports as of June 30, 1985, 1986, and 1987. The following is the state's total outstanding indebtedness as of:

Date	With the Pledged Full Faith and Credit of the State	Without the Pledged Full Faith and Credit of the State	Total
June 30, 1985	\$103,793,993	\$569,637,303	\$673,431,296
June 30, 1986	101,004,838	723,450,116	824,454,954
June 30, 1987	139,001,478	733,681,680	872,683,158

Payment of State Employees Moving Expenses

Background

The San Haven State Hospital audit report for the year ended June 30, 1987, included a finding that San Haven State Hospital did not comply with North Dakota Century Code Section 44-08-04.3 when the institution paid moving expenses to employees who relocated when San Haven State Hospital closed. North Dakota Century Code Section 44-08-04.3 provides which employees can be reimbursed for moving expenses and what type and the amount of moving expenses that can be reimbursed.

The San Haven State Hospital believed it had the

authority to make the payment of the moving expenses in the manner in which it did since the 1987 Legislative Assembly's appropriation to the San Haven State Hospital provided moneys for its closure.

Recommendation

The committee recommends that when an agency or institution finds it necessary to pay employees for relocation costs, and it finds it inappropriate to meet the requirements of Section 44-08-04.3, that it seek an exception to this section of law in the necessary legislative authorization providing the funds.

Receipt of Alchem, Ltd., Audit Report

North Dakota Century Code Section 10-23-03.2 requires the Legislative Audit and Fiscal Review Committee to receive the audit reports from any corporation that produces agricultural ethyl alcohol or methanol and that receives a production subsidy from the state, whether in the form of reduced taxes or other areas. Alchem, Ltd., is an ethanol production facility located in Grafton, North Dakota, which receives a subsidy from the state through a reduction in the motor vehicle fuels tax. The committee received the Alchem, Ltd., December 31, 1986 and 1987, audit report at its October 1988 meeting.

Other Reports

The committee also reviewed the Public Employees Retirement System's borrowing authority and state agency and institution employee liability insurance coverage.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Legislative Procedure and Arrangements Committee was delegated the authority of the Legislative Council under North Dakota Century Code (NDCC) Section 54-35-11 to make necessary arrangements to facilitate the proper convening and operation of the Legislative Assembly. Legislative rules are also reviewed and updated under this authority. The committee was also directed to review the smoking policy applicable to Legislative Assembly areas during legislative sessions. The committee was assigned House Concurrent Resolution No. 3018, which directed a study of the current Legislative Assembly Appropriations Committee structure with a goal of the study to develop recommendations to reduce the current Appropriations Committees' workload and to increase the number of legislators involved in the appropriation process. The committee was designated by Section 4 of 1987 Senate Bill No. 2005 to receive reports from the Director of Institutions with respect to a feasibility study for a State Capitol addition for additional committee rooms. The committee was delegated the responsibility for administering 1987 House Bill No. 1058, the appropriation for improvements to the legislative wing of the State Capitol. The committee was also delegated the power and duty of the Legislative Council under NDCC Section 54-35-02 to control the use of the legislative chambers and permanent displays in Memorial Hall. Finally, the committee was assigned the responsibility for participating in the 1990 census redistricting data program.

Committee members were Representatives Earl Strinden (Chairman), William G. Goetz, Roy Hausauer, Serenus Hoffner, Tish Kelly, Richard Kloubec, William E. Kretschmar, Charles F. Mertens, Jim Peterson, and Wade Williams and Senators Mark Adams, William S. Heigaard, Rick Maixner, Corliss Mushik, David E. Nething, John M. Olson, and Rolland W. Redlin.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. The committee distributed a 1987 legislative process questionnaire to all legislators. The survey asked specific questions on legislative procedures and also requested comments on how to improve the legislative process. The results of the survey are referred to throughout this report.

Bill Control Books

Under the legislative rules, the Chief Clerk of the House of Representatives and the Secretary of the Senate are required to keep a book showing the progress of and actions taken on all measures. These

books are maintained by the bill clerks. Most of the information in the bill control books is also in the computerized bill status system maintained by the Legislative Council staff. The only information in the books that is not in the bill status system relates to conference committee membership and recommendations. The committee reviewed a proposal to provide the bill clerks with access to the bill status system, which would be expanded to include conference committee membership and recommendations. Access to the bill status system would require placement of a cathode ray tube (CRT) terminal at the front desk in each chamber for use by the bill clerk of that chamber. The committee accepted the proposal, which would eliminate the need for maintenance of bill control books. The committee recommends amendment of House and Senate Rules 203 to replace references to "books" with references to "records."

Officers and Employee Positions

The committee reviewed the employee positions provided for by rule and the employee positions authorized during the 1987 session by House Concurrent Resolution No. 3019. The committee makes no recommendation to amend the rules concerning employee positions.

Questions Laid on the Table

The committee discussed problems that occurred as the result of bills being laid on the table. Committee members were told that the Secretary of State thought that specific action needed to be taken to dispose of such measures and thus "clean up" records in the Secretary of State's office. The committee discussed the procedure that should be followed when, at the end of the session, the majority leader asks if the desk is clear. The response to this question should be in the negative if a proposal has been laid on the table and no further action has been taken. If, through inadvertence, this response is not given, the measure laid on the table has not had final disposition. The committee recommends creation of House and Senate Rules 312.2 and amendment of House and Senate Rules 334 to provide that a question laid on the table is deemed finally disposed of whenever a motion to adjourn without fixing a time for reconvening is approved.

Journal Contents

The committee reviewed several proposals to enhance the contents of the House and Senate journals. These proposals are specifically described in the section of this report entitled "Session Arrangements." The committee reviewed a rule change to eliminate references to "short" titles in the journals. A short title designates a bill by name. In the past, short titles were contained in numerous bills to provide for reference to those bills by name. This practice generally has been discontinued because of modern code compilation and publication procedures, whereby legislation is codified after each session

rather than after a period of several years such as the practice when the Compiled Laws of 1913 and the Revised Code of 1943 were in effect. The committee recommends amendment of House and Senate Rules 325 to remove references to "short" titles in the journal.

Legislative Deadlines

The committee discussed the impact of the Legislative Council's selection of Wednesday, January 4, 1989, as the date for the convening of the 51st Legislative Assembly. Under the Constitution of North Dakota, the normal date for the session to convene would have been Tuesday, January 10, 1989. With the session starting on Wednesday rather than Tuesday, all deadlines in the legislative rules are affected. The committee was particularly concerned with the deadline for introduction of bills. Under current rules, the deadlines for introduction of bills are the 10th and 15th legislative days (Mondays, if the session begins on a Tuesday). Committee members discussed the problems that could surface if each deadline were a Tuesday, e.g., on Monday the Legislative Council staff could receive several bill draft requests that would be impossible to complete by Tuesday. The committee recommends amendment of House and Senate Rules 402 to designate the 9th and 14th legislative days as deadline days for introducing bills.

As a result of comments by legislators in response to the legislative process survey, committee members discussed various legislative deadlines. With respect to the deadline for crossover of bills, committee members were of the opinion that changing this deadline would not resolve any perceived problem. Although the current crossover deadline of the 34th legislative day was described as unrealistic, the attitude toward crossover was explained as caused by the media's coverage of the session. Committee members described the crossover deadline as a flexible objective, not a sacrosanct one.

Bill Format and Copies

The committee reviewed the revised format of bill drafts prepared on letter size (8 1/2" x 11") paper. Bill drafts had been prepared on legal size (8 1/2" x 14") paper with 10-pitch print. Upon introduction, bills were reduced to 8 1/2" x 11" size. Because of enhanced capabilities of the printers in the Legislative Council office, bills can be prepared on letter size paper, with 12-pitch print, and with smaller margins. The effect would be to have bills that are more manageable and easier to read, without increasing the number of pages used. Committee members discussed the savings that could result from having a one-line enacting clause, rather than a two-line clause. Also discussed was the fact that resolutions had been jointly sponsored by legislators, even though that is not allowed by the rules. The committee recommends amendment of House and Senate Rules 404 to allow joint sponsorship of resolutions, shorten the enacting clause to "Be it enacted by the Legislative Assembly of North Dakota," and remove dated language concerning the 1983 legislative session.

Constitutional Amendments

The committee compared the House and Senate rules and discovered that the House rules require the statement of intent on a resolution proposing a constitutional amendment to "clearly" represent the effect of the proposed change, while the Senate rules require such a statement to "fairly" represent the effect of the proposed change. The committee recommends amendment of House and Senate Rules 408 to provide that the statement of intent in a resolution proposing a constitutional change clearly represent the substance and effect of the proposed change.

Notice of Hearings

The committee discovered that the House and Senate rules require the Chief Clerk of the House and the Secretary of the Senate to use bulletin boards for the posting of notices of committee hearings. Notices of committee hearings are either announced in the chamber or are entered for display by committee hearing monitors. The committee recommends amendment of House and Senate Rules 506 to remove the requirement for posting of notice on bulletin boards (and thus recognize the use of posting notice through use of committee hearing monitors).

Return of Vetoed Bills

Committee members discussed questions concerning receipt of veto messages. Under the constitution, the Governor must return a bill within three days, Sundays excepted, after it has been presented to the Governor, unless the Legislative Assembly has adjourned, in which case the bill must be filed in the office of the Secretary of State within 15 days after adjournment. Concerns were expressed over the differing interpretations of "within three days," ranging from 72 hours after the minute the bill is delivered to the Governor to three calendar days after the day the bill is delivered. Concerns were also expressed over the lack of a procedure to receive a vetoed bill while the Legislative Assembly is in recess. During committee considerations of these questions, a procedure was suggested whereby the Legislative Council staff would be allowed to receive veto messages on behalf of the Legislative Assembly. The major concern over involvement of the Legislative Council staff was the potential for the return of a veto message becoming a partisan issue. The committee recommends creation of Joint Rule 209 to provide that the three days within which the Governor must return a vetoed bill during a legislative session means three calendar days after the day of presentation to the Governor and to authorize the director of the Legislative Council or an employee designated by the director to receive the vetoed bill and objections as the representative of the appropriate house if the appropriate legislative employee is not available to receive the vetoed bill and objections.

Conference Committees

In responding to the legislative process survey, a number of legislators suggested that conference committees should be required to meet more promptly after they had been appointed. Committee members

also questioned the type of majority vote that should be required to adopt a conference committee report. Under the rules, a majority vote of the members present and voting is required for any question for which another vote is not required by the constitution or another rule. Thus, by implication, conference committee reports are adopted by a majority of the members present. Although some committee members suggested that a majority of the members-elect should be required to adopt conference committee reports, it was pointed out that amendments are adopted by a majority vote of the members present and a majority of the members-elect is still required to pass a bill. The committee recommends amendment of Joint Rule 301 to require conference committees to meet within two legislative days of appointment. The committee also recommends amendment of House and Senate Rules 315 and 605 to provide specifically that conference committee reports may be adopted by a majority vote of the members present.

Media Identification Badges

Concerns were expressed to the committee regarding the difficulty the presiding officers and sergeants-at-arms have in recognizing representatives of the media for purposes of floor privileges. A policy adopted by the Legislative Procedure and Arrangements Committee during the 1985-86 interim was that the sergeants-at-arms would issue media badges to be worn by representatives of the media. Although representatives of the media were requested to wear identification badges, this policy was not uniformly followed. The committee reviewed procedures of other states with respect to limiting floor access by representatives of the media. Generally, other state legislative bodies do not provide the access to the floor that the North Dakota Legislative Assembly does. The North Dakota Newspaper Association and North Dakota Broadcasters Association suggested a procedure whereby the associations would identify those individuals who would cover the legislative session and would submit a list of names to the Legislative Council. In turn, the Legislative Council would prepare media identification badges, which would be distributed to those individuals by the Associated Press. Provision would also be made for the use of "generic" identification badges by those individuals who are not listed by the associations. The committee recommends creation of Joint Rule 802 and amendment of House and Senate Rules 205 to provide for identification of representatives of the media whereby the Legislative Council would provide identification badges for individuals identified as representatives of the media by the North Dakota Newspaper Association, the North Dakota Broadcasters Association, and the state house correspondent of the Associated Press, who would also distribute the badges to the appropriate individuals. The presiding officers would also be provided with the names of the individuals who received the badges.

Use of Committee Rooms

The committee was concerned over use of legislative

space during the session and the interim. For example, during the 1987 session, private groups were granted the use of committee rooms for press conferences. The committee reviewed the policies on the use of legislative facilities and State Capitol facilities in other states and policies governing use of facilities in the State Capitol. Committee members discussed the impact a lack of policy has with respect to allowing use of committee rooms for press conferences or by nonlegislative entities. Discussions included the impact such use could have on scheduling legislative activities as well as the impact on State Capitol access, use, security, utilities, and cleanup. The committee recommends creation of Joint Rule 803 to provide a coordinated procedure for controlling the use of committee rooms during a legislative session. Under the proposed rule, committee rooms under the jurisdiction of the Senate or House and hearing rooms under the jurisdiction of the Legislative Assembly could be used only for functions and activities of the legislative branch, except the Secretary of the Senate or Chief Clerk of the House could grant permission to a state agency to use a room at times and under conditions not interfering with use of the room by the legislative branch.

Recommended Bills

The committee recommends Senate Bill No. 2064 to amend NDCC Section 16.1-06-09.1 to remove language describing the contents of the statement of intent contained on a resolution proposing a constitutional amendment. The contents are provided for by House and Senate Rules 408. The bill would eliminate the statutory requirement and thus leave that requirement to the rules of the Legislative Assembly.

The committee recommends Senate Bill No. 2065 to amend NDCC Section 48-08-04 to remove the prohibition on using or leasing of legislative space by federal or state agencies except in case of extreme emergency and to provide that such areas may not be used without authorization by the Legislative Council. The rules amendment recommended by the committee would govern use of legislative space during the session, and this bill would govern use of legislative space during the interim between sessions. The bill would provide for statutory recognition of the procedure currently followed in approving use of legislative space.

SESSION ARRANGEMENTS

Legislative Information System Pilot Project

During the 1985-86 interim, a proposal was made to the Legislative Procedure and Arrangements Committee with respect to the possibility of replacing legislators' bill racks with personal computer terminals. Committee members suggested that representatives of computer firms review the legislative process during the session, especially with respect to the use of bill racks by legislators. Representatives of IBM spent a day in each chamber during the 1987 session, interviewed legislators, and sat with legislators on the floor. During this review, it was found that legislators use bill racks to place

notes on bills, note votes taken, add personal notes, and place telephone messages with the bills.

The committee reviewed a proposal to provide a personal computer for each legislator. The personal computer would have these features—color, small footprint, small keyboard, easy to use keyboard, ease of installation, fast response time, and reliability. The specific proposal for the 1989 legislative session was that an IBM Personal System/2 be provided to a legislator, with one printer located in the page area of each chamber. The proposed information system contained four basic components—bill status, committee hearings, daily calendar, and personal services. As part of the personal services component, telephone messages would be entered in the system by the telephone attendants.

The committee approved plans for development of the legislative information system on a pilot project basis for the 1989 session. The committee recommends that personal computer terminals be placed in each chamber. Committee members were of the opinion that the assistant leaders in each chamber be assigned a personal computer terminal and another legislator from each party in each chamber be assigned a personal computer terminal, as determined by the party leaders. The committee recommends that, before the regular session convenes, each legislator assigned a personal computer terminal attend a training session on use of the information system.

House and Senate Journals

The committee reviewed several proposals to enhance the contents of the House and Senate journals. The proposals included consolidation of the format of reports of standing committees and messages from the other chamber, revision of the format for recording roll call votes, elimination of the announcement that bills have been rereferred, consolidation of recognitions of former members and other guests, addition of four more lines to each page, use of 12-pitch print size, and consolidation of the two lobbyist lists printed in the journal. Committee members determined that communications from the Governor should not be consolidated as that would remove the appearance of official communications. The committee approved the proposals as described and the proposals will be implemented for the 1989 House and Senate journals.

Number of Journals

Journals of the House and Senate are printed daily during the legislative session. During the 1987 session, 2,000 small-sized journals of each house were printed daily. During the session, the number was changed to 1,800. As the result of a suggestion to start with 1,800 copies, the contract with the printer for the 1989 journals provides for 1,800 copies of the small-size daily journals to be provided for each chamber.

Journal Distribution Policy

The committee approved continuation of the policy initiated in 1985 to the effect that legislators would not be asked to fill out a list of persons who are to

receive daily journals but that legislators upon request may have daily journals sent to as many as 15 persons.

Legislative Internship Program

Beginning with the 1969 session, the Legislative Assembly has sponsored a legislative internship program in cooperation with the law and graduate schools at the University of North Dakota and the graduate school at North Dakota State University. The legislative internship program has provided the Legislative Assembly with the assistance of law school students and graduate school students for a variety of tasks, and has provided the students with a valuable educational experience. The allocation of interns among the three programs is six from the School of Law, four from the Department of Political Science at the University of North Dakota, and six from the graduate program at North Dakota State University. Ten interns are assigned to committees, one is assigned to each of the four caucuses, and two are assigned to the Legislative Council office.

The committee reviewed the program and approved its continuation for the 1989 Legislative Assembly. The same procedure followed for selecting interns for the 1987 Legislative Assembly was followed, e.g., the majority and minority leaders from the prior legislative session interviewed those interns who were interested in serving as caucus interns. The interns received training and orientation by the Legislative Council staff and will be given their assignments prior to the session.

As a result of concerns with respect to possible problems with accreditation of the law school by the American Bar Association if law school students receive compensation for participating in the internship program, the committee approved conversion of the program to a fellowship program, with a stipend for interns who complete the regular term of internship and with compensation for additional service by interns who continue their service beyond this regular term. The committee also approved the publication of an internship program brochure to help inform students of the program and obtain applicants for the program.

Legislative Tour Guide Program

For the past six legislative sessions there has been a tour guide program to coordinate tours of the Legislative Assembly by high school groups. The tour guide program is extensively used by high school groups during the session and other groups have been placed on the tour schedule at their request. For the 1987 Legislative Assembly, two tour guides were hired due to the heavy workload in scheduling tour groups. The committee approved the continuation of the legislative tour guide program for the 1989 session.

Legislative Document Library Distribution Program

Starting with the 1983 session, the Legislative Assembly has provided bills and resolutions, journals, and bill status reports to academic, special, and public libraries throughout the state which request this service. In 1983, 30 libraries received the documents;

in 1985, 46 libraries received the documents; and in 1987, 45 libraries received the documents. These libraries reported extensive use of the documents by library patrons. In response to requests by libraries, the committee approved expanding this service. Fifty-two libraries are scheduled to receive the documents during the 1989 session.

Bill Status Report System Access

The Bill Status Report system began in 1969 as a Legislative Council computerized in-house operation to provide day-old information concerning the progress of bills and resolutions through the legislative process. The system has grown to an on-line system providing up-to-the-minute information concerning the status of bills and resolutions for use by legislative personnel and outside users. Although most outside users are state agencies, a number of private entities have gained access through arrangements with the Legislative Council and the Office of Central Data Processing of the Office of Management and Budget. In 1981, two private entities were authorized access to the on-line system; in 1983, six private entities were authorized access; in 1985, 19 private entities were authorized access; and in 1987, 24 private entities were authorized access.

The committee approved the providing of access to the Bill Status Report system to outside (private entity) users provided that the user have compatible equipment and that each user pay the full cost of usage.

Bill Subscription Fee

Under House and Senate Rules 404, any statewide organization or association may be provided a copy of each introduced bill or resolution upon payment of a subscription fee established by the committee. The committee reviewed the cost of providing the service and established a fee of \$425 for the 1989 session (the same amount established for the 1987 session).

Bill Distribution Policy

The committee approved continuation of the policy adopted by the Legislative Procedure and Arrangements Committee during the 1985-86 interim and followed in 1987 to the effect that the Joint Bill and Journal Room should mail a small number of bills at no charge to a requestor, but if the request is made for a large number of bills or for all the bills introduced, the requestor should pay the postage.

Bill Introduction Privilege

The committee discussed several comments by legislators in their responses to the legislative process survey with respect to introduction of bills. Of concern to committee members was the practice of agencies to request individual legislators to sponsor agency bills. By joint rule, executive branch agencies and the Supreme Court have been granted the privilege of introducing bills in the Legislative Assembly. This permits agencies to introduce prospective legislation of interest to the agencies without the necessity of contacting members of the Legislative Assembly. These bills must be prefiled, which provides the Legislative Assembly with the opportunity to

schedule a full slate of committee hearings early in each session. Committee members suggested that one reason why agencies may be seeking individual legislators is that it is difficult to arrange for appearances before committees on bills scheduled early in the session. In response to this concern, committee members suggested that only "simple" bills should be scheduled for hearings early in the session. The committee was also concerned over the number of bills introduced by agencies. One problem that results if there is an attempt to limit or reduce the number of bills introduced is that sponsors will probably consolidate ideas. This would result in more complex bills, which are therefore more difficult to schedule for early hearing. The committee requested that all agencies be notified of the problem of managing the legislative workload and be asked for their full cooperation in managing that workload by pre-filing agency bills. A letter signed by the majority and minority leaders, the President Pro Tempore, and the Speaker of the House was sent to all agencies.

Appropriations Bills

The committee received a request for a statement concerning the inclusion of substantive provisions in appropriations bills. The executive budget for the 1989-91 biennium will be based on assumptions with respect to fee increases and government reorganization, which require statutory changes. Committee members were of the consensus that substantive provisions should be placed in separate bills for referral to the appropriate standing committees.

Doctor of the Day Program

The North Dakota Medical Association expressed willingness to continue its program of making medical services available during legislative sessions. The committee accepted the offer of the association to continue the Doctor of the Day Program during the 1989 session.

Chaplaincy Program

In cooperation with the Bismarck Ministerial Association, the House and Senate have chaplains open daily sessions with a prayer. The committee reviewed the procedure in effect during the 1985 and 1987 sessions which gave legislators until the end of December to schedule out-of-town clergymen to deliver prayers during the session. The committee requested the Legislative Council staff to notify all legislators prior to the convening of the session that they have until December 31, 1988, to schedule out-of-town clergymen to deliver daily prayers during the 1989 session.

Session Employment Coordinators

The committee approved the hiring of personnel representing the two major political parties to receive and coordinate the handling of applications for session employment.

Session Employee Orientation and Training

The committee considered whether session employees should be provided additional orientation and training. Committee members expressed support

for training that would further enhance the ability of the Legislative Assembly to start the legislative process as ready as possible.

The committee authorized the Legislative Council staff to conduct training sessions for the bill clerks, chief telephone attendant, information desk attendants, committee clerks, desk reporters, and the chief stenographer and payroll clerks at various times during the week preceding the legislative session. The committee recommends that the Employment Committees hire session employees to begin work at various times, commencing with the employment coordinators, a joint bill and journal room employee, the desk forces, the committee clerks, and finally all remaining session employees. The recommended periods of employment range from the third Monday in November to the day preceding the first day of the session, depending upon the employee position.

Bill and Journal Room Employee

Bills may be prefiled before the convening of the Legislative Assembly in January. Prefiled bills are delivered to the printer and copies are then printed and placed in the joint bill and journal room. Several requests are made for copies of prefiled bills, because hearings on these bills generally are scheduled early in the legislative session. The Legislative Procedure and Arrangements Committee first authorized the employment committees to hire an individual to organize the bill room and distribute bills prior to the convening of the 1979 Legislative Assembly. The committee reviewed the usefulness of this practice and authorized the Employment Committees to hire an individual to organize the joint bill and journal room and distribute bills prior to the convening of the 1989 Legislative Assembly.

Session Employee Job Descriptions

Committee members expressed concern over the lack of an updated handbook for session employees. The last employees' handbook was published in 1979 and has not been republished because session employee positions and responsibilities change from session to session. Committee members suggested that any handbook applicable to session employees be prepared in a loose-leaf format to allow changes to be readily made. It was also suggested that session employee job descriptions be prepared in such a way that the information would be on a general basis, not subject to change depending upon party control.

The committee recommends the preparation of job descriptions for session employees. The committee requested the Legislative Council staff, in conjunction with the Chief Clerk of the House and the Secretary of the Senate, to prepare job descriptions for initial use by the 1989 Legislative Assembly. The job descriptions would be reviewed after the 1989 Legislative Assembly and the descriptions could be modified next interim in light of experiences during the session. Of major concern in the preparation of job descriptions is the provision of a specific line of authority for employees. The committee authorized that the job descriptions be prepared to provide that Employment Committees would establish broad overall policies, and the Chief Clerk of the House and

Secretary of the Senate would be responsible for administering the policies.

Legislator Supplies

In response to suggestions for a redesign of the legislative stationery, a subcommittee was appointed to select a new design for stationery used by legislators and the Legislative Assembly. A final decision had not been made as of the last committee meeting.

The committee approved continuation of the policy of providing letter files to legislators.

Telephone Equipment and Incoming WATS Lines

The committee reviewed a request to authorize the transfer of ownership of legislative telephone equipment to the Office of Central Data Processing. When telephones were installed for the Legislative Assembly, the Legislative Assembly purchased circuit carriers and circuit packs. As the result of transfer of state communication functions to the Office of Central Data Processing, that office offered a credit to the Legislative Assembly in exchange for acquiring title to the telephone equipment. The committee approved the transfer of ownership of the telephone equipment from the Legislative Assembly to the Office of Central Data Processing.

The Legislative Assembly has provided incoming WATS lines during recent legislative sessions to allow constituents to leave messages or get information. During the 1985 and 1987 sessions, four incoming WATS lines were provided. Because of complaints concerning line unavailability, the committee approved the installation of six incoming WATS lines for the 1989 session. The committee recommends that the operations of the telephone room be reviewed during the session to ensure that the number of telephone attendants is sufficient to provide adequate service.

Printers

The committee reviewed the need to replace the printers used for the voting systems in the chambers. The printers in use are the original printers and are becoming unreliable and difficult to maintain. The committee authorized the purchase and installation of new printers for the voting systems in both chambers, with the old printers to be placed in the page rooms for use as backup or auxiliary printers.

The committee reviewed the feasibility of purchasing an IBM laser printer in place of leasing one, as has been done for the last few sessions, for use in the Legislative Council office during the session. Such printers are no longer leased by IBM. The committee authorized the purchase of a used laser printer, which had been offered to the Legislative Council for purchase.

Committee Chairs

The committee reviewed suggestions to replace chairs used by committee members. The captain's chairs currently in use were described as uncomfortable for persons who are required to remain seated during committee hearings. The committee reviewed various styles of executive chairs and

authorized replacement of all committee chairs with chairs similar to those used by members of the House and Senate Committees on Appropriations. The captain's chairs would be distributed for use as spectator chairs, particularly in the Brynhild Haugland and Lewis and Clark Rooms.

Legislative Expense Reimbursement Policy

Section 26 of Article XI of the Constitution of North Dakota provides that payment for necessary expenses for legislators may not exceed that allowed for other state employees. The 1985 Legislative Assembly authorized legislators to receive up to \$600 per month as reimbursement for lodging. Because of the constitutional provision, reimbursement for expenses during the 1985 session was made pursuant to the policies established by the Office of Management and Budget with respect to state employees who rent apartments while away from their usual work locations for extended periods of time. Several questions arose after the 1985 session as to the reimbursement of items such as utilities, furniture rental, and repairs. The Legislative Council adopted the position that legislators be reimbursed for what is identified as lodging expenses, including utilities and furniture rentals, and referred the expense reimbursement issue to the Legislative Procedure and Arrangements Committee for resolution.

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted a policy to be applied for the 1985 and 1987 sessions that allowed the following items as reimbursable lodging expenses during the session: utilities—electricity and heat, water (including garbage collection and sewer charges), basic telephone service, and telephone installation charges; furniture—rental of furniture and appliances and transit charges for moving rental furniture and appliances; and repairs for damage occurring during the legislator's tenancy—repairs to structure, plumbing or electrical repairs, and repairs to furniture and appliances. The committee adopted the 1987 policy as the policy to be applied for determining reimbursable lodging expenses for the 1989 session.

US West Pilot Project

The committee reviewed a proposal for installation of two-way interactive television in a legislative hearing room and another appropriate spot. Under the proposal, fiber optic cable would be installed by the Office of Central Data Processing and cameras and monitors would be installed by US West. The cameras would record proceedings in a legislative hearing room and in another room monitors would display the proceedings and allow two-way communication between spectators in that room and the persons in the monitored room. The committee authorized the installation of cameras in a legislative hearing room and monitors in an appropriate spot to allow demonstration of two-way interactive television on a pilot project basis.

Organizational Session Agenda

The committee reviewed suggestions with respect to additional orientation sessions for legislators

during the organizational session. Committee members suggested that legislators should receive some orientation from experienced legislators. Committee members also expressed concern over the scheduling of the Budget Section meeting to receive the executive budget during the same week of the organizational session. The committee recommended to the Legislative Council chairman and the interim Budget Section chairman that the Budget Section meeting to receive the executive budget be held during a week other than the week of the organizational session.

The committee approved a tentative agenda for the 1988 organizational session which, although based on the agenda for the 1984 organizational session (the agenda for the 1986 organizational session primarily concerned the special session called by the Governor) contains new items. The agenda includes time periods for the showing of a film prepared by the National Conference of State Legislatures entitled "Presentation Excellence," which describes how to present bills. Also included in presentations to legislators will be a description of the funding of state institutions, programs, and activities.

In response to requests by state agencies for presentations relating to safety belt use and acquired immune deficiency syndrome (AIDS), the committee adopted a general policy that presentations included on the agenda of an organizational session be limited to presentations for legislator orientation purposes and for those purposes provided by NDCC Section 54-03.1-03 and that informational or other "lobbying" presentations not be scheduled on the agenda.

State of the State Address

During the 1987 session, the House and Senate convened at 5:45 p.m. and the Governor presented his State of the State address to a joint session convened at 6:00 p.m. The committee approved a request that the joint session be scheduled to begin at 1:30 p.m., with the State of the State address scheduled to begin at 2:00 p.m. The change in the time is intended to allow sufficient time to prepare for the Inaugural Ball, which is scheduled to begin at 7:30 or 8:00 p.m.

State of the Judiciary Address

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the North Dakota Supreme Court for the State of the Judiciary address on the second legislative day of the 1989 session.

Tribal Address

During the 1983-84 and 1985-86 interims, representatives of the Indian tribes in North Dakota requested permission to appear before the Legislative Assembly to describe from their perspective the current status of the relationship between the tribes and the state of North Dakota. As a result of invitations extended by the committee during those interims, a spokesman from the tribes addressed each house of the Legislative Assembly during the first week in the 1985 and 1987 sessions.

The committee received a similar request this interim, but with an additional request to allow the

“flagsong,” which is a traditional song of the tribes. The committee authorized the extension of an invitation to representatives of the Indian tribes to make a presentation to each house of the Legislative Assembly on the third legislative day of the 1989 session similar to the presentation made during the 1985 and 1987 sessions, but including the flagsong.

Legislative Compensation Commission Report

The committee requested that the report of the Legislative Compensation Commission be presented by the chairman of the commission to each house on the third legislative day of the 1989 session.

Military Exchange Program

During the 1983-84 and 1985-86 interims, the Legislative Procedure and Arrangements Committee approved a military-state government leader exchange program. An exchange program was held early in the 1985 and 1987 sessions.

This interim the committee authorized continuation of the program and extended an invitation to the military personnel to make arrangements for a military exchange program during the 1989 session similar to the program held during the 1985 and 1987 sessions.

Legislative Fitness Day

The committee was requested to continue the physical fitness day program initiated during the 1985 session. The committee requested the Legislative Council staff to prepare a concurrent resolution for introduction by the majority and minority leaders of the 1989 Legislative Assembly to declare January 11, 1989, as Legislative Fitness Day for health screening purposes and other demonstrations.

Military Academy Day

During the 1989 session, the West Point Glee Club of the United States Military Academy will be appearing in Bismarck as a Centennial Project sponsored by the Bismarck-Mandan Symphony. In response to a request by the president of the symphony, the committee requested the staff to prepare a concurrent resolution for introduction by the majority and minority leaders of the 1989 Legislative Assembly to declare March 6, 1989, as United States Military Academy Day and extend an invitation to representatives of the academy to address each house and to the West Point Glee Club to perform in Memorial Hall.

NDSU Centennial

The committee reviewed a request to recognize the North Dakota State University Centennial with a short presentation on March 8, 1989, to a joint session of the Legislative Assembly with respect to the 100th anniversary of North Dakota State University. During discussion of the request for a joint session, committee members determined that because 1989 is a centennial year many special events could be recognized by the Legislative Assembly either as activities or through joint sessions which would not normally be recognized. The committee approved the request for a joint session with respect to the

celebration of the centennial of North Dakota State University.

Centennial Postage Stamp Ceremony

The committee was informed that the United States Postal Service will be issuing a postage stamp in commemoration of the North Dakota Centennial. A request was made for the authorization of a ceremony giving special attention to the issuance of the stamp during the legislative session. Committee members suggested that, due to the lack of specific information as to the date of issuance of the stamp, the leadership be contacted during the session once the actual date of issuance is known.

Government Day Activities

The North Dakota Constitution Celebration Subcommittee of the North Dakota Constitutional Celebration Committee proposed a joint session of the North Dakota Legislative Assembly for recognition of Government Day, Wednesday, February 22, 1989. The proposed activities included an address to the joint session and a program of appropriate activities to celebrate the 100th anniversary of the day when United States President Grover Cleveland signed the Enabling Act, allowing Dakota Territory to proceed with organizing for state government. The committee approved the proposal for a joint session, along with appropriate activities, on Government Day.

Legislative Records

During consideration of the proposed legislative information system pilot project, committee members expressed concern over the possibility of personal information in the system being subject to the public records provisions—Section 6 of Article XI of the Constitution of North Dakota and NDCC Section 44-04-18. Of particular concern was the protection of notes and correspondence from constituents, notes by legislators, telephone messages, requests of legislators to the Legislative Council staff, phone records, and other information that may be included in word processing or other computerized systems utilized by the legislative branch.

The committee considered a proposal that would have generally made records and information of or relating to the legislative branch not subject to the laws on public records. The proposal specifically listed those records that would be subject to the public records provisions. A representative of the media testified in opposition to this approach and expressed a preference for an approach that would identify records that would not be open to public inspection.

The committee recommends House Bill No. 1062 to list specifically certain legislative records and information that is not subject to the constitutional and statutory provisions on public records. Although the bill provides that such records are not subject to the public records provisions, such records would not be “confidential” and thus could be released on a voluntary basis.

LEGISLATIVE ASSEMBLY SMOKING POLICY Background

The 1987 Legislative Assembly enacted legislation

substantially revising the no smoking law—NDCC Sections 23-12-09 through 23-12-11. Before this legislation, smoking was prohibited in any public area that had been designated as a no smoking area. The legislation changed the concept in that smoking in a public area is only permitted in an area that has been designated as a smoking area. Thus, without further action, the State Capitol became a no smoking area. The Director of Institutions designated smoking areas in a limited number of public areas in the State Capitol; the Legislative Council chairman designated the smoking areas in the public areas under control of the Legislative Council—the Harvest Room and the Roughrider Room; and the director of the Legislative Council designated the smoking areas in the Legislative Council offices. Designated smoking areas included the legislative study rooms, the committee clerk’s room in the Harvest Room, the committee clerk’s room in the Roughrider Room, the foyer outside the Red River Room, the south side of the east end of Memorial Hall, and the north side of the west end of Memorial Hall. The Legislative Council assigned to the Legislative Procedure and Arrangements Committee the responsibility to review the smoking policy that should be in effect in areas under control of the Legislative Assembly during legislative sessions.

Survey of Legislators

The 1987 legislative process questionnaire included two questions with respect to suggestions for a smoking policy applicable to legislators and nonlegislators in committee rooms during the legislative session and a smoking policy applicable to legislators and nonlegislators in the chambers. The responses to the question concerning a smoking policy in committee rooms fell into five categories—no smoking anywhere, no smoking in committee rooms, allow smoking in halls outside committee rooms, no smoking in committees while meeting, and let each committee decide. The comments concerning the question on a smoking policy in the chambers fell into four categories—no smoking at all, designate a separate smoking section, no smoking during the session, and let legislators smoke at their desks.

During discussions of a smoking policy applicable to the Legislative Assembly, questions were raised concerning whether NDCC Section 23-12-10 required a proprietor of a public facility to designate a smoking area because of the language that smoking areas “must be designated by the proprietor.”

Recommendations

The committee recommends that each standing committee establish its own policy with respect to smoking in committee rooms. In that committee rooms have not been designated as smoking areas, which is statutorily required if smoking is permitted, this would require committees to determine whether to designate a smoking area. House Rule 511, to a limited extent, is in accord with the recommendation because it provides that each committee is to determine whether smoking by “members only” is to be permitted in the committee’s room. However, the rule provides that a smoking area is then “to the extent possible” to be designated.

The committee recommends that each chamber make its own determination as to the smoking policy in effect for the chamber as well as any time period when smoking is allowed. The committee recommends that the west end of Memorial Hall be designated a smoking area with the appropriate signs placed on pedestals or stands. The committee recognizes that House and Senate Rules 105 may need to be revised because they were adopted prior to the 1987 legislation, which provides that unless a smoking area is designated, no smoking is allowed. The committee makes no recommendation concerning these rules because of its recommendation that each chamber should decide its own policy.

The committee recommends Senate Bill No. 2066 to amend NDCC Section 23-12-10 to clarify that a proprietor of a public facility need not designate a smoking area, but that if a smoking area is designated, it must be designated by the proprietor.

COMMITTEE STRUCTURE FOR APPROPRIATION PROCESS STUDY

Background

The study resolution assigned to the committee directed a comparison of the Legislative Assembly’s Appropriations Committee structure to other states’ committee structures with a goal to develop recommendations to reduce workloads and increase the number of legislators involved in the appropriation process. The resolution also directed a review of the structure of all standing committees to make recommendations for changes in their structures necessary to implement changes in structures of the committees on appropriations.

States use two types of budget cycles in the budgeting of state expenditures—annual and biennial. Thirty-one states follow an annual budget cycle and 19 states follow a biennial budget cycle. Two legislatures of states on an annual budget cycle meet on a biennial basis but through reconvened sessions actually meet annually. Seven of the 19 states on a biennial budget cycle have biennial legislative sessions. Only four of the 19 states with biennial budget cycles provide for appropriations over the entire biennium rather than for each year of the biennium.

North Dakota’s biennial budget cycle begins on July 15 of each even-numbered year with the submission of budget estimates to the Office of the Budget. Budget data information must be presented to the Budget Section of the Legislative Council in December and by the third day after the commencement of the legislative session the official budget report must be transmitted by the Governor to all legislators. The normal effective date for an appropriation measure to maintain state departments and institutions is July 1 after the legislative session. The appropriation is for a biennium (July 1 through June 30 two years later) and 30 days after the close of the biennium unexpended appropriations are canceled, unless certain qualifications are met.

Based strictly upon numbers, the House Committee on Appropriations considers 9.1 percent of the bills and resolutions considered by the House and the Senate Committee on Appropriations considers 9.5

percent of the bills and resolutions considered by the Senate. The number of appropriations bills introduced to put the executive budget recommendation into effect has decreased from 82 in 1981 to 59 in 1987. The 59 budget bills contained 127 budget requests.

The budget procedures in other states vary from state to state. For example, in Kentucky the Senate Appropriations and Revenue Committee conducts hearings, and invites other committees when hearings relate to the scope of those committees. In the House the Appropriations and Revenue Committee and six subcommittees composed of members of the committee and liaison members of related standing committees conduct hearings. In Nevada the Senate Finance Committee and the Assembly Ways and Means Committee independently approve each agency budget and near the end of the session the two committees meet jointly to negotiate any differences between their respective actions.

In North Carolina identical appropriations bills are introduced in both houses and hearings are conducted by the joint membership of the House and Senate Appropriations Committees. One-half of the members of each house serve on the respective Appropriations Committee. Joint subject matter Appropriations Committees are subcommittees of the Joint Appropriations Committee and these committees recommend the base budget. The Joint Appropriations Committee adopts a revenue forecast that is adhered to for the remainder of the process after the joint subject matter Appropriations Committees have made their recommendations.

Committee Considerations

Committee members suggested that consideration be given to establishing a budget process, possibly through a budget committee, under which at the end of January during each legislative session, the leadership could establish parameters of the budget and committees would work towards those parameters. It was also suggested that the Committees on Appropriations could meet to conduct joint hearings on certain bills. For example, numerous university officials now travel to Bismarck for two different budget hearings whereby if joint hearings were held, only one or two representatives of the universities would be necessary to present information to the individual committees when the bills were actually acted upon. It was also suggested that the Committees on Appropriations could start their hearings before the legislative session begins.

Committee members discussed the feasibility of amending the rules to remove the specific listing of subject matter of each committee to allow flexibility in assigning bills to committees. Also discussed was the feasibility of transposing some two-day committees and some three-day committees and consolidating committees or transferring subject matters to other committees. Specific committees mentioned were the Committee on Human Services (a two-day committee), the Committee on State and Federal Government (a three-day committee), the Committee on Transportation (a two-day committee), the Committee on Agriculture (a two-day committee), and the Joint Constitutional Revision Committee.

The committee considered a proposed rules amendment to House and Senate Rules 326 and 501 to increase from \$5,000 to \$50,000 the requirement for bills to be referred or rereferred to the Committees on Appropriations. The intent of the proposal was to relieve the Committee on Appropriations from considering minor bills.

Conclusion

The committee makes no recommendation concerning the committee structure for the appropriation process study.

REPORT ON ADDITIONAL COMMITTEE ROOMS PLAN

Section 4 of 1987 Senate Bill No. 2005 (1987 Session Laws, Chapter 41), provided for the Director of Institutions to conduct a feasibility study, including preliminary drawings and cost estimates, for a State Capitol addition for additional committee rooms. The Director of Institutions was required to present reports to the committee during the interim.

The committee received a report from the Director of Institutions which described four proposals for additional committee rooms. One proposal was to add a 2,800 square foot per floor addition to the Capitol on the south side of the cafeteria between the Roughrider Room and the Judicial Wing. The second and third proposals were to build another facility and move the Office of Central Data Processing to that facility and use the vacated area in two different manners for committee room organization. The fourth proposal was to add a 5,800 square foot per floor addition to the north side of the Capitol in the areas between the Senate chamber and the mail room.

The committee was only required to receive the report and makes no recommendation with respect to the feasibility of an addition to the State Capitol.

APPROPRIATION FOR IMPROVEMENTS TO THE LEGISLATIVE WING

Background

The major legislative wing renovation project dates back to the 1977 Legislative Assembly, which authorized the construction of the Judicial Wing-State Office Building. Over the years, various projects have been undertaken to renovate the legislative wing and during the last interim projects that were completed included refinishing of woodwork, installation of lighting fixtures, a Prairie Room table, a Harvest Room sound system, Roughrider Room bookcases and chairs, committee room signage and bulletin boards, and a ceiling for the information kiosk. The 1985-86 interim Legislative Procedure and Arrangements Committee recommended 1987 House Bill No. 1058 to appropriate funds for refinishing the benches in the House and Senate chambers, replacing the windows in the House chamber, and providing thematic displays in four committee rooms.

Committee Room Signage Boards

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee approved the installation of signage and bulletin boards for legislative committee rooms. The boards provided for

the names of the committees. However, during the interim, the rooms are used for other purposes and legislative committee signage boards are inappropriate. The committee approved the installation of blank signage boards for use during the interim.

Chamber Benches

The benches in the House and Senate chambers have been used for several years and were in need of refinishing. The committee approved the refinishing of the benches in the House and Senate chambers.

House Chamber Windows

The committee reviewed a suggestion during the 1985-86 interim that the windows in the House chamber be replaced with more darkly tinted windows so as to reduce the glare faced by personnel at the front desk of the chamber. Various samples of tinted windows were installed in the House chamber for review. The inside pane of the double windows in the House chamber is currently clear glass and the committee approved the replacement of the clear glass with a glass having a reflective coating.

Committee Room Pictures

Since the 1983-84 interim, interest has been expressed in having committee rooms contain displays related to the names of the rooms. As the result of a request by the Legislative Procedure and Arrangements Committee during the 1985-86 interim, the State Historical Society developed a prototype proposal illustrating the types of displays that could be placed in committee rooms. The proposal was prepared for the Missouri River Room and included a large wall-mounted exhibit panel, and two small, wall-mounted exhibit panels to supplement the large panel. The committee authorized the State Historical Society to install thematic pictures in the committee rooms, as time permits. As of the last meeting of the committee, thematic pictures had been installed in the Missouri River Room.

House Men's Restroom

The committee reviewed a suggestion that an additional urinal be provided in the men's restroom in the House chamber. The committee approved the installation of a second urinal in the men's restroom in the House chamber.

Recommendation

Because of possible lack of available funds from the appropriation provided by 1987 House Bill No. 1058, the committee approved the expenditure of Legislative Assembly appropriated funds for the additional urinal in the men's restroom in the House chamber. The intent, however, was to appropriate funds from the interest and income fund of the Capitol building fund to pay for the project, which is scheduled for completion just prior to the 1989 legislative session. Projects under consideration for next interim include remodeling of the front desk in the House chamber to expand usable work space and reduce the height of the front desk and completing installation of thematic pictures in the remaining eight committee

rooms.

The committee recommends House Bill No. 1063 to appropriate \$14,300 from the interest and income fund of the Capitol building fund for payment of the projects authorized by the committee for completion this interim and for projects under consideration for the next interim. As it is intended that the payment for the project finished immediately prior to the 1989 Legislative Assembly would be made from this appropriation, the bill contains an emergency clause.

MEMORIAL HALL GUIDELINES

Background

North Dakota Century Code Section 54-35-02(8) provides the Legislative Council with the power and duty to control the use of the legislative chambers and permanent displays in Memorial Hall. This authority has customarily been delegated to the Legislative Procedure and Arrangements Committee. Under guidelines adopted in 1981, any permanent display in Memorial Hall is to be reviewed annually. In 1982 the committee approved relocating the Liberty Bell to the Heritage Center, and in 1984 the committee approved relocating two statues to the Heritage Center.

Current Interim

Since the removal of the statues in 1984, Memorial Hall does not contain any permanent display.

1990 CENSUS REDISTRICTING DATA PROGRAM

Background

Under Public Law 94-171, approved December 23, 1975, the Congress of the United States authorized officials responsible for legislative apportionment in each state to submit a plan identifying geographic areas for which specific tabulations of population are desired. The Bureau of the Census was directed to establish criteria for the plans and to provide the tabulations as expeditiously as possible after the census date. The bureau designated this program as the 1990 census redistricting data program.

Block Boundary Suggestion Project

Under Phase 1 of the program, states were given the opportunity to suggest boundaries for census blocks (the smallest geographic areas for which census information will normally be provided). During the 1985-86 interim, the Legislative Procedure and Arrangements Committee participated in Phase 1 of the program and contracted with Dr. Floyd Hickok of the Department of Geography at the University of North Dakota. Dr. Hickok had been involved with the technical aspects of the reapportionment study in 1981 and the reapportionment plan adopted during the 1981 reconvened session.

Phase 2

Phase 2 of the program was scheduled to commence in late 1987 or early 1988 when the Census Bureau delivered maps with the block boundaries suggested under Phase 1. Precinct boundaries would be marked on the maps and the maps would be returned to the

Census Bureau. Census information would be tabulated for those precincts. As of the last meeting of the committee, the Census Bureau had not delivered the maps.

Conclusion

To complete the state's participation in the 1990

census redistricting data program, the maps that will be received from the Census Bureau must be marked with the precinct boundaries in the state.

The committee approved a contract with Dr. Hickok to complete Phase 2 of the program as well as to provide legislative reapportionment consulting services to the Legislative Council.

POLITICAL SUBDIVISIONS COMMITTEE

The Political Subdivisions Committee was assigned two studies. Senate Concurrent Resolution No. 4066 directed a study of the feasibility and desirability of changes in the legal status of, and relationships existing among, political subdivisions and the effect of new legislation on county and city budgets. Senate Concurrent Resolution No. 4069 directed a study of the method of providing state aid to local fire departments and districts, with determination of whether the reserves of the state fire and tornado fund would be adequate to fund aid programs in the future.

Committee members were Senators Clayton A. Lodoen (Chairman), James A. Dotzenrod, Don Moore, Chester Reiten, and Dan Wogsland and Representatives June Y. Enget, J. A. Haugen, Alvin Hausauer, Ray Meyer, Marshall W. Moore, Rosemarie Myrdal, Jeremy Nelson, Vince Olson, Archie R. Shaw, William Starke, Janet Wentz, Adella J. Williams, and Clark Williams.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

POLITICAL SUBDIVISIONS RELATIONSHIPS STUDY

Background

Within the broad range of topics under the study of political subdivisions' relationships, the committee determined to focus attention on joint efforts among political subdivisions and the impact of legislation on budgets of political subdivisions. The committee also acted on suggestions to examine enforcement of township zoning regulations and creation of a state-level Advisory Commission on Intergovernmental Relations.

North Dakota law broadly authorizes cooperation between or among political subdivisions. At least 40 sections of the North Dakota Century Code (NDCC) authorize joint exercise of powers among political subdivisions in specific instances. In addition, two provisions of law provide general authority for joint efforts of political subdivisions. Article VII, Section 10, of the Constitution of North Dakota provides that agreements for cooperative or joint administration of any powers or functions may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter. North Dakota Century Code Section 54-40-08 allows any political subdivision to enter agreements with other political subdivisions for joint action to carry out any function or duty that one of the subdivisions may perform under law.

Home rule provisions for counties and cities further expand the possibility for joint exercise of powers. County home rule is permitted under NDCC Chapter 11-09.1 and city home rule is permitted under NDCC Chapter 40-05.1. A properly implemented ordinance of a home rule county or city, with limited exceptions, supersedes any conflicting state law. By use of home rule authority, counties and cities have the option of creating governmental combinations and expanding

county and city powers and duties beyond those contemplated under state law.

State legislation that impacts political subdivisions' budgets, called state "mandates," presents difficulties to political subdivisions in two ways. The first difficulty is pressure to reduce spending or increase taxes. The second difficulty results from combining the timetable for local budgeting and the time state legislation takes effect. Recent legislation changed the budget year for cities, counties, and townships from the year ending June 30 to the year ending December 31. Beginning with calendar year 1983 cities have budgeted on a calendar year basis. County budgets were changed to a calendar year basis beginning in 1984. Townships will change to a calendar year fiscal year beginning in 1989. The difficulty faced by political subdivisions on a calendar year budget is that most legislation approved by the Legislative Assembly takes effect in July, which falls in the middle of a calendar year budget. Because the regular legislative session begins in January, after the political subdivision's budget has been approved, the local budget process does not allow any opportunity to consider the effect of the new legislation.

If new legislation mandates additional expenses for the political subdivision, the governing body of the political subdivision is faced with a choice of finding money in its budget for an unbudgeted expense or ignoring the law until the beginning of the next budget year. Ignoring the law is not an appropriate option because officers of political subdivisions are sworn to uphold the law and failing to comply with the law could subject the officer or the political subdivision to civil liability.

House Bill No. 1331 (1987) was an attempt to deal with the concerns of political subdivisions regarding mandates. It appears that under Article IV, Section 13, of the Constitution of North Dakota, the Legislative Assembly cannot provide for delayed effectiveness of selected legislation unless it does so directly by the terms of the bill itself or by amendment of the bill through another bill. Because it appears that legislation could not provide a blanket delayed effect for mandates legislation, House Bill No. 1331 as introduced provided that political subdivisions would not have to comply with mandates legislation until the first full fiscal year after passage. However, the objection was raised that the Legislative Assembly may want immediate compliance with legislative mandates. For this reason, House Bill No. 1331 was amended to provide a delayed effective date for four bills that had already been passed by the Legislative Assembly which were viewed as potentially troublesome for local budgets unless their effective dates were delayed.

The fiscal notes process for pending legislation that would affect revenues or expenditures of political subdivisions is a longstanding concern of representatives of political subdivisions. Fiscal notes are estimates of positive or negative fiscal impact of passage of a bill on the revenues or expenditures of the state or a political subdivision. These notes are prepared by state agencies that generally have good

data upon which to base estimates of impact to the state, but which often lack sufficient data to estimate impact to political subdivisions. House Bill No. 1275 (1975) and Senate Bill No. 2224 (1981) would have required fiscal notes on legislative measures causing a fiscal impact to political subdivisions. Both of these bills were defeated. During the 1981-82 interim, the matter of fiscal notes for bills having fiscal impact to political subdivisions was studied by the Legislative Procedure and Arrangements Committee. That committee recommended adoption of Legislative Assembly Joint Rule 502 and the rule, which established the current fiscal notes process, was adopted by the House of Representatives and the Senate during the organizational session in December 1982. The Legislative Procedure and Arrangements Committee recognized that the rule represented a compromise but found that no state agency had necessary data to prepare fiscal notes for all bills impacting political subdivisions, the cost to state government of developing a data base to provide fiscal notes would be substantial, and that the Legislative Assembly would be reluctant to accept fiscal estimates prepared by organizations outside state government. The rule requires that if no state agency can prepare a fiscal note, a statement must be attached to inform legislators that the bill has an apparent fiscal impact to political subdivisions but that no state agency has the capacity to estimate the impact. Thus, even though no accurate fiscal information is available, the Legislative Assembly will be put on notice of potential fiscal impacts to political subdivisions. The statement that no agency can estimate the impact of the bill was attached to 33 bills during the 1987 legislative session.

The difficulty of enforcing township zoning regulations was raised as a matter for committee consideration. Townships have broad zoning authority within their respective jurisdictions in order to provide for orderly development of areas outside city limits. Enforcement of township zoning regulations is provided under NDCC Section 58-03-14, which authorizes local authorities, any affected citizen, or any property owner to institute appropriate action to prevent or restrain land use in violation of zoning regulations. The county state's attorney is not statutorily required to enforce township zoning regulations. Most townships operate on a relatively modest budget and hiring private legal counsel to represent the township may be beyond the reach of the township, if a substantial number of zoning violations exist.

Several national organizations have recommended the creation of a state-level Advisory Commission on Intergovernmental Relations. In 1974 the federal Advisory Commission on Intergovernmental Relations suggested that states create intergovernmental panels with representation from political subdivisions. At that time only four states had such panels. By 1987 there were 25 such organizations operating in the states and a dozen other states were considering such proposals. Senate Bill No. 2460 (1983) and Senate Bill No. 2402 (1985) would have created a North Dakota Advisory Commission on Intergovernmental Relations to serve

as a forum for discussion and resolution of intergovernmental problems and to conduct studies and investigations on several subjects affecting state and local government. Both bills failed to pass, apparently due to cost concerns. The fiscal note for the 1985 bill estimated a cost of approximately \$81,000 for the biennium, including over \$27,000 for compensation and expenses for 20 commission members to attend four meetings each year and \$54,000 for staff costs and operating expenses. The Senate Appropriations Committee recommended that the bill not pass, and the bill failed to pass the Senate.

Testimony and Committee Considerations

Representatives of the Highway Department, Department of Health and Consolidated Laboratories, State Parks and Recreation Department, and Economic Development Commission described their efforts to encourage cooperation among political subdivisions in providing services. These state agencies attempt to foster cooperative agreements among political subdivisions in appropriate circumstances.

The committee received testimony from representatives of various political subdivisions on cooperative efforts in areas including planning, nursing, jail, law enforcement, youth services, parks and recreation, computer use, health services, road maintenance and construction, economic development, buildings and facilities, libraries, and communications. It appears that successes and failures result from attempts to cooperate among political subdivisions but that successes outnumber the failures. Combination among political subdivisions creates unique problems but the efforts were described as worthwhile because of possible success in achieving savings of revenues or providing services that could not be provided through the resources of a single political subdivision.

Professors from North Dakota State University described a study they began in 1987 and expect to complete in 1990. An important part of the study, from the committee's perspective, is the attention that will be focused on identifying methods to improve the efficiency of local government in use of revenues, including the potential for joint or cooperative provision of services. It is anticipated that significant knowledge will be gained from this detailed study.

Representatives of state and local governments told the committee that present law is broad enough to allow joint or cooperative efforts among political subdivisions. The problem perceived is discovering, disseminating, and encouraging appropriate joint efforts to conserve resources of political subdivisions. The view was expressed that cooperation among political subdivisions cannot, and should not, be legislated because of the diversity that exists among the various political subdivisions in the state. Those who addressed the issue indicated that the difficulty that must be overcome is not a matter of state law, but rather, a matter of local politics and the desire of some local officials to retain full control over all matters within their jurisdiction. Testimony indicated that the state could provide more assistance by establishing a central source for disseminating

information to political subdivisions on success and failure of local cooperative efforts, program descriptions, and contact people.

To address the problem of legislation taking effect in the middle of a political subdivision's budget year, the committee considered the following options and accompanying problems:

1. Amend Article IV, Section 13, of the Constitution of North Dakota to delay the effective date of bills until January 1 after passage, at least for bills that have fiscal impact on political subdivisions. A difficulty with this option is that, for bills that should become effective on an earlier date, a two-thirds vote would be needed for passage.
2. Allow political subdivisions to amend their budgets during the budget year. The facts that a budget change does not increase tax revenues and that taxes have already been levied for the year make this option unattractive. To make this option viable would require granting accompanying authority to political subdivisions to levy taxes during the budget year, payable on very short notice.
3. Rely on political subdivisions to carry contingency funds or levy excess taxes so funds are available to meet unexpected budget demands from new laws. The undesirable feature of this approach is that tax burdens are increased, perhaps unnecessarily.
4. Create an "escape valve" so political subdivisions do not have to comply with new mandates until January 1 of the year following passage. This approach was originally contained in House Bill No. 1331 (1987) but the objection was raised that the Legislative Assembly may desire immediate compliance on certain measures.
5. Pass one bill that would amend bills containing mandates so as to provide a delayed effective date for those bills. This approach was chosen in House Bill No. 1331 (1987) as passed, which amended a delayed effective date into four other bills. The pitfalls in this option are that oversight may cause laws to become effective during the budget year and that a bill containing a mandate may be considered after passage of the bill that should have provided the delayed effective date.
6. Include a delayed effective date in every bill that is perceived as a problem if it becomes effective during the budget year of political subdivisions. The pitfalls in this option is the possibility that oversight may result in such a bill lacking a delayed effective date clause or the sponsor or Legislative Assembly may not agree to delay the effective date of the bill.
7. Provide state funding to political subdivisions to meet needs created by laws mandating new or additional expenses during a budget period. The difficulties with this approach are that the Legislative Assembly may not be able or willing to provide funding and that administrative difficulties are likely because new laws would

affect different subdivisions uniquely and inequity in distribution may result.

8. Rely on political subdivisions to fund new spending mandates through existing revenues or by incurring indebtedness if necessary. In addition to political unpopularity, this approach may create compliance problems because it takes time to raise funds through indebtedness and a new law may take effect before the funds are available. Constitutional debt limitations may also pose a problem.
9. Revert to a July 1 budget year for political subdivisions or change to a tax year beginning at a different time. These options would be unsettling to political subdivisions and may cause other problems if budget and tax periods are not concurrent.

Committee members and representatives of political subdivisions expressed the opinion that not one of these options is very attractive. The option of including a delayed effective date in every bill that would impact political subdivisions' budgets was identified as the best of the options considered but, to make this option workable, the fiscal notes process would need to be improved.

Representatives of political subdivisions expressed great concern with state mandates and the fiscal notes process. League of Cities and Association of Counties' representatives said their organizations could not generate fiscal notes but accurate fiscal notes on impact of legislation to political subdivisions is essential.

State mandates are supported because mandates may promote desirable social and economic goals and the activity or service may be significant in all areas of the state and require statewide uniformity. Mandates are opposed because they may contravene the principle of political accountability of local officials, undercut financial responsibility, and reduce local budget control. The committee was asked to consider providing full reimbursement from the state for legislation that limits local taxing authority, increases direct costs to local government, or relates to political subdivision employees. Consideration was also requested for partial reimbursement for a mandate that enhances or expands the role of local government when the mandate requires performance of a function that is in the state's interest.

The committee surveyed the states and of 35 states that responded 27 have some form of requirement for a fiscal note to be attached to a bill having a fiscal impact on political subdivisions. However, with respect to those 27 states in most instances the fiscal notes have little credibility because of a lack of reliable data or a statement may be attached that no fiscal estimate can be made from available data.

The committee reviewed Illinois and Connecticut laws that appear to require state funding for any state mandate imposed on political subdivisions. Under Illinois law, local governments are relieved of the requirement to comply with any state mandate unless the Illinois General Assembly appropriates the necessary funds or unless the Act specifically provides that funding is not provided and requires compliance with the mandate. The Illinois Department of

Commerce and Community Affairs reported that the vast majority of legislative mandates excuse the state from funding the mandate but require local governments to comply with the mandate. Connecticut law does not require the state to fund mandates but requires bills containing a state mandate to be examined by the Appropriations Committee, which is to make a recommendation on whether the state should reimburse local governments for the cost resulting from the mandate. The Connecticut Office of Fiscal Analysis reported that in practice the determinations that are supposed to be made by the Appropriations Committee are not made when the bills are reported out of committee. Both Illinois and Connecticut contact staff indicated that it is difficult to measure the effectiveness of mandate laws but the laws seem to make legislators more aware of the consequences of their actions on municipalities and fewer mandate bills seem to be passed by their legislatures.

Political subdivisions representatives said the information necessary to prepare fiscal notes for proposed legislation exists in the records of political subdivisions. The question is a balancing of the need for the information against the funds that must be invested to supply the information. It was suggested that establishing a single office for retention of necessary data and compilation of fiscal notes on impact to political subdivisions may be more economical than requiring each state agency with responsibility for fiscal note preparation to obtain the necessary information. It was suggested that the place for such a centralized staff would be with the Legislative Council or an Advisory Commission on Intergovernmental Relations.

A representative of the North Dakota State's Attorneys Association said the association would oppose requiring county state's attorneys to enforce township zoning regulations. Several reasons were cited for this opposition including the existing growth in time demands on state's attorneys, the potential for great use of state's attorneys' time by townships, and the potential conflict of interest in representing both a county and a township within the county. State's attorneys were described as offering as much assistance as possible to township officers under their statutory duty to advise township officers on questions involving their duties. It was suggested that townships that get involved in local zoning without paying the costs of enforcement lack a commitment to zoning regulations.

A representative of the North Dakota Township Officers Association said he would not recommend requiring the county state's attorney to enforce township zoning regulations. Zoning at the county level was described as not working well because uniform enforcement is very difficult. Township zoning was described as preferable to zoning by the county. Much of township zoning was described as enforceable locally without litigation and the majority of zoning conflicts could be settled by cooperation.

The committee considered recommendations of the National Conference of State Legislatures' Task Force on State-Local Relations. The task force recommends that each state should have an entity to deal with

state-local concerns. The entity should be created by statute, have strong legislative representation, and have adequate budgets and staff. The entity would serve as a forum for discussion of state-local issues, research local developments and state policies, promote experimentation in the state-local government process, and suggest solutions to state-local problems.

The North Dakota Association of Counties, North Dakota League of Cities, North Dakota Recreation and Parks Association, and North Dakota Township Officers Association supported the creation of a North Dakota Advisory Commission on Intergovernmental Relations. All of these groups said they would be willing to pay expenses for their own representatives on the advisory commission.

During consideration of a bill to create a North Dakota Commission on Intergovernmental Relations, several issues were addressed. The bill initially provided for a 16-member commission appointed by the Legislative Council and the Governor. Members would have been reimbursed for expenses and per diem by a legislative appropriation. Membership of the commission was reduced to reduce costs. Appointment authority was changed to provide that commission members representing political subdivision groups would be appointed and could have their expenses paid by their respective group. Park districts levy slightly more taxes in the state than townships and the commission's membership was changed to include one member of the commission, to be appointed by the North Dakota Recreation and Parks Association. Only the members of the Legislative Assembly would receive reimbursement from the state for per diem and expenses for serving on the commission. This would reduce the expenditure of state funds to support the commission to less than \$5,000 for the biennium as compared to the estimated cost of \$81,000 attached to the 1985 legislation for creation of an Advisory Commission on Intergovernmental Relations.

Recommendations and Conclusions

The committee recommends Senate Bill No. 2067 to create an 11-member Advisory Commission on Intergovernmental Relations. The commission would consist of two members appointed by the North Dakota League of Cities, two members appointed by the North Dakota Association of Counties, one member appointed by the North Dakota Township Officers Association, one member appointed by the North Dakota Recreation and Parks Association, four members of the Legislative Assembly appointed by the Legislative Council, and the Director of the Office of Management and Budget. The Legislative Council would designate the chairman and vice chairman of the commission. All members of the commission would serve for a term of two years beginning July 1 of each odd-numbered year and may be reappointed for additional terms. The commission must meet at least semiannually. The commission would serve as a forum for discussion or resolution of intergovernmental problems and present reports and recommended legislative bills to the Legislative Council for consideration in the same manner as

interim Legislative Council committees. The commission could request provision of appropriate staff services from the Legislative Council. Senate Bill No. 2067 contains an appropriation of \$4,700 to the commission for its operation during the 1989-91 biennium. The appropriated amount includes funds for preparation of a report for delivery to the Legislative Council.

The committee recommends that the Legislative Procedure and Arrangements Committee and the Advisory Commission on Intergovernmental Relations investigate the possibilities of improving the fiscal note system, including the possibility of the commission or the Legislative Council hiring additional staff, with the goal of improving the fiscal note process with regard to impact of legislation on political subdivisions.

The committee makes no recommendation regarding statutory changes with respect to cooperative or joint efforts of political subdivisions. The committee finds that existing constitutional and statutory law provides adequately for cooperative or joint functions of political subdivisions. The committee recommends that the Advisory Commission on Intergovernmental Relations make this issue a standing concern and attempt to provide information and encourage cooperative efforts among political subdivisions.

The committee makes no recommendation regarding statutory changes with respect to enforcement of township zoning regulations.

Executive Order

After the final meeting of the interim Political Subdivisions Committee, the Governor created an Advisory Commission on Intergovernmental Relations by Executive Order 1988-7, dated August 29, 1988. The commission as created by the Executive Order differs somewhat in membership from the commission that would be created by Senate Bill No. 2067.

INSURANCE PREMIUM TAX DISTRIBUTION TO FIRE DISTRICTS

Background

Since 1887 North Dakota law has provided for distribution of fire insurance premium tax revenues to fire protection districts, which includes cities, city fire departments, rural fire departments, and rural fire protection districts. North Dakota Century Code Section 26.1-03-17 provides that insurance premium taxes are to be deposited in the state general fund. During the 1987-89 biennium, \$3.5 to \$3.7 million from premiums taxes on property and casualty lines of insurance will be deposited in the state general fund. The insurance premium tax rate is 1.25 percent for property and casualty insurance, and insurance companies based in other states are taxed at the rate imposed in their home state, the so-called "retaliatory" tax rate. Until 1983 the applicable tax rate was 2.5 percent. The current rate is lower than the percentage of premiums to be distributed under the distribution formula. North Dakota Century Code Section 18-04-05 provides for annual distribution:

1. To cities not within the boundaries of a fire

protection district, a sum equal to 2.25 percent of the premiums received by insurance companies issuing policies for fire, allied lines, homeowner's multiple peril, farm owner's multiple peril, and commercial multiple peril insurance on property in those cities.

2. To each city fire department performing service outside city limits, \$100.
3. To each rural fire department not certified by the State Fire Marshal, \$200.
4. To each rural fire protection district organized under NDCC Title 18 or rural fire department certified by the State Fire Marshal, \$200 plus a sum equal to 2.25 percent of the premiums received by insurance companies issuing policies for fire, allied lines, and multiple peril within the boundaries of the rural fire protection district or properties served by certified rural fire departments.

When the Commissioner of Insurance determines the amount due each entity, that amount is to be certified to the Office of Management and Budget for payment on or before June 1 of each year. The amounts distributed cannot exceed the amount of the biennial appropriation made by the Legislative Assembly and payments in any fiscal year cannot exceed one-half of the biennial appropriation. If the amount appropriated is less than the amount determined by applying the formula, proration must be made by the commissioner to provide each eligible recipient with an equal proportion of the amount actually appropriated as would have been received under the formula.

In 1983 the distribution formula was amended to exclude hail insurance premiums from the computation of distributions to rural fire protection districts. In 1985 this change was reversed and crop hail insurance premiums were reinstated in the computation.

The appropriations for insurance premium tax distributions were made from the state general fund until 1983. Beginning with appropriations made by the 1983 Legislative Assembly, the appropriations for insurance premium tax distributions have come from the state fire and tornado fund. The general fund appropriation approved in 1981 for distribution in 1982 and 1983 was for \$3,811,500. In 1983 a deficiency appropriation for the 1981-83 biennium was made in the amount of \$1,003,016 from the state fire and tornado fund. Other appropriations for biennial insurance premium tax distribution from the state fire and tornado fund have totaled \$4,811,500 in 1983, \$5,200,000 in 1985, and \$5,200,000 in 1987.

The state fire and tornado fund was created in 1919 to provide for insurance coverage of public buildings belonging to the state or political subdivisions. With limited exceptions, the state and any county, city, township, school district, or park district owning a public building must insure the building with the fund. The premiums paid for the insurance depend upon the balance in the fund. All assessments, interest, and investment profits of the fund are added to a reserve balance within the fund. All covered losses are paid out of the fund, and, if a major loss or a succession of disasters occurs and the reserve

balance is depleted below \$2 million, the Commissioner of Insurance with approval of the Industrial Commission may issue premium anticipation certificates in an amount sufficient to bring the reserve balance up to \$2 million. If premium anticipation certificates are issued, the commissioner must levy special assessments against all property insured with the fund. The commissioner must obtain an excess loss reinsurance contract naming the fund as the reinsured to reimburse the fund for all losses in excess of \$1 million with a liability limit of at least \$100 million for each loss and \$100 million for all loss occurrences during any 12-month period. The fire and tornado fund balance on July 1, 1987, was \$20 million and recent estimates show an unobligated fund balance of \$12.9 million for June 30, 1989.

Testimony

The Commissioner of Insurance testified in opposition to appropriations from the fire and tornado fund unless for fire and tornado fund purposes. During the 1987 legislative session, bills appropriations were made from the fire and tornado fund of \$2 million to the Industrial Commission for an interest rate buydown program, \$475,000 for the State Fire Marshal program, \$200,000 for Department of Health and Consolidated Laboratories emergency medical services, \$49,500 for State Firemen's Association operations, and \$5.2 million for insurance premium tax payments to fire protection districts. Claims against the state fire and tornado fund have increased, total coverage under the fire and tornado fund has increased, and the fire and tornado fund has been drawn down by appropriations for other purposes. The combination of these factors was described as creating a danger to the existence of the state fire and tornado fund for its intended purpose. Insurance premiums for political subdivisions through the state fire and tornado fund are about 25 percent of the premiums charged by private insurers for the same purposes. The commissioner said fire and tornado fund premiums could be reduced further if the fire and tornado fund balance had not been drawn down by legislative appropriations for other purposes. The commissioner presented an actuarial study that indicates a balance of \$12 million in the state fire and tornado fund gives the state a 99 percent assurance that the fund will not be completely drained by loss claims within one biennium. The present balance of the state fire and tornado fund was described as being as low as it can be without risk of endangering the fund's security or increasing premiums for coverage of public buildings by the fund. Increasing fire and tornado fund premiums to political subdivisions to provide political subdivisions with distributions in place of insurance premium tax revenues was described as making no sense.

Representatives of the State Firemen's Association surveyed officials of local fire protection districts. The

survey indicated satisfaction with current insurance premium tax distribution levels except when appropriated amounts fall short of the amount that would be provided through full funding under the distribution formula. Local officials believe that insurance premium tax distributions are essential to the survival of local fire protection districts. State Firemen's Association representatives said they would be satisfied with appropriations for the 1989-91 biennium at the levels provided by 1987 and 1985 appropriations.

The committee considered the possibilities of increasing insurance premium tax rates to provide additional revenue to the state general fund for the purpose of funding insurance premium tax distributions to fire protection districts from the state general fund rather than from the state fire and tornado fund. Changing the funding source from the state fire and tornado fund to the state general fund will show a negative fiscal impact to the state general fund of \$5.2 million if appropriated amounts are the same as those in 1985 and 1987. The insurance premium tax rate is 1.25 percent but a retaliatory provision requires insurance companies based in other states to pay the tax in North Dakota at the rate imposed in their home states. Most states impose a rate of two percent or higher so most companies based in other states pay at a two percent or higher rate in North Dakota. Increasing the North Dakota insurance premium tax rate to two percent would therefore affect mostly domestic companies and would increase revenues by \$1.15 million per biennium. Committee members rejected this approach for reasons including not wanting to raise health insurance premiums to fund fire protection and not wanting to raise insurance premium tax rates on only domestic insurance companies. To fully fund a \$5.2 million fire protection district distribution through increased insurance premium tax rates would require a rate of 2.5 percent on property and casualty insurance which would be double the present rate for domestic insurance companies. Committee members pointed out that recommending appropriations for distributions from the general fund is not equivalent to recommending increased taxes in other areas, since reduced general fund spending for some purposes could accommodate the necessary appropriation.

Recommendation

The committee recommends that insurance premiums tax receipts, which are deposited in the state general fund, should be the source of distributions to fire protection districts, and that amounts appropriated in the future be at least as much as was provided by 1987 legislative appropriations. The committee recognizes that this recommendation has a negative impact to the state general fund but the committee believes it is appropriate that the state general fund provide fire protection district distributions because the tax revenues are deposited in the state general fund.

RETIREMENT COMMITTEE

The Retirement Committee has statutory jurisdiction over legislative measures that affect retirement programs. Under North Dakota Century Code (NDCC) Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs of state employees or employees of any political subdivision. The committee is allowed to solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. The statute requires that a copy of the committee's report accompany any measure affecting a public employees' retirement program which is introduced during a legislative session. A copy of the report must be attached to any retirement measure referred to a standing committee and amendments to those measures during a session must also be accompanied by a committee report. Under the statute, legislation enacted in contravention of these requirements is invalid and benefits provided under that legislation must be reduced to the level in effect before enactment.

In addition to its statutory responsibilities, the committee was assigned two studies relating to health insurance benefits and other benefits provided to public employees. House Concurrent Resolution No. 3047 directed a study of the uniform group insurance program administered by the Public Employees Retirement System (PERS) to determine the extent to which the program should be subject to legislative control, the type of administration best suited for the program, and options for providing adequate, affordable coverage for active and retired employees. House Concurrent Resolution No. 3069 directed a study of health insurance benefits and other benefits administered by the various public employee retirement boards, as well as the investment practices and performance of those boards.

Committee members were Senators Joseph A. Satrom (Chairman), Bonnie Heinrich, and Clayton A. Lodoen and Representatives Wesley R. Belter, Lyle L. Hanson, Bob Martinson, and Wade Williams.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

CONSIDERATION OF RETIREMENT PROPOSALS

The committee is statutorily authorized to establish rules for its operation, including rules relating to the submission and review of proposals and the establishment of standards for actuarial review. The committee established April 1, 1988, as the deadline for submission of retirement proposals. The deadline was established to provide the committee and the consulting actuary of the affected retirement programs sufficient time to discuss and evaluate the proposals. The committee limited the submission of retirement proposals considered by it to legislators

and those agencies entitled to the bill introduction privilege.

The committee reviewed each submitted proposal and solicited testimony from proponents, retirement program administrators, and other interested persons. In past interims, the committee contracted for the services of an actuarial consultant; however, the 1987 Legislative Assembly amended Section 54-35-02.4 to require that each retirement program pay, from its retirement fund and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that retirement program. Therefore, the committee referred proposals submitted to it to the affected retirement programs, which were requested to authorize the preparation of actuarial reports. The retirement programs used the actuarial services of the Martin E. Segal Company in evaluating the proposals. The committee obtained written actuarial information on each proposal.

In evaluating each proposal, the committee considered the proposal's actuarial cost impact, testimony by retirement program administrators and affected individuals, the impact on state general or special funds and on the affected retirement program, and other consequences of the proposal or alternatives to it. Based on these factors, each proposal received a favorable recommendation, an unfavorable recommendation, or no recommendation. If the committee decided not to take jurisdiction over the proposal, the proposal was not acted on.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to the proposal and delivered to its sponsor. Each sponsor is responsible for securing introduction of the proposal in the 51st Legislative Assembly.

Public Employees Retirement System

The Public Employees Retirement System is governed by NDCC Chapter 54-52. The plan is supervised by the PERS Board, and covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1979, can choose to be members. Officials appointed to office after that date are required to be members. Most Supreme Court and district court judges are also members of the plan, but receive benefits different from other members. A county, city, or school district may choose to participate on completion of an employee referendum and making an agreement with the PERS Board.

The PERS plan provides for participating members other than judges to receive a retirement benefit of 1.5 percent of final average salary times the number of years of service. For judges, the normal retirement is three percent of final average salary times the first 10 years of judicial service, two percent of final average salary for the next 10 years, and one percent for service after 20 years. Under Section 54-52-17(2), final average salary is defined as the average of the highest salary for any 60 consecutive months of the last 10 years of employment. An employee is vested

after eight years of service. The normal retirement benefit is payable at age 65 or when the member has a combined total of years of service credit and years of age equal to 90. A reduced early retirement benefit is payable for vested employees who have reached age 55. Disability retirement benefits are payable to members who become permanently and totally disabled after completing at least 180 days of eligible employment. Disability benefits are calculated at 60 percent of the member's final average salary, reduced by any primary benefits received under the federal Social Security Act and by any workers' compensation benefits paid.

The employer contributes 5.12 percent of covered salary to the PERS plan and the employee contributes four percent. For many employees, no deduction is made from pay for the employee's share. This is the result of 1983 legislation that provided for a phased-in "pick up" of the employee contribution in lieu of a salary increase at that time. The latest available report of the consulting actuary is dated July 1, 1988. According to the report, on that date the Public Employees Retirement System had net assets with a cost value of approximately \$280 million, with a market value of approximately \$294.4 million, excluding assets of the Highway Patrolmen's Retirement System. Total active membership was 13,594 (5,781 men other than judges, 7,785 women other than judges, and 28 judges). The report indicated an employer contribution of 1.52 percent of July 1, 1988, compensation would be necessary to meet the normal cost and cost of amortizing "unfunded" liability associated with nonjudge members. This results in an actuarial margin of \$8,339,688 or 3.60 percent of July 1, 1988, total covered compensation, the difference between the indicated required employer contribution and the statutory 5.12 percent.

The following is a summary of the proposals affecting the PERS over which the committee took jurisdiction and the committee's action on each proposal:

Bill No. 1. SPONSOR: PERS Board
PROPOSAL: Increase benefit multiplier for nonjudge members and current retirees from 1.5 percent to 1.65 percent.
ACTUARIAL ANALYSIS: The reported annual actuarial cost impact would be approximately \$3,891,854 or 1.68 percent of July 1, 1988, total covered compensation.
COMMITTEE REPORT: Favorable recommendation because the proposal provides a benefit enhancement at a reasonable cost.

Bill No. 2. SPONSOR: Representative Bob Martinson
PROPOSAL: Increase benefit multiplier for nonjudge members and current retirees to 1.65 percent and calculate benefits based on a consecutive 36-month final average salary. The committee amended the proposal at the request of its sponsor

to increase postretirement benefits by 5.76 percent, to include part-time employment in the calculation of final average salary, and to calculate benefits based on a nonconsecutive 36-month final average salary.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact of the amended proposal would be approximately \$6,185,268 or 2.67 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Favorable recommendation because the proposal as amended provides a benefit enhancement at a reasonable cost. (Note that this proposal incorporates the combined effect of Bill Nos. 1 and 3.)

Bill No. 3. SPONSOR: PERS Board

PROPOSAL: Provide for the calculation of retirement benefits based on a consecutive 36-month final average salary, include part-time employment in the calculation of final average salary, and increase postretirement benefits by 5.76 percent. The committee amended this proposal at the request of the PERS Board to provide for the calculation of benefits based on a nonconsecutive 36-month final average salary.

ACTUARIAL ANALYSIS: The reported actuarial cost impact of the original proposal would be approximately \$2,293,414 or 0.99 percent of July 1, 1988, total covered compensation. The reported annual actuarial cost impact of the amendment was negligible.

COMMITTEE REPORT: Favorable recommendation because the proposal as amended provides a benefit enhancement at a reasonable cost.

Bill No. 4. SPONSOR: Senator Bonnie Heinrich

PROPOSAL: Credit unused sick leave to years of service employment in calculating retirement benefits.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact would be approximately \$370,653 or .16 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Unfavorable recommendation because the PERS Board does not support the proposal on grounds it penalizes participating members who must utilize available sick leave benefits.

Bill No. 5. SPONSOR: Representative Charles F. Mertens

PROPOSAL: Provide disability retirement benefit of 20 percent of final average salary notwithstanding other disability income, and optional payment forms.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact would be approximately \$185,326 or 0.08 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Unfavorable recommendation in light of the favorable recommendation accorded Bill No. 7.

Bill No. 6. SPONSOR: Representative Charles F. Mertens

PROPOSAL: Provide disability retirement benefit of 20 percent of final average salary notwithstanding other disability income.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact would be approximately \$185,326 or 0.08 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Unfavorable recommendation in light of the favorable recommendation accorded Bill No. 7.

Bill No. 7. SPONSOR: PERS Board

PROPOSAL: Increase disability retirement benefits from 60 percent to 70 percent of final average salary reduced by Social Security and workers' compensation benefits paid with a minimum monthly disability retirement benefit of \$100.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact would be approximately \$347,487 or 0.15 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Favorable recommendation because the proposal provides a benefit enhancement at a reasonable cost, while continuing to recognize other available sources of disability income and providing a minimum monthly benefit.

Bill No. 8. SPONSOR: PERS Board

PROPOSAL: Substitute Rule of 85 for Rule of 90 for purposes of determining eligibility for normal retirement benefits.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact would be approximately \$880,300 or

0.38 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Unfavorable recommendation because the PERS Board has withdrawn its support for the proposal.

Bill No. 9. SPONSOR: PERS Board

PROPOSAL: Substitute five-year vesting for eight-year vesting. The committee amended the proposal at the request of the PERS Board to allow vested participating members who terminate eligible employment to repurchase the forfeited past service upon reemployment.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact would be approximately \$138,995 or 0.06 percent of July 1, 1988, total covered compensation. The reported actuarial cost impact of the amendment was minimal.

COMMITTEE REPORT: Favorable recommendation because the proposal provides a benefit enhancement at a reasonable cost.

Bill No. 10. SPONSOR: PERS Board

PROPOSAL: Provide a retroactive postretirement benefit increase for retirees who would have been eligible for normal retirement benefits under the Rule of 90 had that rule been in effect before July 1, 1985.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact would be approximately \$69,497 or 0.03 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Unfavorable recommendation because the PERS Board has withdrawn its support for the proposal.

Bill No. 11. SPONSOR: PERS Board

PROPOSAL: Application period of 12 months for disability retirement benefits. The committee amended the proposal at the request of the PERS Board to require that disability retirement benefits be paid only if the disability occurred during the period of eligible employment.

ACTUARIAL ANALYSIS: The reported estimated cost savings would be approximately \$23,166 or 0.01 percent of July 1, 1988, total covered compensation. The amendment would result in a negligible additional cost savings.

COMMITTEE REPORT: Favorable recommendation.

Bill No. 17. SPONSOR: Senator Joseph A. Satrom
PROPOSAL: Allow one-time encouragement of early retirement by authorizing payment of normal retirement benefits, hospital and medical benefits coverage until age 65, and additional incentives.
ACTUARIAL ANALYSIS: The PERS consulting actuary could not determine the annual actuarial cost impact of this proposal because replacement policies were not identified.
COMMITTEE REPORT: Unfavorable recommendation at the request of the proposal's sponsor.

Bill No. 51. SPONSOR: Representative Charles F. Mertens
PROPOSAL: Allow former, current, and future legislators to participate in PERS under which the state would contribute an amount equal to 9.12 percent of each current legislator's monthly salary and compensation beginning on July 1, 1989, while members or former members of the Legislative Assembly would be eligible to receive credit for all legislative service prior to July 1, 1989. The committee amended the proposal to require members or former members to purchase prior service on an actuarial equivalent basis.

ACTUARIAL ANALYSIS: The actuarial analysis of the original proposal indicated that contributions totaling 16.12 percent of legislators' compensation would be necessary to fund the proposal on a prospective basis, while legislators' prior service would result in an accrued liability of \$1,547,800 to be amortized under the existing PERS amortization period and method. The actuarial analysis of the amended proposal indicated that contributions totaling 7.83 percent of legislators' compensation would be necessary to fund the proposal.

COMMITTEE REPORT: Consideration deferred in light of the committee's further amendment of the proposal to provide a fixed-dollar year-of-service benefit formula and referral to PERS for the purpose of obtaining an actuarial analysis of the amended proposal.

The following is a summary of proposals and amended proposals affecting the Public Employees Retirement System which would have a minimal or no actuarial cost impact:

Bill No. 12. SPONSOR: PERS Board
PROPOSAL: Allow participating members to purchase military and other governmental service credit at a cost of 9.12 percent times the member's monthly salary on the date of purchase

times the number of months of credit purchased plus interest. The committee amended the proposal at the request of the PERS Board to allow purchase of credit for service in a governmental unit only if that governmental unit does not participate in PERS and to allow purchase of credit by special refund employees from July 1, 1977, to the date the employee rejoined PERS. The amendment would have no actuarial cost impact.

COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

Bill No. 13. SPONSOR: PERS Board
PROPOSAL: Allow participation by temporary employees in PERS and the uniform group insurance program. The committee amended the proposal at the request of the PERS Board to allow participation only if the temporary employee meets medical underwriting requirements. The amendment would have no actuarial cost impact.

COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

Bill No. 14. SPONSOR: PERS Board
PROPOSAL: Require participation by members of the Highway Patrol in PERS and the federal Social Security system after June 30, 1989.

COMMITTEE REPORT: Unfavorable recommendation because the PERS Board has withdrawn its support for the proposal.

Bill No. 15. SPONSOR: PERS Board
PROPOSAL: Allow credit for years of service credit in the Teachers' Insurance and Annuity Association of America-College Retirement Equities Fund (TIAA-CREF) for determination of eligibility for PERS benefits.

COMMITTEE REPORT: Favorable recommendation.

Bill No. 18. SPONSOR: PERS Board
PROPOSAL: Expand definition of a governmental unit.

COMMITTEE REPORT: Unfavorable recommendation because the PERS Board has withdrawn its support for the proposal.

Bill No. 19. SPONSOR: PERS Board
PROPOSAL: Establish a 20-year amortization period for any unfunded accrued actuarial liability for PERS and the Highway Patrolmen's Retirement System.

COMMITTEE REPORT: Unfavorable

recommendation because the PERS Board has withdrawn its support for the proposal.

Bill No. 20. SPONSOR: Senator Joseph A. Satrom

PROPOSAL: Increase the voting membership of the PERS Board to six members by adding a retiree representative. The committee amended the proposal, at the request of the PERS Board and upon approval by the proposal's sponsor, to provide an additional voting member on the board by eliminating the three nonvoting, ex officio members of the board and making the state health officer a voting member of the board.

COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

Bill No. 21. SPONSOR: PERS Board

PROPOSAL: Increase the PERS Board chairman's compensation from \$50 per day to \$250 for each meeting of the board attended by the chairman, and increase PERS Board members' compensation from \$50 per month to \$100 per month.

COMMITTEE REPORT: No recommendation.

Bill No. 22. SPONSOR: PERS Board

PROPOSAL: Require annual, rather than biennial, actuarial valuations of the liabilities and reserves of the system, and require a general investigation of the system's actuarial experience every five years rather than every even-numbered year. The committee amended the proposal at the request of the PERS Board to authorize the board to implement supplemental employee-paid benefit plans, to allow costs associated with the hiring and termination of funding agents to be reimbursed from the PERS fund, and to revise the definition of a "permanent employee."

COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

Bill No. 23. SPONSOR: PERS Board

PROPOSAL: Authorize payment of retirement benefits under the Highway Patrolmen's Retirement System and PERS in accordance with domestic relations orders issued by courts under North Dakota law.

COMMITTEE REPORT: Favorable recommendation.

Bill No. 40. SPONSOR: State Board of Higher Education

PROPOSAL: Allow special annuity

purchases in TIAA-CREF by PERS members. The committee amended the proposal at the request of the PERS Board to require that the member be vested prior to allowing employer contributions to be transferred to TIAA-CREF.

COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

Teachers' Fund for Retirement

Former NDCC Chapter 15-39 established the Teachers' Insurance and Retirement Fund. This fund, the rights to which were preserved by NDCC Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when the Teachers' Fund for Retirement (TFFR) was established with the enactment of NDCC Chapter 15-39.1. The plan is managed by the board of trustees of the Teachers' Fund for Retirement (TFFR Board).

The Teachers' Fund for Retirement plan provides a retirement benefit of 1.22 percent of final average salary times the number of years of teaching service. Final average salary is defined as the average of the highest annual salaries for any three years of service under the fund. Full benefits are payable when the teacher has completed five years of teaching credit and is at least 65 years of age or when the teacher has a combined total of years of service credit and years of age that is equal to at least 90 if one year of that credit was completed after July 1, 1979. The plan provides for a minimum benefit for post-1970 retirees of \$6 per month per year of teaching for the first 25 years of service and \$7.50 per month of teaching credit for service over 25 years.

After retirement, benefits are adjusted as deemed necessary by the Legislative Assembly. Postretirement adjustments were provided in 1983, 1985, and 1987. A reduced early retirement benefit is payable at age 55 after five years of service. Disabled teachers are entitled to receive a benefit equal to the greater of 20 percent of the teacher's last annual salary or a normal retirement pension computed without consideration for the disabled teacher's age.

The teacher and the teacher's employer each contribute 6.25 percent of covered salary to the plan. Employers are permitted to pay the employee's share by affecting an equal cash reduction in the gross salary of the teacher or by offsetting the contribution against future salary increases.

The latest available report of the consulting actuary was dated July 1, 1987. According to the report, on that date the fund had total assets with an actuarial value of approximately \$317.9 million and a market value of approximately \$330.5 million. Total active membership was 9,082 (3,365 men and 5,717 women). The report indicated that an employer contribution of 5.37 percent of projected fiscal 1988 compensation would be necessary to meet the normal cost and payment on unfunded liability. This results in an actuarial margin of 0.86 percent, the difference between the indicated required employer contribution

and the expected employer contributions of 6.23 percent. Although a more recent report of the consulting actuary was not available at the time the committee considered proposals affecting the Teachers' Fund for Retirement, a representative of the fund indicated that the actuarial margin as of July 1, 1988, was \$2,306,093 or 1.02 percent of projected fiscal 1989 compensation.

The following is a summary of proposals affecting the Teachers' Fund for Retirement over which the committee took jurisdiction and the committee's action on each proposal:

Bill No. 24. SPONSOR: TFFR Board

PROPOSAL: Increase benefit multiplier from 1.22 to 1.30 percent, provide a postretirement benefit increase equal to six cents times the number of years of service credit times the number of years benefits were drawn from the fund, provide for the conversion of an optional reduced retirement allowance to a single life annuity, and provide a level income with Social Security option. The committee amended the proposal to increase the benefit multiplier to 1.275 percent and to revise the postretirement adjustment formula from six to five cents.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact of the original proposal would be approximately \$3,097,400 or 1.37 percent of projected 1989 covered compensation. The reported actuarial cost of the amended proposal would be approximately \$2,215,658 or 0.98 percent of projected 1989 covered compensation.

COMMITTEE REPORT: Favorable recommendation because the proposal as amended provides a benefit enhancement at a reasonable cost.

Bill No. 25. SPONSOR: Representative Moine Gates

PROPOSAL: Increase benefit multiplier from 1.22 to 1.28 percent and provide a postretirement benefit increase to retirees under the Teachers' Insurance and Retirement Fund of \$3 per month per year of service and to retirees under the Teachers' Fund for Retirement of \$2 per month per year of service, subject to a \$75 per month maximum post-retirement adjustment for all retirees.

ACTUARIAL ANALYSIS: The reported annual actuarial cost impact would be approximately \$4,273,055 or 1.89 percent of projected 1989 covered compensation.

COMMITTEE REPORT: Unfavorable recommendation in light of unavailable actuarial margin and approval of Bill No. 24.

Bill No. 27. SPONSOR: Representative Lyle Hanson

PROPOSAL: Substitute the Rule of 90 with a Rule of 85 for purposes of determining eligibility for retirement benefits. The committee amended the proposal at the request of the proposal's sponsor to fund this benefit by increasing both the teacher assessment and employer contributions from 6.25 to 6.75 percent of compensation.

ACTUARIAL ANALYSIS: The reported annual actuarial cost of the original proposal would be approximately \$1,695,657 or 0.75 percent of total covered 1989 projected compensation. The reported actuarial cost of the proposal as amended would be approximately \$972,177 or 0.43 percent of total covered 1989 projected compensation but would also increase the actuarial margin to 1.52 percent of total projected 1989 covered compensation.

COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

The committee considered the following proposals or amended proposals affecting the Teachers' Fund for Retirement which have a minimal or no actuarial impact:

Bill No. 26. SPONSOR: Senator Gary Nelson

PROPOSAL: Provide for the conversion of an optional reduced retirement allowance to a single life annuity if the person designated to receive the allowance predeceases the teacher. The committee amended the proposal, upon approval of the proposal's sponsor, to provide a level income with Social Security option, which the TFFR consulting actuary indicated would have only a small actuarial impact.

COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

Bill No. 28. SPONSOR: Representative Carolyn Nelson

PROPOSAL: Allow purchase of out-of-state service credit for up to 15, rather than 10, years of teaching service on an actuarial equivalent basis. The committee amended the proposal to allow unlimited purchase of out-of-state teaching credit, which the TFFR consulting actuary indicated would have no actuarial impact.

COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

Bill No. 29. SPONSOR: Senator Ray Holmberg

PROPOSAL: Allow for the purchase of

additional service credit for out-of-state teaching, military service, nonpublic teaching service, and other service until July 1, 1991, notwithstanding non-compliance with the requirement that payment be made within five years of initial eligibility if the purchase is made on an actuarial equivalent basis.

COMMITTEE REPORT: Favorable recommendation.

Bill No. 30. SPONSOR: Senator Ray Holmberg
PROPOSAL: Allow purchase of previously withdrawn teaching credit to be made prior to July 1, 1991, notwithstanding noncompliance with the requirement that the payment be made within five years of initial eligibility if the payment is made on an actuarial equivalent basis.
COMMITTEE REPORT: Favorable recommendation.

Bill No. 31. SPONSOR: TFFR Board
PROPOSAL: Allow assessments and contributions for legislative service credit to be paid pursuant to an agreement between the teacher and the teacher's employer.
COMMITTEE REPORT: Favorable recommendation.

Bill No. 32. SPONSOR: TFFR Board
PROPOSAL: Revise definitions, include as eligible members the professional staff of the North Dakota Council of School Administrators, allow the TFFR Board to employ a deputy administrator who may serve and vote on the state investment board on behalf of the administrator, and provide for periodic medical examinations of disability annuitants. The committee amended the proposal at the request of the TFFR Board to revise obsolete eligibility provisions, which the TFFR consulting actuary indicated would have no actuarial cost impact.
COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

Bill No. 33. SPONSOR: TFFR Board
PROPOSAL: Require teacher assessments to be remitted to the fund on a monthly basis. The committee amended the proposal to require employer contributions also to be remitted to the fund on a monthly, rather than quarterly, basis.
COMMITTEE REPORT: Favorable recommendation on the proposal as amended.

Bill No. 34. SPONSOR: TFFR Board
PROPOSAL: Authorize payment of retirement benefits in accordance with

domestic relations orders issued by courts under North Dakota law.

COMMITTEE REPORT: Favorable recommendation.

Bill No. 52. SPONSOR: Interim Education Finance Committee

PROPOSAL: Establish area service agencies for replacement of the office of county superintendent and to provide for participation in TFFR by the director and professional staff of those agencies.
COMMITTEE REPORT: No recommendation.

Other Retirement Plans

The committee considered a number of proposals dealing with changes to the Highway Patrolmen's Retirement System and the Old-Age and Survivor Insurance System. The committee considered the following proposals:

1. Highway Patrolmen's Retirement System

Bill No. 35. SPONSOR: PERS Board

PROPOSAL: Increase benefit multiplier by multiplying 2.5 percent of final average salary times the first 30, rather than 25, years of credited service and multiplying 1.5 percent of final average salary times all years in excess of 30, rather than 25, years of service; and provide a postretirement benefit of 2.5 percent of final average salary times the first 30 years of credited service plus 1.5 percent of final average salary times credited service in excess of 30 years.

ACTUARIAL ANALYSIS: The reported actuarial cost impact would be approximately \$78,575 or 2.72 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Unfavorable recommendation because the Highway Patrol does not support the proposal in light of the Highway Patrol's prioritization of Bill Nos. 37, 38, and 39, and the committee's consideration of a proposal to prefund retiree health insurance benefits.

Bill No. 36. SPONSOR: PERS Board

PROPOSAL: Provide an annual increase in benefits under the Highway Patrolmen's Retirement System equal to one percent of present benefits after three years have elapsed since retirement or death.

ACTUARIAL ANALYSIS: The reported actuarial cost impact would be approximately \$106,886 or 3.70 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Unfavorable recommendation because the Highway Patrol does not support the proposal in

light of the same factors enumerated in the committee's report to Bill No. 35.

Bill No. 37. SPONSOR: PERS Board

PROPOSAL: Provide disability retirement benefits equal to 70 percent of final average salary reduced by any workers' compensation benefits paid, with a minimum monthly disability benefit of \$100.

ACTUARIAL ANALYSIS: The reported actuarial cost impact would be approximately \$57,776 or 2.0 percent of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Favorable recommendation because the proposal provides a reasonable benefit enhancement in light of an available margin of approximately \$245,548 or 8.50 percent of July 1, 1988, total covered compensation.

Bill No. 38. SPONSOR: PERS Board

PROPOSAL: Provide 100 percent and 50 percent joint and survivor annuity options and five- and 10-year term certain options for receipt of benefits.

ACTUARIAL ANALYSIS: The actuarial report indicated that the proposal would have no actuarial cost impact.

COMMITTEE REPORT: Favorable recommendation.

Bill No. 39. SPONSOR: PERS Board

PROPOSAL: Change preretirement spousal death benefit from a lifetime 50 percent of the deceased's accrued normal retirement beginning at age 55 to an immediate benefit in several optional forms to the surviving spouse.

ACTUARIAL ANALYSIS: The reported actuarial cost impact would be approximately \$20,222 or 0.70 percent of total of July 1, 1988, total covered compensation.

COMMITTEE REPORT: Favorable recommendation because the proposal provides a reasonable benefit enhancement in light of the available margin.

2. Old-Age and Survivor Insurance System

Bill No. 41. SPONSOR: Job Service North Dakota

PROPOSAL: Increase Old-Age and Survivor Insurance System benefits by \$20 per month for fiscal year 1989 and by an additional \$20 per month for fiscal year 1990, and reduce rate of contribution.

COST ANALYSIS: Job Service North Dakota indicated that the proposal would increase benefit payments by \$31,620 during the biennium beginning

July 1, 1989, and ending June 30, 1991.

COMMITTEE REPORT: Favorable recommendation.

Fringe Benefit Bills

The following proposals submitted to the committee relate to employee fringe benefits that do not affect a public employees' retirement program. The committee decided to waive jurisdiction over the following proposals:

Bill No. 42. SPONSOR: Senator Joseph A. Satrom

PROPOSAL: Eliminate authority to subgroup active and retired eligible employees under the PERS uniform group insurance program.

Bill No. 43. SPONSOR: PERS Board

PROPOSAL: Allow certain political subdivisions that do not participate in the PERS retirement plan to participate under the PERS uniform group insurance program.

Bill No. 44. SPONSOR: PERS Board

PROPOSAL: Establish a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the PERS uniform group insurance program.

Bill No. 45. SPONSOR: PERS Board

PROPOSAL: Require prefunding of retiree health insurance benefits under the PERS uniform group insurance program.

Bill No. 46. SPONSOR: PERS Board

PROPOSAL: Authorize adjustments in the state contribution for premium amounts under the PERS uniform group insurance program between legislative sessions.

Bill No. 47. SPONSOR: PERS Board

PROPOSAL: Credit unused sick leave to the purchase of retiree health insurance under the PERS uniform group insurance program.

Bill No. 48. SPONSOR: PERS Board

PROPOSAL: Expand the definition of a permanent employee for purposes of eligibility under the PERS uniform group insurance program to employees employed at least 17.5, rather than 20, hours per week.

Bill No. 49. SPONSOR: Senator Joseph A. Satrom

PROPOSAL: Provide for partial payment of unused sick leave at retirement.

Bill No. 50. SPONSOR: PERS Board

PROPOSAL: Include an account with the Public Employees Retirement System as an authorized investment of

a deferred compensation program for public employees.

PUBLIC EMPLOYEES BENEFITS STUDIES

The committee focused its study efforts under House Concurrent Resolution No. 3047 and House Concurrent Resolution No. 3069 on the uniform group insurance program administered by the Public Employees Retirement System Board, particularly recent cash flow problems that were experienced by the PERS Board in administration of the program and the issue of rising health care costs for retired public employees. The committee also monitored the investment performance and practices of the PERS Board and the TFFR Board.

Uniform Group Insurance Program

Background

Health insurance benefits are offered to public employees under the provisions of a uniform group insurance program originally enacted in 1971 and codified as NDCC Chapter 54-52.1. The statutory purpose of the uniform group insurance program is to promote the economy and efficiency of employment in state service, reduce personnel turnover, and offer an incentive to high grade men and women to enter and remain in the service of state employment. The program provides hospital and medical benefits coverage and life insurance benefits coverage to eligible employees, which include permanent state employees and employees of various political subdivisions of the state.

Prior to 1983, the PERS Board was required by law to solicit bids and contract for the provision of insurance benefits coverage with the insurance carrier determined by the PERS Board to be best able to provide that coverage. From 1971 to 1983, Blue Cross and Blue Shield of North Dakota provided and administered the health insurance benefits plan for public employees. In 1983 the PERS Board was authorized by Section 54-52.1-04.2 to establish a plan of self-insurance for providing health benefits coverage under an administrative services only contract or a third party administrator contract, if the board determines during any biennium that a self-insured plan is less costly than the lowest bid submitted by an insurance carrier. The PERS Board exercised the option to implement a self-insurance health benefits plan and has administered the program in this manner since July 1, 1983. Under the self-insurance plan, the PERS Board establishes the level of coverage and premiums, and contracts with an insurance company to pay medical claims.

Section 54-52.1-06 requires that the state and other participating employers such as counties, cities, and school districts, make monthly contributions to the PERS Board from funds appropriated for payroll and salary in an amount equal to the full single rate monthly premium for each eligible employee enrolled in the uniform group insurance program, and the full rate monthly premium under the alternate family contract for hospital and medical benefits coverage for spouses and dependent children of eligible employees. Monthly premiums in effect during the 1987-89 biennium are \$68.28 for the full single rate premium

and \$191.28 for the full rate premium under the alternate family contract.

The emergence of health maintenance organizations in North Dakota has had a significant impact on the PERS health benefits plan. The PERS Board is authorized by Section 54-52.1-04.1 to contract with one or more health maintenance organizations to provide eligible employees the option of membership in a health maintenance organization. Under federal law (42 U.S.C. 300e-9), any state and its political subdivisions which during any calendar quarter employed an average number of 25 or more employees, as a condition of the payment to the state of various federal health services grants and other funding, are required to include in any health benefits plan offered to those employees the option of membership in qualified health maintenance organizations that are engaged in the provision of basic health services in areas in which at least 25 of those employees reside.

Financial Status of the PERS Health Benefits Plan

The committee received periodic reports from representatives of the Public Employees Retirement System concerning the financial status of the PERS health benefits plan.

Although the PERS Board began its administration of the self-insured health benefits plan on July 1, 1983, with reserves carried forward of \$2,143,880, claim expenditures and other expenses of the program began exceeding premium income and other revenue in 1984 and by June 30, 1987, the fund balance, as indicated in audited financial statements of the plan, was \$(4,759,963) with estimated outstanding claims payable of \$4,600,000. A PERS representative attributed the deficiency in premium income to escalating claim expenditures, particularly during the 1985-87 biennium, which were attributed to the following: (1) changing demographics—the program membership shifted somewhat in age distribution whereby an increase occurred in the percentage of membership by age groups that historically utilize the program to a greater extent; (2) hospital experience—hospital utilization by members, particularly in medical, psychiatric, and chemical dependency services, increased significantly with an overall increase in hospital utilization between 1985 and 1987 of 11.7 percent, while outpatient hospital utilization by members during the 1985-87 biennium, in terms of outpatient claims, increased by 42 percent; and (3) physician experience—the utilization of physician services by members increased by approximately 55 percent during the 1985-87 biennium which, combined with increasing physician charges, resulted in a net increase in physician payments per member of 82 percent. Although the PERS Board's consulting actuary indicated that a 35 percent increase in premiums would be necessary for the 1987-89 biennium, budgetary constraints resulted in an actual increase of 13.6 percent.

Faced with these circumstances, the PERS Board in 1987 incorporated various cost containment components into the health benefits plan which included:

1. Implementation of a program of concurrent

review of inpatient hospitalizations designed to eliminate unnecessary treatment or prolonged hospital stays and to allow consideration of less expensive appropriate treatment for long-term medical care.

2. Implementation of a program of mandatory second surgical opinions for certain elective surgeries. (This program did not generate anticipated results and, after a one-year trial period, was discontinued.)
3. Expansion of contract deductibles to include all inpatient, outpatient, and physician services.
4. Increase in the coinsurance base from the first \$2,000 in charges to the first \$4,000 in charges.
5. Implementation of a preferred pharmacy program.
6. Establishment of a separate premium rate for retirees, based on retiree claims experience.
7. Introduction of a \$25 copayment for each hospital emergency room visit.
8. Adjustment of the Medicare coordination of benefits formula applied to retiree members of the plan.

Due to the introduction of these cost containment initiatives and the availability to public employees of a number of attractive health maintenance organization plans, approximately 3,350 membership contracts constituting 23 percent of the total contracts of the PERS health benefits plan were lost during the 1987 open enrollment period, resulting in a decrease of approximately \$563,000 per month in premium income. As previously incurred but unreported claims relating to these lost contracts were filed, the plan's cash assets were depleted resulting in the occurrence of a cash flow deficit in August 1987.

The committee closely monitored the cash flow difficulties and heard additional perspectives on the problem from representatives of Blue Cross and Blue Shield of North Dakota, the PERS Board's consulting actuary, and the State Commissioner of Insurance.

A representative of Blue Cross and Blue Shield of North Dakota indicated that a successful risk underwriter, whether it be a self-insured or commercially insured health benefits plan administrator, must have the ability to create reserves for contingencies such as unfavorable swings in health care costs and utilization practices. Testimony indicated that those reserves, unencumbered by liabilities, must be substantial, i.e., in an amount equal to at least two to three months of claim expenditures. Public Employees Retirement System representatives suggested possible legislative solutions to prevent the reoccurrence of cash flow problems, including the (1) provision for and establishment of sufficient reserves in the plan; (2) authorization for payroll deductions to alleviate excessive claim expenditures between legislative sessions; (3) authorization for adjustments in the state contributions for premiums between legislative sessions; and (4) authorization for the Public Employees Retirement System to provide its own claims administration. The PERS Board's consulting actuary indicated that the Legislative Assembly must decide whether a self-insured health benefits plan is more cost efficient over the long term than a plan

underwritten by a commercial insurer, whether it can better manage reserves and earn interest, and whether it can exercise more leverage on health care providers.

The Commissioner of Insurance indicated that rising health care costs in the state were the primary reason for the cash flow difficulties experienced in the PERS health benefits plan. The commissioner emphasized the importance of the state continuing to administer a self-insured health benefits plan for three reasons. First, a self-insured plan allows the state to control health care costs, to add cost containment measures when appropriate, and to impose additional utilization review procedures to ensure that health care providers are performing procedures that are medically appropriate and charging what is reasonable for those services. Second, the state is better able to monitor, with appropriate data under a self-insured plan, utilization and cost trends associated with the plan. Finally, a self-insured plan provides a significant nonprovider presence in the state in light of the fact that there is not a significant amount of competition in the health care market in the state. The commissioner suggested that contingency moneys be appropriated to adjust premium rates if appropriate and that the state should explore alternatives to the present claims administrator under contract with the Public Employees Retirement System, including the possibility that the Public Employees Retirement System provide its own claims administration.

Subsequent activities and initiatives of the PERS Board in cooperation with the Office of Management and Budget and various events alleviated to a great extent the cash flow difficulties experienced during the first year of the 1987-89 biennium. The Public Employees Retirement System and the Office of Management and Budget entered into an agreement in December 1987 for the prepayment of health insurance premiums to allow the Public Employees Retirement System to pay unpaid claims. Terms of that agreement required the Public Employees Retirement System to develop preferred provider organizations for the provision of discounts by physicians and hospitals and to implement preferred provider organization agreements by July 1, 1988; to develop a proposal for reimbursing acute care institutions on a prospective pricing system, which is a cost containment process that establishes prices that hospitals may charge in advance of the time the services are rendered; and to evaluate the implementation of an effective utilization review program. Health insurance premiums advanced pursuant to the agreement totaled \$1,198,696. The Office of Management and Budget also revised its executive budget process to allow the Public Employees Retirement System to submit a projected premium increase at a later date prior to the legislative session.

The decision by MedCenters HMO, a health maintenance organization which had the largest PERS-eligible enrollment, to discontinue its participation agreement with the Public Employees Retirement System as of July 1, 1988, and substantial increases in premiums charged by other health

maintenance organizations, resulted in a substantial number of public employees choosing the PERS health benefits plan during the most recent open enrollment period prior to July 1, 1988. This influx of new membership and a 25 percent increase effective July 1, 1988, in premium rates charged retiree members of the plan increased monthly premium revenues by approximately \$479,100 or 31 percent which representatives of the Public Employees Retirement System indicated has significantly eased the pressure of meeting monthly claims and administrative expenses. A PERS representative indicated that all prepaid premiums are expected to be reimbursed by January 1989.

Based on these improved conditions, representatives of the Public Employees Retirement System, although they had anticipated the need for a deficiency appropriation of approximately \$3.5 million earlier in the biennium, projected in October 1988 that at most a \$500,000 deficiency appropriation will be requested. Testimony indicated that if the self-insured PERS health benefits plan were discontinued at the end of the biennium, an unfunded claims liability of \$7,600,000 would need to be dealt with under a commercially insured plan either through a deficiency appropriation or additional premiums. Testimony indicated that insurance companies and consulting actuaries are consistently using factors ranging from 18 percent to 23 percent as indicative of the annual rise in medical costs and that health insurance premiums, regardless of the mode of insurance, will continue to escalate at a rate far exceeding overall inflation rates.

Retiree Health Benefits

The committee considered the issue of providing adequate and affordable health insurance coverage for retired public employees.

Background

Medical care protection for the retired population continues to be a major concern at both the national and state levels as medical costs continue to escalate and access to medical care becomes prohibitive for the poor and elderly living on fixed incomes. To obtain needed medical care, the poor rely on Medicaid, the federally supported health care program for the poor which is administered by the states. The elderly, those aged 65 and over, rely on the Medicare program, the federally administered health care program for the elderly. Recently, several factors have focused attention on retiree health benefits—the rapid escalation in medical care costs; the growth and the size of the retired population, both in absolute numbers and in relation to the working population; the increase in life expectancies; the shifting of costs to employer-sponsored health benefit plans; and the financial condition of Medicare. Employer-sponsored postretirement medical plans have become the principal source of protection for retirees under age 65 and, beyond Medicare (which requires substantial cost sharing), the most important source of medical care protection for retirees age 65 or over.

Health insurance costs of retired public employees participating in the PERS health benefits plan have

increased significantly in recent years. Section 54-52.1-03 generally allows a retired eligible employee receiving a retirement allowance or that retiree's surviving spouse to continue as a member of the PERS health benefits plan; however, no contribution toward the cost of benefits coverage may be made by the state or other participating employer. The retired public employee is required to pay the premiums in effect for the coverage directly to the PERS Board.

The PERS Board recently implemented a 25 percent increase, effective July 1, 1988, in retiree premium rates. A PERS representative indicated that, prior to the rate increase, the program was experiencing claim expenditures of \$1.27 to \$1.36 for the retiree group for every \$1 of premium income received from that group. The purpose of the premium increase was to minimize the subsidization of retired participants in the PERS health benefits plan by the active participants. Current monthly rates for non-Medicare eligible retirees are \$113.75 under the single plan and \$327.50 under the alternate family plan. Current monthly rates for retirees eligible for Medicare are as follows: Single with Medicare Part A only—\$117.50; Single with Medicare Parts A and B—\$82.50; Retiree and spouse with Medicare Part A only—\$235; Retiree and spouse with Medicare Parts A and B—\$170; and Retiree with one or two members under Medicare and dependents not under Medicare—\$257.50.

Actuarial Study

The PERS Board contracted with the consulting and actuarial firm of Buck Consultants, Inc., for an actuarial study concerning the prefunding of retiree health benefits of current and future retirees under the Public Employees Retirement System. The results of the actuarial study were presented to the committee by the consulting actuary.

The report of the consulting actuary dated October 6, 1988, indicated that rapidly increasing Medicare costs and increasing retiree premiums under the PERS health benefits plan have contributed to a relatively low level of participation by eligible retirees in the plan. Only 56 percent of the 1,841 current eligible retirees participate in the plan. In addition to increasing retiree premiums, the PERS Board has implemented other cost control initiatives relating to retiree health benefits. For example, the retiree program under the PERS health benefits plan was modified effective July 1, 1987, to change the method by which plan benefits are coordinated with Medicare. Previously, the coordination of benefits followed a traditional approach whereby the combined benefits payable under Medicare and benefits paid under the PERS health benefits plan equaled 100 percent of the health care costs incurred. This coordination of benefits provision was changed to an "exclusion type" coordination of benefits provision which resulted in a significant reduction in retiree plan costs by shifting expenses to retirees. The consulting actuary indicated that without these modifications, the recent 25 percent increase in retiree premium rates would have been greater or the financial condition of the PERS health benefits plan would have suffered.

The consulting actuary indicated that a temporary abatement in the level of health care costs experienced

on a national basis in 1985 and 1986 has been followed by renewed substantial increases in 1987 and 1988. Many health insurance carriers are now requesting rate increases ranging from 15 percent to 40 percent. In light of these medical care inflation trends, the costs of retiree health coverage available through the PERS health benefits plan will become even more unaffordable for most retirees. The consulting actuary predicted that if retiree health insurance costs under the PERS health benefits plan become unaffordable to eligible retirees, only those retirees and their dependents who have serious known medical ailments will continue to participate in the plan which will inevitably result in a shift in costs to those active employees participating in the plan.

The federal Medicare Catastrophic Coverage Act of 1988 will significantly change Medicare's benefit structure and alter the program's financing, provide elderly and disabled beneficiaries with some catastrophic protection against acute illness expenses, and add a new outpatient prescription drug benefit to Medicare. The consulting actuary reported that the new Medicare catastrophic law will decrease some costs of the PERS health benefits plan; however, the new law will require the PERS Board to adjust the premiums for eligible retirees both in 1989 and 1990 based on the savings which the plan may realize by virtue of the new revised Medicare program. Although the Medicare Catastrophic Coverage Act of 1988 will produce some cost pressure abatement on employer-sponsored plans, continued annual cost-shifting from Medicare to employer-sponsored plans will occur and despite substantive changes in Medicare, costs under the PERS health benefits plan will continue to rise in future years at a significant level. The consulting actuary indicated that retirees will still be faced with higher costs which generally must be paid out of the retirees' fixed retirement income benefits.

The consulting actuary presented alternate solutions to problems associated with retiree health insurance benefits, including the possibility of reducing health care benefits for retirees under the PERS health benefits plan or increasing the level of retirement income benefits under the PERS retirement plan. The actuary explained that reducing retiree health care benefits would not only dilute the level of protection for retirees from substantial health care expenses but would not protect the PERS health benefits plan from possible adverse selection. Simply increasing the level of retirement income benefits received by retirees would not address anticipated increased adverse selection and would not assure increased participation in the plan. In addition, increasing retirement income benefits would result in a tax disadvantage to retirees because retirement income benefits are subject to federal and state taxation while contributions made to a prefunded program enjoy a tax-favored status.

The consulting actuary suggested that the most effective approach to financing retiree health benefits is to prefund those benefits in a manner that will reduce the contribution levels required of retirees participating in the PERS health benefits plan. There are primarily two methods of financing retiree health benefits, i.e., pay-as-you-go or prefunding. Most

retirement health benefits are financed on a pay-as-you-go basis, which means that the long-term survival of the plan depends on annual increases in contributions over a long period of time. A prefunding approach, similar to that used for funding a retirement system, requires that amounts be contributed by either the employer or employee, or both, to the plan in order to ensure the continuation of benefits for the lifetime of current retirees and to ultimately establish a reserve sufficient to provide benefits for future retirees. The consulting actuary indicated that a prefunding credit would accomplish two objectives. First, it would diminish anticipated problems with adverse selection with the PERS health benefits plan and, secondly, it would make it possible to maintain the plan on a group basis.

The consulting actuary recommended, based on long-range expected costs, that present retirement contributions under the Public Employees Retirement System equal to one percent of salaries and wages of participating members be utilized to prefund retiree health benefits under the PERS health benefits plan. To guard against any commitment that would expose the state to the full impact of spiraling medical costs, the consulting actuary recommended that contributions to retiree health benefits be based on a fixed-contribution years-of-service formula that would specify a particular credit for each eligible retiree based on years of service and be limited to the total monthly cost of coverage selected by that retiree. The consulting actuary recommended that the initial "fixed-dollar" portion of the credit formula be set at \$3 per month per year of service which would represent the state assuming, in the aggregate, approximately 33 percent of the projected 1989-90 retiree health insurance costs.

Committee Considerations

The committee considered a bill draft based on recommendations of Buck Consultants and the PERS Board which established a retiree health benefits fund for the purpose of prefunding group medical and hospital benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents. The bill draft required the PERS Board, as the trustee of the fund and in exclusive control of its administration, to transfer each month from the public employees retirement fund account established under Section 54-52-14 to the newly created retiree health benefits fund, an amount equal to one percent of the monthly salaries and wages of all participating members of the Public Employees Retirement System.

The bill draft entitled members of the Public Employees Retirement System receiving retirement benefits and the surviving spouse of a member of the Public Employees Retirement System who was eligible to receive, or was receiving, retirement benefits to receive credit for hospital and medical benefits coverage. The bill draft calculated the allowable monthly credit toward this hospital and medical benefits coverage in an amount equal to \$3 multiplied by the member's or deceased member's number of years of service and prior service

employment under the Public Employees Retirement System and incorporated various reduction factors suggested by the consulting actuary for eligible retirees receiving early retirement benefits or disability retirement benefits. The allowable credit is used for the payment of monthly premiums required of eligible retirees and their surviving spouses under the uniform group insurance program; however, any allowable credit that exceeds the monthly premium in effect for selected coverage is forfeited and may not be used for any other purpose.

In light of testimony received from representatives of the Public Employees Retirement System, the committee amended the bill draft to remove provisions relating to the reduction of credits toward the payment of health benefits of disability retirees, and to remove the requirement that moneys be transferred from the public employees retirement fund to the retiree health benefits fund in favor of a direct transfer by participating employers of an amount equal to one percent of the monthly salaries and wages of participating members and a corresponding reduction in the state contribution to the public employees retirement fund.

Because state contributions exceed the actuarial requirement under the North Dakota Highway Patrolmen's Retirement System fund, by \$245,548, or 8.5 percent of July 1, 1988, total covered compensation, the committee also amended the bill draft to provide for participation by retired members of the Highway Patrolmen's Retirement System or their surviving spouses and dependents.

The committee was concerned that the bill draft did not provide a mechanism for providing adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement, and judges and state employees who are not participating members of the Public Employees Retirement System or the Highway Patrolmen's Retirement System. The committee considered a resolution draft directing the Legislative Council to study issues and options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and amended that resolution draft to broaden the scope of that proposed study to judges and state employees who are not participating members of the Public Employees Retirement System or the Highway Patrolmen's Retirement System.

Recommendations

The committee recommends Senate Bill No. 2068 to establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired members of the Public Employees Retirement System and Highway Patrolmen's Retirement System receiving retirement benefits or surviving spouses of those retired members who were eligible to receive, or were receiving, retirement benefits. The bill would reduce the employer contribution under both the Public Employees

Retirement System and the Highway Patrolmen's Retirement System by one percent of the monthly salaries or wages of participating members and would divert those moneys to the retiree health benefits fund by requiring the state and other participating employers to contribute one percent of monthly salaries and wages to the health benefits fund. The retiree health benefits fund would be administered by the PERS Board, which would be required to adopt rules necessary for the proper administration of the fund, including enrollment procedures.

The bill would provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures to be made in the same manner as moneys of the Public Employees Retirement System are invested, disbursed, or expended in that the PERS Board would not be allowed to invest those moneys but rather would select a funding agent that would be authorized to hold and invest moneys for the system. The bill would provide a fixed-dollar year-of-service credit formula for the calculation of the allowable monthly credit toward hospital and medical benefits coverage under the program for eligible persons in an amount equal to \$3 multiplied by the member's or deceased member's number of years of service and prior service employment under the Public Employees Retirement System or Highway Patrolmen's Retirement System. Reduction factors would apply only to eligible retirees receiving early retirement benefits or their surviving spouses.

The committee recommends Senate Concurrent Resolution No. 4006 to direct the Legislative Council to study the issues and the feasibility of various options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and judges and state employees who are not participating members of the Public Employees Retirement System or the Highway Patrolmen's Retirement System.

PROPOSED 1989-90 INTERIM STUDY

The committee heard testimony from representatives of the Office of Management and Budget indicating that the retirement system goals and investment objectives of the Public Employees Retirement System and Teachers' Fund for Retirement are similar in many respects and that possible administrative efficiencies and cost savings might be realized through the consolidation of various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board. In recognition that a consolidation decision of this nature should be made by the Legislative Assembly in close consultation with the affected boards, the committee recommends House Concurrent Resolution No. 3006 to direct the Legislative Council to study the feasibility and desirability of various options relating to the consolidation of various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board.

WATER RESOURCES COMMITTEE

The Water Resources Committee was assigned two studies. House Concurrent Resolution No. 3007 directed a study of the feasibility and desirability of restoring Devils Lake and the Devils Lake system through alternate sources of water. House Concurrent Resolution No. 3096 directed a study of the beneficial or adverse economic impact that implementation of a "no net loss of wetlands" policy would have on this state, including the impact on landowners, farmers, local businesses, and the hunting industry in this state, and the effect implementation of such a policy would have on rivers, lakes, and farmland in this state. This study was also to include a determination to the extent practicable of the number of migratory and resident waterfowl relying on wetlands in this state and the effect that drained and undrained wetlands have on the water table of salt-affected soils, the effect on surrounding croplands, and the resulting impact on agricultural land.

Committee members were Representatives Gordon Berg (Chairman), Quentin E. Christman, Odell D. Flaagan, Lyle L. Hanson, John Hokana, Emil J. Riehl, Orville Schindler, Don Shide, Kelly Shockman, William Starke, Steven W. Tomac, and Gene Watne and Senators Bruce Bakewell, Earl M. Kelly, Byron Langley, Rick Maixner, Rolland W. Redlin, and F. Kent Vosper.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1988. The report was adopted for submission to the 51st Legislative Assembly.

DEVILS LAKE RESTORATION STUDY

House Concurrent Resolution No. 3007 reflects the Legislative Assembly's concern regarding the stabilization of Devils Lake and the Devils Lake lacustrine system.

History of Devils Lake

Devils Lake is the largest natural body of water in North Dakota (only the manmade reservoirs of Lake Sakakawea and Lake Oahe are larger) and is located in a closed drainage basin encompassing 3,580 square miles. The Devils Lake Basin extends from the southeastern edge of the Turtle Mountains in Rolette County to a range of prominent hills located south of the lake in Benson County. The area encompassing the Devils Lake Basin was heavily glaciated and the geological features of the area are due to glaciation and to a lesser extent wind and water action. Geological surveys of the basin indicate that the water level of Devils Lake has fluctuated dramatically since the last glacial event occurred approximately 12,000 years ago from a level of roughly 1,453 feet above sea level in prehistoric times to a low of 1,401 feet in 1940. Since this low point, the lake has risen to its present level of approximately 1,428 feet above sea level. This fluctuation in the level of Devils Lake is caused by natural, cyclical, climatic events and not by the drainage of wetlands or other human activities. If the water level of Devils Lake rises above 1,450 feet, the lakes comprising the Devils Lake chain, i.e., Devils Lake, East Bay Devils Lake, East Devils Lake, West

Stump Lake, and East Stump Lake, combine to form a single body of water. Radiocarbon dates taken in the Devils Lake area indicate that Devils Lake has risen high enough in recent geologic time to overflow into the Stump Lake system and into the Sheyenne River system.

Another problem associated with the peculiar geology of the Devils Lake Basin is the high salinity of the lakes located in the basin. Because the basin is a closed system, any increase in the water level of the lakes in the basin results in a corresponding decrease in the salinity of the affected lake while any decrease in the water level of the lakes leads to an increase in the salinity of the lakes comprising the Devils Lake system.

Missouri River Water and the Garrison Diversion Unit Project

Proposals for restoring Devils Lake and as a consequence freshening the water of the lake date back to the late 19th Century. Many of these plans proposed that water from the Missouri River be diverted to the Devils Lake Basin. Objectives of these various proposals included stabilization and restoration of the lakes in the Devils Lake chain, freshening of the lakes in the Devils Lake chain, establishment of fish and wildlife development areas, enhancement and stabilization of recreation areas, and flood control. In order to manage the excess water diverted to the Devils Lake chain from the Missouri River, plans, including the Garrison Diversion Unit Project as originally formulated, called for the construction of an outlet from East Stump Lake to the Sheyenne River. In addition, the drinking water supply of the communities located in the Devils Lake Basin would also have been enhanced by freshening the lakes.

The Garrison Diversion Unit, as originally envisioned, provided for Missouri River water to be diverted from Lake Audubon to the Lonetree Reservoir via the McClusky Canal and from the Lonetree Reservoir to Devils Lake via the New Rockford Canal, Warwick Canal, and Devils Lake Feeder Canal. This would have assured that the lakes located in the Devils Lake Basin would receive a reliable source of water for freshening and stabilization.

On August 11, 1984, the Secretary of the Interior appointed the Garrison Diversion Unit Commission to review the controversy surrounding the authorized Initial Stage of the Garrison Diversion Unit, to evaluate the contemporary water needs of the state of North Dakota, and to make recommendations. Among the recommendations included in the commission's final report issued on December 20, 1984, is that Lonetree Dam not be completed at this time and that the Sykeston Canal be constructed as a functional replacement. The Garrison Diversion Unit Commission's final report also notes:

While the Lonetree Dam and Reservoir facility remains an authorized feature of the Commission Plan, it is recommended that construction be deferred pending a

determination by the Secretary of the Interior consisting of a demonstration of need and satisfactory conclusion of consultations with Canada, after which appropriation of funds by Congress could be sought.

Although the commission also recommended that "construction of an outlet from the Devils Lake system to the Sheyenne River and future funding for an inlet to the Devils Lake system be considered," it tempered this recommendation by adding the proviso that "initiation of either feature shall be based on the outcome of current Corps of Engineers studies, NEPA [National Environmental Policy Act] compliance, permitting reviews, and satisfactory completion of consultations with Canada." Thus, water may not be available from the Garrison Diversion Unit for restoration of Devils Lake.

Testimony

In light of the language contained in the study resolution suggesting that an alternate source of water available to restore Devils Lake and the Devils Lake chain would be created by draining the thousands of acres of lake bottoms and potholes north of Devils Lake, the committee received testimony relating to precipitation, inflows, and evaporation in the Devils Lake Basin, and the water storage capacity of the lakes and wetlands located in the basin. The committee received testimony from a representative of the Water Resources Division of the United States Geological Survey that the two most difficult variables to calculate concerning future levels of Devils Lake are the amount of evaporation from the lake and the amount of ground water flowing into the lake. The testimony also indicated that there may not be sufficient runoff in the Devils Lake Basin to maintain the entire lake system at present levels, especially during periods of drought. Testimony also noted that the lakes north of Devils Lake would not be a good source of water for replenishing Devils Lake and maintaining the present level of the lake because they are large shallow lakes and would be highly susceptible to evaporation during dry periods.

Of more immediate concern, however, is the high level of Devils Lake. If the water level of Devils Lake reaches 1,430 feet above sea level, flooding will cause an estimated \$2 million in property damage. Should the water level reach 1,435 feet above sea level, flooding will cause an estimated \$20 million in property damage.

The committee received testimony from the United States Army Corps of Engineers concerning several plans it has formulated to control flooding in the Devils Lake Basin. Proposals studied by the Army Corps of Engineers included restricting inflows into the lake through wetland restoration, erecting various control structures, constructing upstream reservoirs, utilizing the Garrison Diversion Unit Project to restrict inflows, and controlling outflows of excess water from Devils Lake into the Sheyenne River. The Army Corps of Engineers informed the committee that it recommends that an outlet be constructed from the west bay of Devils Lake to the Sheyenne River for three reasons—it is the least expensive alternative; the quality of water that can be obtained from the

western end of the lake is better than that of the water in the eastern end of the lake; and the proposed outlet would not have to cross the Fort Totten Indian Reservation.

The plan recommended by the Army Corps of Engineers calls for a flood control channel to be constructed from the west end of Devils Lake to the Sheyenne River, a connecting channel to be constructed from East Devils Lake to the Stump Lake system, a water quality outlet channel to be constructed from East Stump Lake to the Sheyenne River, voluntary evacuation of the low lying areas around the Devils Lake chain, drainage controls north of Devils Lake, and floodplain zoning around Devils Lake.

The major problem with any outlet from Devils Lake is the impact it will have on water quality in the Sheyenne and Red Rivers. The Corps plan addresses this concern by providing that water from Devils Lake cannot be released downstream unless specific water quality standards are met.

The committee received testimony concerning benefits to be obtained from the stabilization of Devils Lake. Representatives of the Game and Fish Department reported that Devils Lake is an important sport fishing resource to North Dakota. Representatives of the department pointed out that the department's primary concern is with water stability as opposed to water quality. The committee also received testimony from representatives of the Parks and Recreation Department that the viability of the Devils Lake state parks system depends on the water quality of Devils Lake and the sport and game fish industry based on the lake.

Conclusion

The committee makes no recommendation concerning the Devils Lake restoration study.

REPLACEMENT OF WETLANDS STUDY

House Concurrent Resolution No. 3096 reflects the Legislative Assembly's concern with whether the "no net loss of wetlands" provisions of North Dakota Century Code (NDCC) Chapter 61-32 should be allowed to go into effect on July 1, 1989.

Wetlands in the United States and in North Dakota

It has been estimated that the original wetland acres of the 48 conterminous states have decreased at a rate of between 450,000 and 550,000 acres per year for the years from 1950 to 1970. More recently the loss-per-year figure has been set at approximately 300,000 acres. Approximately one-half of the original wetland acres of the lower 48 states has been lost. Ninety-five percent of this loss is attributable to human activities, with agriculture causing 80 percent of the loss. North Dakota comprises about 10 percent of the prairie pothole region and plays an essential role in maintaining North America's waterfowl population. Approximately 175 species of resident and migratory birds rely on North Dakota's potholes. The wetlands in North Dakota form the largest and most productive waterfowl breeding habitat in the lower 48 states. In an average year, over 3,000,000 ducks are present during the spring breeding season. This

amounts to as much as 50 percent of the breeding ducks in the 48 conterminous states. A square mile of the pothole region can allow the production of breeding ducks in densities of up to 185 pairs. The United States Fish and Wildlife Service has indicated that in 1984, 350 nest islands and 1,625 nest structures were in place in North Dakota. Ducks banded in North Dakota have been recovered in 46 states, 10 Canadian provinces, and 22 other countries. The United States Fish and Wildlife Service has stated that the long-term trend indicates duck numbers are gradually declining.

In North Dakota from 2 to 2.6 million acres (of an original 4.9 million acres) of wetlands remain. The United States Fish and Wildlife Service has stated that it manages 423,122 acres of fee title lands in North Dakota, and, prior to 1976, purchased easements on an estimated 758,645 acres of wetlands. Because the easements were taken on quarter section or larger tracts of land, the total land subject to pre-1976 easements is approximately 4.8 million acres. The terms of the pre-1976 easements prohibit the draining, filling, leveling, or burning of wetlands located on the 4.8 million acres. The estimated number of 758,645 wetland acres protected by the pre-1976 easements represents the number of wetland acres identified by the United States Fish and Wildlife Service when payment was made to landowners for wetland easements and when county-by-county gubernatorial consents were computed. Because wetland acres in pre-1976 easements are not delineated, the actual number of wetland acres protected by the pre-1976 easements is an unresolved issue between the state of North Dakota and the United States Fish and Wildlife Service.

In the early 1950s, the states, the United States Fish and Wildlife Service, and the International Association of Fish and Wildlife Agencies jointly determined that approximately 12.5 million acres of waterfowl habitat, including wetland and upland, in the United States should be under state and federal control as a means to stop the decline in waterfowl populations. North Dakota's share of the 12.5 million acre objective was 1,577,976 acres. The responsibility for acquiring this habitat was split—the federal share was 8,000,000 acres and the states' share was 4.5 million acres. According to the United States Fish and Wildlife Service, 62 percent of the North Dakota share was acquired between 1961 and 1983.

The United States Fish and Wildlife Service's goal is to acquire an additional 110,802 acres in fee and 491,122 acres of wetland easements in North Dakota. According to the United States Fish and Wildlife Service, if this goal is met, 500,000 wetland acres in North Dakota will not be subject to regulation or control by the United States Fish and Wildlife Service or the state.

State Wetlands Preservation Law

Several state statutes recognize the importance of wetlands by encouraging the preservation of wetlands in North Dakota.

North Dakota Century Code Sections 57-02-08.4 through 57-02-08.6 provide a conditional property tax exemption for owners of wetlands. Owners of wetlands

may qualify for the tax exemption by filing an agreement not to drain, fill, pump, concentrate water in a smaller or deeper excavation in the wetland basin, or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. The amount of the wetland exemption is reflected on the property tax statement of the individual taxpayer. When wetlands are drained, the exemption is forfeited and the land is subject to additional taxes that would have been assessed if the property had not qualified for the exemption. The State Treasurer may receive funds for the tax exemption program from legislative appropriation, or by gift, grant, devise, or bequest from any source. These funds are to be used to make payments to counties, for apportionment and distribution to county and local taxing districts, in lieu of revenues lost. No money has been appropriated for this program; however, certain state officials are authorized to work with federal or private groups or citizens to develop a source of funding to implement the program.

North Dakota Century Code Chapter 61-31 establishes a state waterbank program. Under the program, which is administered by the Commissioner of Agriculture, the state may contract with landowners for the conservation of wetlands. Landowners must agree not to drain, burn, fill, or otherwise destroy wetlands, and must agree not to use the wetlands for agricultural purposes other than as authorized by the commissioner. In return, each landowner will receive benefits, including an annual payment at a rate set by the commissioner. The State Engineer and the water resource districts are required to notify the commissioner of drainage permit applications that have been denied. The commissioner is then required to attempt to enter into a waterbank agreement with each landowner. The Commissioner of Agriculture is required to work with the Governor, the Game and Fish Commissioner, the United States Fish and Wildlife Service, and organizations and citizens to develop a source of funding to implement the waterbank program. The waterbank program was created in 1981 but has never received any state funding. According to the office of the commissioner, a limited number of small donations have been received to finance the waterbank program and additional funds are being solicited.

North Dakota Century Code Chapter 61-32 provides for the replacement of wetlands, the so-called "no net loss of wetlands" policy, as well as for the establishment of a wetlands bank and a wetlands replacement fund. Section 61-32-01 declares the wetlands policy of the state to be that:

1. Water development and wetland preservation activities should be balanced to protect and accommodate agriculture, water, and wetland interests and objectives.
2. Programs protecting and preserving wetlands must provide adequate compensation to the landowner and must provide periodic reevaluation of compensation to the landowner. Annual payments are encouraged as an option for landowners.

3. Land, wetland, or water acquisition for waterfowl production areas, wildlife refuges, or other wildlife, waterfowl, or wetland protection purposes may not be acquired through the exercise of the right of eminent domain.
4. When land is removed from the tax base to protect wetlands, replacement payments must be paid by the entity that purchases the land so that the amount of money which would otherwise be received in taxes if such land were not removed from the tax base is not diminished.

Section 61-32-03 contains the "no net loss of wetlands" provision:

Any person, before draining water from a wetland, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. . . . [T]he state engineer and the [state game and fish] commissioner must jointly find that the wetland acres proposed to be drained will be replaced by an equal acreage of replacement wetlands, or through debits to the wetland bank . . . before any permit for drainage can be approved by the state engineer or water resource board.

Section 61-32-04 contains a number of provisions governing the administration and implementation of the "no net loss of wetlands" policy. Among these is a provision limiting the acquisition of wetlands to willing sellers and requiring the purchasing entity to make replacement payments so as not to diminish the tax base by the preservation of wetlands. Also, anyone proposing to drain a wetland for which a permit is required, i.e., a wetland that has a watershed area consisting of 80 acres or more, must pay 10 percent of the cost of replacing the drained wetlands, with the remaining 90 percent to be paid either by federal, state, or private interests.

Section 61-32-05 requires the State Engineer and the Game and Fish Commissioner to establish a wetlands bank. Acreages of all replacement wetlands constructed after January 1, 1987, are to be credited to the bank, and acreages of all wetlands drained after January 1, 1987, except for projects for which permits were applied for prior to January 1, 1987, are to be charged as a debit. No more than 2,500 acres may be carried as a debit balance. However, this limitation does not apply to the drainage of wetlands for which a permit is not required. A wetlands replacement fund is established to finance the replacement of wetlands objectives.

The replacement of wetlands requirement of the Act does not take effect until July 1, 1989. Until July 1, 1989, the drainage of Type IV and V wetlands, as defined in United States Fish and Wildlife Service Circular 39 (1971 edition) is not permitted, except for permit applications submitted prior to January 1, 1987, or unless replaced in accordance with the replacement of wetlands provisions. As used in Circular 39, Type IV and V wetlands include inland deep fresh marshes and inland open fresh water such as shallow ponds and reservoirs.

Federal Wetlands Preservation Law

Several federal laws affect wetlands. The 1929

Migratory Bird Conservation Act initiated a program for the acquisition of land for migratory bird refuges. Under the program, the state must consent by law to the acquisitions. The 1934 Migratory Bird Hunting Stamp Act provided a revenue source to the federal government for the refuge acquisition program. Under the Act, "duck stamps" are sold and the proceeds are placed in the migratory bird conservation fund. In 1958 the Migratory Bird Hunting Stamp Act was amended to allow the Secretary of the Interior to acquire land or interests in land for waterfowl production areas. The 1958 amendment provided that the secretary could acquire waterfowl production areas without the state legislative consent required by the 1929 Act for migratory bird refuges. In 1961 Congress authorized a \$105 million interest-free loan to the migratory bird conservation fund for a crash program for acquisition of waterfowl production areas and migratory bird refuges. The 1961 Act, however, also provided that no land could be acquired using the migratory bird conservation fund unless the acquisition was consented to by the Governor or an appropriate state agency. Because of the 1929 and 1961 Acts, both legislative consent and gubernatorial consent are necessary for federal acquisition of migratory bird refuges, but state legislative consent is not necessary for the acquisition of waterfowl production areas. Between 1961 and 1977 Governors Guy and Link approved the acquisition of approximately 1.2 million acres of waterfowl production area easements by the federal government through the United States Fish and Wildlife Service.

In 1964 Congress enacted the Revenue Refuge Sharing Act. Under this Act the net receipts of the federal government under the national wildlife refuge system are used to make payments in lieu of taxes to counties in which refuges are located.

The wetlands trust provision of the Garrison Diversion Unit Reformulation Act of 1986 attempted to resolve wetland acquisition and management issues. The Act created a trust fund for developing wetlands which will primarily be used to pay farmers to maintain existing wetlands to further wildlife production. Total federal contributions to the program cannot exceed \$12 million. The fund will contain \$4 million in federal funds by 1992 and the remaining \$8 million in federal funds must be matched 10 percent by state, local, or private interests. The trust fund is operated as a nonprofit corporation by a board of trustees with three members appointed by the Governor and three members appointed by wetlands and wildlife organizations. The Governor's approval is required to acquire wetlands. Under this Act there is no eminent domain authority. The trust is intended to complement existing state and federal wetlands programs by developing innovative approaches to the preservation, enhancement, restoration, and management of wetlands in private, as well as public, ownership.

In addition, the so-called swampbuster provisions of the Food Security Act of 1985 (16 U.S.C. 3821-23) are designed to discourage the conversion of wetlands for agricultural purposes. The Act provides that individuals who produce agricultural commodities on converted wetlands are ineligible to receive

agricultural price supports, farm storage facility loans, crop insurance under the Federal Crop Insurance Act, disaster payments made pursuant to the Agricultural Act of 1949, or loans made, insured, or guaranteed under the Consolidated Farm and Rural Development Act or any other law administered by the Farmers Home Administration, and Commodity Credit Corporation storage payments.

For purposes of the swampbuster provisions, wetlands are defined as hydric soils (soils that are covered with standing water or are saturated most of the year) that support hydrophytic (water-loving) plants. A converted wetland is a wetland that has been artificially drained, pumped, or altered in some manner so as to make the converted wetland suitable for producing crops. Persons seeking to participate in any of the Department of Agriculture programs noted above must certify that they are not producing crops on land that has been converted from wetlands since December 23, 1985, the effective date of the Food Security Act of 1985.

The swampbuster provisions are enforced by the Agricultural Stabilization and Conservation Service. The service inspects approximately 15 percent of the acreage involved in the various farm programs. Any person found producing crops on converted wetlands will be disqualified from participating in the various farm programs. However, persons who began the conversion of wetlands before December 23, 1985, or converted wetlands where the United States Soil Conservation Service has determined that the conversion has a minimal effect on the wetland, or who produce crops on converted wetlands that had been created artificially or produce crops on wetlands that became dry enough to produce crops due to natural conditions such as drought, are still eligible to participate in the various federal farm programs.

Wetlands-Related Testimony

Testimony received by the committee indicated that water, wildlife, and wetland interests began negotiating and subsequently cooperating in 1985 in order that the impasse between these groups might be resolved. These negotiations culminated in three major results—the Garrison Diversion Unit Reformulation Act of 1986; a series of 13 agreements between the Governor of North Dakota and the regional director of the United States Fish and Wildlife Service concerning wetlands and other related issues; and the replacement of wetlands or “no net loss of wetlands” provisions of NDCC Chapter 61-32.

Testimony received by the committee disclosed that the replacement of wetlands provisions had been enacted for essentially three reasons. First, and primarily, to obtain relief from the onerous requirements of the swampbuster provisions of the Food Security Act of 1985; second, to temper opposition from environmental interest groups to continued funding and construction of the Garrison Diversion Unit Project; and third, to gain support for replacing the Sykeston Canal feature of the Garrison Diversion Unit Project with the proposed Mid Dakota Reservoir.

The committee received testimony that although for

much of American history wetlands were viewed as unproductive disease-producing areas that stood in the way of progress, in recent years the increased recognition of wetlands as a source of water purification and regeneration, flood control, wildlife habitat, and food has led to efforts to preserve and enhance existing wetlands becoming a national priority. The swampbuster provisions were enacted to further the national policy of protecting the remaining wetlands in the nation. Testimony indicated that the replacement of wetlands provisions may qualify under the minimal effects exemption of the swampbuster provisions. Under this exemption, if an activity has a minimal effect on wetlands it may be exempted from compliance with the swampbuster provisions. Testimony indicated that several drainage projects have been constructed under the minimal effects exemption which may not have been constructed had not the state's replacement of wetlands provisions been enacted. In addition, the committee received testimony that legislation such as the replacements wetlands provisions, and the new spirit of cooperation it has engendered between water, wildlife, and wetland interest groups, may lead to relaxation of the swampbuster-related regulations in the future.

The committee also received testimony that the replacement of wetlands provisions should not be allowed to go into effect on July 1, 1989, and should be repealed by the 1989 Legislative Assembly. Testimony indicated that the provisions disproportionately impact the counties comprising the Devils Lake Basin and the James and Sheyenne River Valleys as compared to the counties located in the Red River Valley and the western portion of the state. Testimony also reflected that the provisions restrict the ability of local water resource district boards to manage water resources. It was also pointed out that individuals can still drain under the swampbuster provisions if they do not plant an agricultural commodity on the drained wetland or if they do not participate in the farm program, while under “no net loss of wetlands” individuals will be denied any required drainage permit if the drained wetlands are not replaced. Additional testimony indicated that individuals should be compensated for preserving and enhancing wetlands if they are restricted from draining wetlands located on their property. Opposition to the replacement of wetlands provisions was also voiced by various landowners from the Devils Lake Basin. They believe that the inability to drain saline soils in this area of the state because of this policy may lead to saline saturated soils that will result in decreased agricultural production. The committee also received testimony that there has been no amelioration of swampbuster-related regulations.

Migratory Waterfowl

The committee gathered information from several sources with respect to that portion of the study of the beneficial or adverse economic impact that implementation of a “no net loss of wetlands” policy would have on the number of migratory and resident waterfowl that rely on and benefit from wetlands in this state. The United States Fish and Wildlife Service has performed annual surveys to estimate the size of

the migratory waterfowl population in North Dakota since 1958. The 1987 population survey showed a waterfowl breeding population in North Dakota of 3,008,000, as compared to 3,138,000 in 1986. This figure constitutes 8.6 percent of the total for the United States and Canada as compared to nine percent of the total in 1986. The service estimated that waterfowl production for North Dakota in 1987 was 4,679,000 birds, as compared to 3,626,000 in 1986. The service believes that the increase in production is due to substantial increases in breeding habitat.

The committee also received testimony that the number of migratory and resident waterfowl relying on wetlands in North Dakota can be affected by the presence of avian botulism and other waterfowl diseases in North Dakota. Although avian botulism is not infectious or contagious to humans, it is especially problematic to migratory waterfowl populations on the Great Plains. Botulism outbreaks are caused by decaying vegetation and dead organic matter. The requirements for a botulism outbreak are the presence of a toxigenic (*C. botulinum*), an appropriate substrate, a suitable temperature (70 degrees Fahrenheit), a method of transfer (maggots and flies), and waterfowl. Once a botulism outbreak occurs there are generally three methods of controlling the outbreak. The primary method is to remove the carcasses of the dead birds from the outbreak area. However, this method is not entirely effective because it is very expensive as well as almost impossible to remove all of the carcasses from the affected area. Another method that has been used with some success in the prairie provinces of Canada is to move the waterfowl out of the outbreak area. This is accomplished by using scare cannons or establishing artificial feeding areas located away from the affected wetland or marsh. The final method centers on disease prevention as opposed to disease control. This method consists of managing marshes, stabilizing water levels throughout the year, and ensuring that there are no power lines or other similar structures constructed in or through wetlands or marshes. This last requirement is important as several botulism outbreaks have been traced to birds striking power lines and falling into a marsh, thus providing the first link in the botulism chain.

The committee received testimony that outbreaks of botulism were especially severe during 1987. Representatives of the United States Fish and Wildlife Service estimated that approximately 64,000 birds (18,000 in the Minnewaukan flats area of Ramsey and Benson Counties) died from botulism in 1987. In addition to avian botulism, diseases such as avian cholera, newcastle disease, and an as yet unnamed bacterial disease may also affect waterfowl populations.

The committee also received testimony that waterfowl populations may be adversely affected by predation. Testimony estimated that approximately 25 percent of waterfowl hens are lost annually to predators. The principal mammalian predator of waterfowl in North Dakota is the red fox. Other significant predators include the striped skunk, Franklin's ground squirrel, mink, coyote, raccoon, badger, crow, great horned owl, and various raptors.

There are several steps that can be undertaken to reduce predation. One method is to manipulate waterfowl habitat by planting dense cover vegetation on farmsteads and refuges. Other methods of reducing predation include creating islands in wetlands, constructing nesting structures, and enclosing refuges with electric fences or killing the particular predator involved. The final alternative is not preferred because predators may be protected by federal law as well as difficult to kill.

The committee also received testimony that illegal hunting or poaching, especially in the south central portion of the United States, may also adversely impact waterfowl populations. In fact, the illegal waterfowl harvest by poachers may equal or exceed the legal harvest in some areas of the country.

Salt-Affected Soils

The committee received testimony that there are approximately 1,000,000 acres of salt-affected soils in the eastern portion of the state. A saline soil is defined as a soil that contains salt soluble in water.

Testimony indicated that the primary crop production problem, in addition to reduced yields as a result of the low salt tolerance of the type of crop involved, is caused by the fact that saline soils retain water. Restricted or reduced soil drainage increases the risk of reduced crop yields because wet soils lead to delays in seeding which in turn increases the risk of crop disease. Wet soils may also reduce the acreage available for good field selection and proper crop rotation which may lead to fewer crop rotations and result in increased recropping on diseased residue.

The committee received testimony that the first step in reclaiming salt-affected soils is drainage. However, the North Dakota Cooperative Extension Service takes the position that surface drainage is not feasible because of the cost associated with surface drainage, the unavailability of outlets for drains, and the inability to find areas in which to drain the saline water. In addition, although surface drainage may allow the area to be farmed, yields may be low because the soils may have a high concentration of salt due to the subsurface capillary action of ground water, thus making them less productive. Thus, the North Dakota Cooperative Extension Service recommends that farmers use crops that are tolerant to saline soils. The salt-affected soil production program recommended by the North Dakota Cooperative Extension Service also prescribes that farmers farm around or across salt-affected soils and accept the lower yields that result from this practice rather than assuming the cost of draining or reclaiming these types of soils.

Proposals Considered

The committee considered a proposal that would have repealed NDCC Chapter 61-32 and either reinstated or not reinstated North Dakota drainage law as it existed prior to enactment of the 1987 legislation (the North Dakota drainage permitting system).

Another proposal considered by the committee would have declared a state wetlands policy and would have provided for the classification of wetlands. This proposal included repeal of the replacement of

wetlands and wetlands bank provisions and enactment of a state wetlands policy formulated by the 1985-86 interim Agriculture Committee and recommended by that committee and approved by the Legislative Council. The wetlands policy would not have imposed any duty on any state agency or other person but was an advisory declaration of the state's wetlands policy. The policy was that water is one of North Dakota's most important natural resources, and that the protection, development, and management of North Dakota's water resources is essential for the long-term public health, safety, and general welfare and economic security of North Dakota. It also recognized that agriculture is the most important industry in North Dakota and that agricultural

concerns must be accommodated when wetlands are protected.

The committee considered a proposal that would have exempted wetlands composed of soils that have a salt content sufficient to reduce crop yields as compared to similar nonsaline soils from the replacement of wetlands provisions of NDCC Chapter 61-32. In addition, the proposal would have provided that these types of wetlands may not be charged as a debit against acreages credited to the wetlands bank.

Conclusion

The committee makes no recommendation concerning the replacement of wetlands study.

STUDY RESOLUTIONS AND ASSIGNMENTS FOR THE 1987-88 INTERIM

The following table identifies the resolutions prioritized for study during the 1987-88 interim under authority of North Dakota Century Code (NDCC) Section 54-35-03 and statutory or other responsibilities that were assigned to interim committees. The table lists the resolutions approved for study or the statutory responsibilities involved, the subject matter of each, and the interim committee that was assigned the specific study or responsibility.

1987 Concurrent Resolution	
No.	Subject Matter (Committee)
3001	Administrative Agencies Practice Act (Administrative Rules Committee)
3005	Methods and efforts to initiate and sustain new economic development and to stimulate the creation of new employment opportunities for the citizens of this state (Jobs Development Commission)
3007	Feasibility and desirability of restoring Devils Lake through alternate sources of water (Water Resources Committee)
3008	Community-based care provided by the Department of Human Services for the developmentally disabled, chronically mentally ill, aged and infirm, and other persons, including the process of reimbursement for providers of such services and the availability of community-based settings—by Legislative Council directive, limited to the process of reimbursement for providers (Budget Committee on Human Services)
3012	Procedures and standards in appeals for court review of decisions of county commissioners and other local governing bodies (Judiciary Committee)
3015	Administrative structure of school districts providing elementary and secondary education in this state and other states (Education Finance Committee)
3018	Alternatives to improve the committee structure for the appropriation process (Legislative Procedure and Arrangements Committee)
3021	Feasibility and desirability for revision of the Charitable Solicitations Act (Business Committee)
3024	Feasibility and desirability of establishing educational programs relating to career guidance and development for children and adults in the state (Education Committee)

1987 Concurrent Resolution	
No.	Subject Matter (Committee)
3025	Feasibility, cost, and benefits of utilizing current technology to enhance the educational opportunities of North Dakota students (Education Committee)
3031	Nonagricultural real estate foreclosure laws of the state of North Dakota in relation to the foreclosure laws adopted by other states (Judicial Process Committee)
3047	State employees health insurance program (Retirement Committee)
3048	Use of near infrared reflectance analyzers to test grain protein content (Agriculture Committee)
3049	Methods of reducing losses incurred by the Comprehensive Health Association (Legislative Audit and Fiscal Review Committee)
3058	Feasibility and desirability of developing a program for competency testing of elementary and secondary students and of providing remedial programs for students who need assistance mastering basic skills (Education Committee)
3063	Makeup of the advisory councils appointed under the North Dakota unemployment insurance law, status of the unemployment insurance trust fund reserve during the interim, and approaches to the problem of unemployment (Budget Committee on Government Administration)
3069	Health insurance benefits and other benefits administered by public employee retirement boards, and the investment practices and performances of those boards (Retirement Committee)
3073	Services to deaf and hearing impaired children and adults, role of the North Dakota School for the Deaf in the provision of educational and rehabilitative services to the deaf, and alternative methods of educating and rehabilitating the deaf in communities throughout the state (Budget Committee on Institutional Services)
3074	Services to blind and visually impaired children and adults, role of the North Dakota School for the Blind in the provision of educational and rehabilitative services to the blind, and alternative methods of educating and rehabilitating the blind in communities throughout the state (Budget Committee on Institutional Services)

1987 Concurrent Resolution	
No.	Subject Matter (Committee)
3077	Differences in employee benefits between part-time and full-time employment in the private sector (Budget Committee on Government Administration)
3080	Present and future role and function of the State Hospital in the provision of services to the mentally ill and the chemically dependent and its relationship to private and public agencies in the community providing similar services (Budget Committee on Human Services)
3084	Department of Human Services' establishment of a prospective Medicaid payment system (Budget Committee on Human Services)
3085	Feasibility and desirability of requiring a history of pesticides applied to agricultural property to be provided to owners, tenants, and purchasers of the property (Agriculture Committee)
3095	Revision of the Constitution of North Dakota (Judiciary Committee)
3096	Economic impact that implementation of a "no net loss of wetlands" policy would have in this state; effect that implementation of such a policy would have on rivers, lakes, and farmland in this state; number of resident and migratory waterfowl that rely on wetlands in this state; and effect that drained and undrained wetlands have on the water table of salt affected soils (Water Resources Committee)
3099	Real estate licensure requirements for property managers (Business Committee)
4010	Need for providing protective services to vulnerable adults subject to abuse, neglect, self-neglect, and exploitation (Law Enforcement Committee)
4016	Use of comparable worth to determine the existence of wage-based sex discrimination—by Legislative Council directive, limited to state government (Budget Committee on Government Administration)
4017	Investigation and prosecution procedures for child abuse and neglect cases and whether state law protects the interests of justice and of all parties involved in such cases (Law Enforcement Committee)
4021	Problems faced by and the funding of the North Dakota emergency medical services system and, in particular, volunteer ambulance services and the Division of Emergency Health Services

1987 Concurrent Resolution	
No.	Subject Matter (Committee)
	of the State Department of Health (Budget Committee on Institutional Services)
4022	Criminal sentencing statutes in misdemeanor and felony cases (Judiciary Committee)
4026	Programs for assistance to victims of and witnesses to crime (Law Enforcement Committee)
4031	Uniform Juvenile Court Act, child abuse and neglect laws, other state and federal laws, and current administrative rules and practices regarding the confidentiality, management, exchange, and use of records and information relating to services provided to minors (Law Enforcement Committee)
4046	Game and fish laws and rules, with an emphasis on the laws and rules concerning the issuance of game and fish licenses and the role of county auditors in the issuance of game and fish licenses (Judicial Process Committee)
4051	Feasibility and desirability of establishing a state bonding fund for those persons who are required by state law to be bonded in order to engage in business activities—by Legislative Council directive, limited to grain warehousemen and livestock auction markets (Agriculture Committee)
4053	Appropriation of special funds (Budget Committee on Government Finance)
4058	Alternative methods available for establishing a capital construction trust fund for the state (Budget Committee on Government Finance)
4060	Securities laws of North Dakota, need for regulation of the various aspects of the securities business, and desirability of revising the state's securities laws to foster legitimate capital formation in the state (Jobs Development Commission)
4066	Feasibility and desirability of changes in the legal status of, and relationships existing among, political subdivisions and effect of new legislation on county and city budgets (Political Subdivisions Committee)
4067	Relationship between railroads and their tenants along railroad rights of way (Business Committee)
4069	State aid to local fire departments and districts (Political Subdivisions Committee)

NDCC Citation	Subject Matter (Committee)
10-23-03.2	Receive annual audit report from corporation receiving ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)
15-10-12.1	Approve any gift of a higher education facility (Budget Section)
15-10-18	Approve nonresident student tuition fees charged at state institutions of higher education (Budget Section)
15-59-05.2	Receive reports on interagency agreements for education services to handicapped students (Education Committee)
15-65-03	Approve any gift of a tax-producing educational broadcasting facility (Budget Section)
21-11-05	Receive any application for a natural resource bond loan (Budget Section)
25-04-17	Receive report on writeoff of patients' accounts at Grafton State School (Legislative Audit and Fiscal Review Committee)
25-09-02.1	Receive annual report on status of accounts receivable at State Hospital and Grafton State School (Legislative Audit and Fiscal Review Committee)
28-32-02	Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)
38-14.1-04.2	Receive annual reports of Reclamation Research Advisory Committee (Agriculture Committee)
49-09-10.1	Receive periodic reports on Public Service Commission's identification of certain railroad rights of way (Legislative Audit and Fiscal Review Committee)
50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)
54-10-01	Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review Committee)
54-14-01.1	Periodically review actions of the Office of the Budget (Budget Section)
54-14-03.1	Receive reports on fiscal irregularities (Budget Section)
54-16-01	Approve excess transfers from state contingency fund (Budget Section)
54-27-22	Approve use of capital improvements planning revolving fund (Budget Section)
54-27-23	Approve use of cash flow financing (Budget Section)
54-35-02	Review uniform laws recommended by Commission on Uniform State Laws (Judiciary Committee)
54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Procedure and Arrangements Committee)

NDCC Citation	Subject Matter (Committee)
54-35-02.2	Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)
54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs (Retirement Committee)
54-35-02.6	Study and review rules of administrative agencies (Administrative Rules Committee)
54-35-02.7	Legislative overview of the Garrison Diversion Project and related matters (Garrison Diversion Overview Committee)
54-35-11	Make arrangements for 1989 session (Legislative Procedure and Arrangements Committee)
54-40.2-05.1	Receive report on any state agency agreement with an Indian tribe (Legislative Council)
54-44.1-07	Receive executive budget (Budget Section)
54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action (Budget Section)
54-44.4-04	Approve state purchasing rules (Administrative Rules Committee)
54-52-06	Receive report on state retirement fund's actuarial soundness (Budget Committee on Government Finance)
57-01-11.1	Receive quarterly reports on auditing enhancement program and settlement of tax assessments (Budget Section)

**1985
Session
Laws**

Citation	Subject Matter (Committee)
Chapter 51	Receive Land Reclamation Research Center 1987 report (Agriculture Committee)

**1987
Session
Laws**

Citation	Subject Matter (Committee)
Chapter 5	Receive Land Reclamation Research Center 1987, 1988, and 1989 reports (Agriculture Committee)
Chapter 5	Approve expenditure of funds for construction of experiment station facilities (Budget Section)
Chapter 29	Administer legislative wing improvements appropriation (Legislative Procedure and Arrangements Committee)
Chapter 38	Study education finance issues—by Legislative Council directive, to include study of funding of adult basic and secondary education and small but necessary schools (Education Finance Committee)

1987 Session Laws Citation	Subject Matter (Committee)
Chapter 41	Receive reports on plan for additional committee rooms (Legislative Procedure and Arrangements Committee)
Chapter 49	Approve vacation of National Guard armories (Budget Section)
Chapter 51	Approve expenditure of funds by Department of Human Services to unify inspection of care functions and the health facility certification survey (Budget Section)
Chapter 52	Approve transfer of title or use of San Haven (Budget Section)
Chapter 185	Approve expenditures of Children's Services Coordinating Committee (Budget Section)
Chapter 185	Receive plan developed by Children's Services Coordinating Committee (Legislative Council)
Chapter 205	Approve use of moneys for Child Welfare Research Bureau (Budget Section)
Chapter 351	Receive report on deficiency appropriation to state bonding fund (Budget Section)
Chapter 811	Receive report on progress of implementation of changes in higher education (Budget Section)
Chapter 869	Receive progress reports from Department of Human Services on implementation of changes to the human service delivery system (Budget Committee on Human Services)
Chapter 879	Hold legislative hearings on block grants (Budget Section)

Added Committee Responsibilities

This portion of the table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees by listing the subject matter and the interim committee to which it was referred.

Responsibility	Interim Committee
Monitor status of state agency and institution appropriations	Budget Committee on Government Finance
Receive reports on actuarial soundness of Teachers' Fund for Retirement and Highway Patrolmen's Retirement System	Budget Committee on Government Finance
Study methods to authorize counties to jointly issue bonds for capital improvements	Budget Committee on Government Finance
Receive report on need for residential child care treatment facilities	Budget Committee on Institutional Services
Receive information on tax reductions provided by the 1987 Legislative Assembly to the oil and coal industries	Budget Section
Study problems relating to the title transfer of Dickinson State Addition property to the Board of University and School Lands	Dickinson State Addition Committee

Responsibility	Interim Committee
Study effect of federal law on state law relating to age of schoolbus drivers	Education Finance Committee
Study attorneys' fees in workers' compensation cases	Judicial Process Committee
Review effect of nonprioritization of HCR 3012 (study procedures and standards in appeals for court review of decisions of county commissioners and other local governing bodies)	Judiciary Committee
Study legal issues associated with the disease AIDS	Judiciary Committee
Statutory revision	Judiciary Committee
Monitor fine revenues to the common schools trust fund	Legislative Audit and Fiscal Review Committee
Provide Census Bureau with legislative apportionment information requirements for 1990 census tracts	Legislative Procedure and Arrangements Committee
Review smoking policy applicable to Legislative Assembly areas during sessions	Legislative Procedure and Arrangements Committee

STUDY RESOLUTIONS NOT PRIORITIZED

The following table lists the resolutions not prioritized for study during the 1987-88 interim under authority of NDCC Section 54-35-03. The subject matter of many of these resolutions is the same or similar to subject matter of resolutions that were given priority or of assignments to specific committees.

1987 Concurrent Resolution No.	Subject Matter (Committee)
3002	Methods for providing and maintaining model municipal ordinances for the protection of small North Dakota cities
3006	Insurance industry
3010	Need for consolidation and revision of state bidding and bid preference laws relating to public contracts
3023	Procedures and requirements for review of rate filings by health insurers
3050	Functions and duties of Job Service North Dakota and the Workmen's Compensation Bureau with a view toward reorganizing those agencies
3053	Problems caused by and associated with waterfowl
3056	Methods to encourage contributions to nonprofit organizations in North Dakota
3057	Financing, type, and potential location of group or residential child treatment facilities needed for foster care or educational placements (a report on this matter was received by the Budget Committee on Institutional Services)
3059	Methods of stabilizing receipts from taxes imposed on oil production

1987 Concurrent Resolution	
No.	Subject Matter (Committee)
3060	Small but necessary schools to determine what needs to be done to capitalize upon the strengths as well as correct the deficiencies of those schools (This matter was included in assignment of 1987 S.L. Chapter 38 to the Education Finance Committee)
3066	Funding of adult basic and secondary education, to review the various alternative methods of funding this type of education, and to arrive at a method of funding adult basic and secondary education that is secure and stable (This matter was included in assignment of 1987 S.L. Chapter 38 to the Education Finance Committee)
3067	Research services provided in this state by various entities to determine how resources can be most efficiently used to enhance and preserve the delivery of research information available to farmers and agribusinesses in this state
3068	Corporal punishment in schools
3072	Statutes of limitations in this state and feasibility and desirability of shortening, lengthening, or otherwise modifying existing statutes of limitations
3076	Feasibility and desirability of adopting administrative alternatives to the application of the exclusionary rule as it relates to search and seizure provisions of the North Dakota and United States Constitutions
3078	Fiscal aspects of the office of the court monitor which was created by the federal district court in the case concerning deinstitutionalization of developmentally disabled persons
3079	Potential benefits to be derived from offering courses through the use of electronic media, including satellite dishes, cable and public television, video cassettes, and video and telephone audiosystems, and methods available to implement a system of telecommunications (HCR 3025, involving similar subject matter, was assigned to the Education Committee)
4018	Feasibility and desirability of implementing a guaranteed tuition program for financing a child's postsecondary education
4023	Property tax credits allowed by law for persons 65 years of age or older with limited income
4038	Judicial standards of a "person requiring treatment" as used in mental health commitment proceedings resulting in treatment programs other than hospitalization

1987 Concurrent Resolution	
No.	Subject Matter (Committee)
4042	Life insurance needs of individuals born with incurable diseases
4045	Process of approving and ultimately prioritizing studies to be conducted by the Legislative Council
4048	State's bountiful natural resources and outdoor recreation activities with an emphasis on the state's wildlife resources for the purpose of promoting tourism and economic development
4052	Health impact of indoor radon gas and radon progeny in homes and other buildings in North Dakota
4056	Cost effectiveness and economic impact of governmental and intergovernmental services provided by state agencies, departments, and institutions, and alternative means of delivering those services
4057	Administrative hearing and license suspension process for alcohol-related traffic offenses
4065	Remedial action on two inactive uranium processing facilities in North Dakota

HOUSE BILL AND RESOLUTION SUMMARIES

House Bill No. 1031—Administrative Agency Rulemaking and Hearing Procedures. This bill provides for publication of an administrative bulletin and for comprehensive requirements relating to administrative agency rulemaking and adjudicatory hearings. (Administrative Rules Committee)

House Bill No. 1032—Administrative Agency Rulemaking. This bill requires the publication of an administrative bulletin and expands rulemaking procedures. (Administrative Rules Committee)

House Bill No. 1033—Classification, Compensation, and Salary Administration Plans. This bill requires the director of the Central Personnel Division to develop procedures in consultation with state agencies and institutions to ensure that the salaries of all state classified employees are paid in a manner consistent with the state's compensation, classification, and salary administration policies. (Budget Committee on Government Administration)

House Bill No. 1034—State Classification Plan. This bill, most of which does not go into effect until July 1, 1991, defines the compensable factors of the state's classification plan and requires the director of the Central Personnel Division to develop guidelines for exceptions to the plan, conduct more representative labor market surveys, and communicate classification and compensation policies to managers and employees. The bill requires all employees in the state's classified service be under one classification plan as of June 30, 1993, and appropriates \$337,416 from the general fund to be used by the Central Personnel Division during the 1989-91 biennium in preparation for the implementation of the bill. (Budget Committee on Government Administration)

House Bill No. 1035—Pay Equity Implementation Committee—Pay Equity Implementation Fund. This bill, most of which does not go into effect until July 1, 1991, contains the state's comparable worth policy; establishes a pay equity implementation committee to supervise and approve proposed changes to the classification and compensation plans; and establishes a pay equity implementation fund from moneys appropriated by the Legislative Assembly to establish equitable relationships within the state's classified service. The bill requires that during the 1989-91 biennium, the Central Personnel Division report proposed changes in the state's classification and compensation plans to an appropriate committee of the Legislative Council. (Budget Committee on Government Administration)

House Bill No. 1036—Insurance Benefits for Part-Time Employees. This bill provides that employees must have access to their employer's group health insurance plans if the plans are commercially insured or if the employer's plan is a self-insured plan of the state or a political subdivision of the state. The employer determines to what extent the employee must contribute to the policy premium. (Budget Committee on Government Administration)

House Bill No. 1037—State Capital Construction Fund. This bill allocates 40 percent of a cent of tax on each dollar of all sales subject to the sales, use, and motor vehicle excise taxes to a capital construction fund. (Budget Committee on Government Finance)

House Bill No. 1038—Mental Health Commitments to the Department of Human Services. This bill provides for commitments of mentally ill and chemically dependent individuals to the Department of Human Services rather than the State Hospital. (Budget Committee on Human Services)

House Bill No. 1039—Emergency Medical Services Liability. This bill defines an emergency medical services volunteer as an individual who receives no compensation or is paid expenses, reasonable benefits, a nominal fee or combination thereof to perform the services for which the individual volunteered. (Budget Committee on Institutional Services)

House Bill No. 1040—Emergency Medical Services Funding. This bill contains a \$3 million appropriation from the emergency medical services fund for the state administration of emergency medical services and for equipment and training grants to licensed ambulance services. The bill establishes an excise tax of 25 cents per month on each telephone access line in the state and requires that the subscriber's telephone company collect the tax and remit the moneys collected, net of administrative costs, to the State Tax Commissioner for deposit into the emergency medical services fund. (Budget Committee on Institutional Services)

House Bill No. 1041—Educational Broadcasting Council. This bill changes the membership of the Educational Broadcasting Council, changes the name of the Educational Broadcasting Council to the Educational Telecommunications Council, and broadens the council's focus from television and radio to telecommunications. (Education Committee)

House Bill No. 1042—Telecommunications Appropriation. This bill appropriates an amount equal to one percent of the amount appropriated for operating expenses for the institutions of higher education and one percent of the amount appropriated for foundation aid to the Educational Broadcasting Council to coordinate, fund, and assist in the development of educational telecommunication programs and systems throughout the state. (Education Committee)

House Bill No. 1043—Fiber-optic Cable Exemption From Regulation. This bill exempts the use of fiber-optic cable for educational purposes from regulation by the Public Service Commission. (Education Committee)

House Bill No. 1044—Transportation Aid to School Districts. This bill decreases the mileage payment for schoolbuses having a capacity to carry nine or fewer pupils from 35.5 to 34.5 cents, decreases the mileage payment for buses having the capacity

to carry 10 or more pupils from 72 to 70 cents, increases the per-pupil payment from 19 to 26 cents per day, and increases the in-city transportation payment from 9.5 to 13 cents per pupil per one-way trip. (Education Finance Committee)

House Bill No. 1045—Elementary Summer Education Programs. This bill permits proportionate foundation aid payments for summer elementary school courses approved by the Superintendent of Public Instruction. (Education Finance Committee)

House Bill No. 1046—Adult Basic and Secondary Education. This bill appropriates \$200,000 to the Superintendent of Public Instruction for adult basic and secondary education and defines adult and adult basic and secondary education. (Education Finance Committee)

House Bill No. 1047—Area Service Agencies. This bill replaces the offices of the county superintendent with area service agencies for the provision of special education, inservice training, coordination of continuing education and adult basic and secondary education, administrative services, and other educational programs and services. (Education Finance Committee)

House Bill No. 1048—Schoolbus Driver Ages. This bill removes the upper age limit of schoolbus drivers and raises the minimum age of schoolbus drivers. (Education Finance Committee)

House Bill No. 1049—Venture Capital Corporations. This bill eliminates certain investment restrictions on the public venture capital corporation, allows certain tax credits, provides limited immunity from liability for the corporation's board of directors, and authorizes income tax credits for investment in the corporation and in private venture capital corporations to be claimed under the optional simplified method of computing the state income tax. (Jobs Development Commission)

House Bill No. 1050—Abandonment of Real Property Subject to Mortgage Foreclosure Actions. This bill enables a mortgagee or holder of a sheriff's certificate of sale to petition the court to determine whether the real property subject to the mortgage foreclosure action is abandoned to receive immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. (Judicial Process Committee)

House Bill No. 1051—Notice of Sale. This bill provides that except for parties having an ownership interest in the real property subject to foreclosure of a mortgage, the names of all defendants may be omitted from the public notice of sale. (Judicial Process Committee)

House Bill No. 1052—Criminal Sentencing Statutes Consolidation. This bill consolidates laws governing suspended sentences and penalties and sentencing, clarifies a court's authority to impose a sentence if conditions of probation are violated and the status of a person receiving a deferred imposition of sentence, establishes certain uniform maximum periods of probation, and addresses conflicts and inconsistencies existing in present sentencing statutes. (Judiciary Committee)

House Bill No. 1053—Motor Vehicle Equipment Violations. This bill amends all pertinent North Dakota Century Code sections to clarify which violations of Chapter 39-21, governing motor vehicle equipment, are infractions and which violations are noncriminal traffic offenses. (Judiciary Committee)

House Bill No. 1054—Notice to Creditors With Claims Against Decedent's Estate. This bill provides that if a personal representative elects to publish a notice to creditors, the personal representative must mail a copy of the notice to those creditors whose identities are known to the personal representative or are reasonably ascertainable and who have not already filed a claim. (Judiciary Committee)

House Bill No. 1055—Juries in Felony Cases. This bill provides for a jury of 12 in felony cases. (Judiciary Committee)

House Bill No. 1056—Appointment of a Guardian Ad Litem. This bill requires the appointment of a guardian ad litem in any proceeding to appoint or remove a guardian of an incapacitated person. (Judiciary Committee)

House Bill No. 1057—Credit Unions as Depositories for the Purposes of Bad Check Prosecution. This bill ensures that credit unions are protected against those who may issue a draft without an account. (Judiciary Committee)

House Bill No. 1058—Protective Services for Vulnerable Adults. This bill establishes a program of protective services for vulnerable adults to be developed and administered by the Department of Human Services with the advice and cooperation of county social service boards. (Law Enforcement Committee)

House Bill No. 1059—Gradation of Offense of Misapplication of Entrusted Property. This bill provides for additional classifications for the grading of the criminal offense of misapplication of entrusted property depending on the value of the property misapplied. (Law Enforcement Committee)

House Bill No. 1060—Continuing Education for Child Protective Services Staff. This bill establishes a program of continuing education or inservice training for child protective services staff of the Department of Human Services and counties. (Law Enforcement Committee)

House Bill No. 1061—Fee Assessments for Funding Victim and Witness Programs or Services. This bill authorizes counties and cities to fund victim and witness advocacy programs or victim and witness services through fees assessed as part of criminal sentences imposed in county or municipal courts. (Law Enforcement Committee)

House Bill No. 1062—Legislative Records Accessibility. This bill identifies those legislative records that would not be subject to the public records laws. (Legislative Procedure and Arrangements Committee)

House Bill No. 1063—Legislative Wing Improvements. This bill appropriates \$14,300 from the interest and income fund of the Capitol building fund for improvements to the legislative wing. (Legislative Procedure and Arrangements Committee)

House Concurrent Resolution No. 3001—Review of Department of Human Services Development of Community Services for the Chronically Mentally Ill and Chemically Dependent. This resolution urges the Department of Human Services as it implements its plan for expansion of community and mental health services during the 1989-91 biennium to present information, along with the State Hospital, to the Legislative Council on implementation of additional community services and the effect those community services will have on the future services to be provided by the State Hospital. (Budget Committee on Human Services)

House Concurrent Resolution No. 3002—Continuum of Mental Health Services Developed on a Pilot Project Basis. This resolution encourages the Department of Human Services, in its development of a continuum of services for the chronically mentally ill and chemically dependent, to conduct pilot projects during the 1989-91 biennium for new programs, to be reviewed by the 1991 Legislative Assembly in its consideration of expanding those programs during the 1991-93 biennium. (Budget Committee on Human Services)

House Concurrent Resolution No. 3003—Review of Developmental Disabilities Reimbursement System. This resolution directs the Legislative Council to study the budgeting, auditing, and management of the Department of Human

Services' developmental disabilities program reimbursement system during the 1989-90 interim. (Budget Committee on Human Services)

House Concurrent Resolution No. 3004—Jobs Development Study. This resolution directs the Legislative Council to establish a Jobs Development Commission to study methods and coordinate efforts to initiate and sustain new economic development in the state. (Jobs Development Commission)

House Concurrent Resolution No. 3005—Effective Dates of Legislation. This resolution proposes a constitutional amendment to provide an August 1 effective date for laws passed during a regular session of the Legislative Assembly, but measures filed with the Secretary of State on or after August 1 and before January 1 of the following year would be effective 90 days after filing with the Secretary of State and the effective date of appropriation measures and tax measures changing tax rates would remain as July 1. (Judiciary Committee)

House Concurrent Resolution No. 3006—Consolidation of Retirement Program Functions Study. This resolution directs the Legislative Council to study the feasibility and desirability of consolidating various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board. (Retirement Committee)

SENATE BILL AND RESOLUTION SUMMARIES

Senate Bill No. 2031—Grain Protein Content Dispute Resolution. This bill provides that if there is a dispute over the grade, dockage, moisture content, or protein content of grain, the parties can send a sample of the grain to a federally licensed inspector or third party for inspection and the results will be binding on the parties. (Agriculture Committee)

Senate Bill No. 2032—Appointment of Job Service Advisory Councils. This bill provides Job Service North Dakota the option to appoint local advisory councils. (Budget Committee on Government Administration)

Senate Bill No. 2033—Appointment and Composition of Job Service Advisory Councils. This bill provides Job Service North Dakota the option to appoint local advisory councils and adds two legislators to the membership of the Job Service State Advisory Council. (Budget Committee on Government Administration)

Senate Bill No. 2034—County Improvement Financing. This bill authorizes two or more counties or cities to issue bonds jointly for the purpose of acquiring equipment or constructing roads, bridges, and road and bridge improvements. (Budget Committee on Government Finance)

Senate Bill No. 2035—State Agency Continuing Appropriations. This bill removes continuing appropriation provisions that are either not used by agencies or the funds are currently included in agencies' appropriations. (Budget Committee on Government Finance)

Senate Bill No. 2036—Expansion of State Building Authority Membership and Responsibilities. This bill expands the membership of the State Building Authority to include four members of the Legislative Assembly, with one member chosen from each party of each house, and requires the authority to develop and maintain long-range capital construction plans for state government and to make recommendations to the Office of Management and Budget on capital construction plans. (Budget Committee on Government Finance)

Senate Bill No. 2037—Special Education Finance. This bill makes the state financially responsible to pay the entire tuition and excess costs for certain handicapped children placed outside their school districts of residence; removes references to state reimbursements for special education being three times the state average per-pupil cost of education and four times the state average per-pupil cost of related services; provides that school districts will receive the state transportation payment for small buses if they transport nine or fewer special education pupils on a bus; requires multidistrict special education boards to plan and coordinate transportation of special education students within the unit; creates a limit of 2.5 times the cost of education for school districts that educate their special education students within the student's district of residence; increases the weighting factor for preschool handicapped students; requires all school districts within a multidistrict special

education program to share the costs of providing all programs; requires the Superintendent of Public Instruction to withhold foundation aid payments from any school district that does not pay the tuition for special education students; and appropriates \$13 million to the Superintendent of Public Instruction for special education. (Education Finance Committee)

Senate Bill No. 2038—Compulsory School Attendance Exemption for Handicapped Students. This bill requires children of parents or guardians who seek an exemption from the compulsory school attendance laws on the basis that the children have a physical or mental condition that would render attendance or participation in a regular or special education program inexpedient or impractical to first be identified as handicapped under the special education laws. (Education Finance Committee)

Senate Bill No. 2039—Boarding Care Services for Handicapped Students. This bill limits the kind of facility that can be licensed under the boarding home care laws to private residences that provide boarding home care to no more than four students. (Education Finance Committee)

Senate Bill No. 2040—Partnerships Between Institutions of Higher Education and Private Business and Industry. This bill authorizes the State Board of Higher Education to authorize and encourage institutions of higher education under its control to enter into contractual arrangements with private business and industry for the purpose of developing business or industry or fostering basic and applied research or technology transfer. (Jobs Development Commission)

Senate Bill No. 2041—Exemption of Certain Economic Development Records From Disclosure. This bill exempts certain economic development records, including records and information pertaining to a prospective location of a business or industry or trade secrets and commercial or financial information received by individuals or entities applying for business assistance, from the state's open records and open meetings laws. (Jobs Development Commission)

Senate Bill No. 2042—Tax Increment Financing for Industrial or Commercial Property. This bill authorizes cities to use tax increment financing for the development of unused or underutilized industrial or commercial property. (Jobs Development Commission)

Senate Bill No. 2043—Securities Commissioner Rulemaking Authority. This bill authorizes the Securities Commissioner to adopt, by rule, one or more transactional exemptions from the registration requirements of the state's securities law to further the objectives of facilitating sales of securities by North Dakota issuers or providing uniformity among the states. (Jobs Development Commission)

Senate Bill No. 2044—Uniform Limited Offering Exemption. This bill substantially incorporates by statute the uniform limited offering exemption, which creates an exemption for the sale of up to \$5 million

of securities during any 12-month period to an unlimited number of accredited investors and 35 unaccredited investors. (Jobs Development Commission)

Senate Bill No. 2045—Game and Fish License Issuance Fee. This bill provides that county auditors who receive less than \$1,000 in commissions from the sale of hunting, fishing, fur-bearer, and general game licenses in any year are entitled to retain, as compensation, 25 cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in the following year. (Judicial Process Committee)

Senate Bill No. 2046—Bonds of County Auditors and Agents Appointed to Distribute Hunting and Fishing Licenses or Stamps. This bill provides that county auditors may require agents to show evidence of adequate financial security, including bonds obtained through the state bonding fund, before the agents may be appointed. (Judicial Process Committee)

Senate Bill No. 2047—Appeals From Decisions of Local Governing Bodies. This bill establishes procedures for judicial review of the decisions of local governing bodies. (Judiciary Committee)

Senate Bill No. 2048—Mandatory Testing for the Presence of Antibodies to the Human Immunodeficiency Virus. This bill requires mandatory testing for the presence of antibodies to the human immunodeficiency virus of anatomical parts used for anatomical gifts, including blood, body tissue, and organs; inmates of Grade 1 or 2 jails, regional correctional facilities, and the State Penitentiary; and individuals, whether imprisoned or not, who are convicted of certain drug and sexual offenses. (Judiciary Committee)

Senate Bill No. 2049—Reporting of Cases of Human Immunodeficiency Virus Infection. This bill requires physicians and certain other individuals to report cases of human immunodeficiency virus infection. (Judiciary Committee)

Senate Bill No. 2050—Confidentiality of Human Immunodeficiency Virus Test Results. This bill establishes the confidentiality of the results of a test for the presence of the antibodies to the human immunodeficiency virus. (Judiciary Committee)

Senate Bill No. 2051—Reasonable Accommodations for Otherwise Qualified Persons With a Physical or Mental Handicap. This bill provides that it is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental handicap. (Judiciary Committee)

Senate Bill No. 2052—Criminal Penalty for the Knowing Transfer of the Human Immunodeficiency Virus. This bill provides that a person who, knowing that that person is or has been afflicted with acquired immune deficiency syndrome (AIDS), afflicted with AIDS-related complexes, or infected with the human immunodeficiency virus, willfully transfers any of that person's body fluid to another person is guilty of a Class A felony. (Judiciary Committee)

Senate Bill No. 2053—Quarantine and Isolation Procedures. This bill establishes isolation measures and procedures for those individuals with a contagious

or infectious disease who are determined to be a threat to public health. (Judiciary Committee)

Senate Bill No. 2054—School Policy Relating to the Human Immunodeficiency Virus. This bill requires school districts to adopt a policy concerning students, employees, and independent contractors who are diagnosed as having the human immunodeficiency virus infection. (Judiciary Committee)

Senate Bill No. 2055—Uniform Anatomical Gift Act (1987). This bill enacts the Uniform Anatomical Gift Act (1987). (Judiciary Committee)

Senate Bill No. 2056—Technical Corrections Act. This bill eliminates inaccurate or obsolete name and statutory references or superfluous language in the code. (Judiciary Committee)

Senate Bill No. 2057—Child Abuse or Neglect Interviews. This bill provides the Department of Human Services and law enforcement agencies with discretionary authority to interview alleged abused or neglected children without the consent of a person responsible for a child's welfare, but provides for subsequent notification of the child's parents, guardians, or foster parent and requires that a disinterested adult attend the interview, and also provides a specific procedure governing interviews of children on school premises, including notification of the appropriate school administrator. (Law Enforcement Committee)

Senate Bill No. 2058—Child Abuse or Neglect Investigation Parameters. This bill provides general parameters concerning the scope of investigations of reports of child abuse or neglect. (Law Enforcement Committee)

Senate Bill No. 2059—Procedures for Resolving Complaints and Conducting Reviews in Child Abuse or Neglect Cases. This bill requires the Department of Human Services to adopt rules establishing policies and procedures to conduct reviews and resolve complaints relating to investigations of reports of child abuse or neglect and determinations of probable cause to believe that child abuse or neglect is indicated. (Law Enforcement Committee)

Senate Bill No. 2060—Removal of Alleged Sexual Offender. This bill provides a procedure for the removal of an alleged sexual offender from the residence of a child if probable cause exists to believe that a sexual offense against or with the child has occurred and that the presence of the alleged sexual offender presents a danger to the child's life or health. (Law Enforcement Committee)

Senate Bill No. 2061—Employer Retaliation and Falsified Reports in Child Abuse or Neglect Cases. This bill provides for the availability of a civil remedy against an employer who retaliates against an employee because of reported child abuse or neglect or against a person who makes a false report of child abuse or neglect or provides false information that causes a report to be made. (Law Enforcement Committee)

Senate Bill No. 2062—Comprehensive Health Association's Board of Directors, Benefits, and Premium Rates. This bill changes the composition of the Comprehensive Health Association board of

directors, eliminates the association's \$150 deductible option, increases the association's premium rate cap from 135 percent to 150 percent of the average premium rates charged by the state's five largest insurers, provides that the association may charge a higher premium rate for individuals who are able to pay a higher premium rate, and lengthens the association's preexisting condition waiting period from six to nine months. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2063—Identification of Certain Railroad Rights of Way by the Public Service Commission. This bill repeals a statute that requires the Public Service Commission to inform the Legislative Audit and Fiscal Review Committee of operating railroad rights of way in the state which may be sold, transferred, or leased. It also requires a party intending to acquire or lease a railroad right of way to file a notice with the Public Service Commission regarding the lines and parties involved in the acquisition or lease. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2064—Statements of Intent. This bill eliminates the statutory requirements specifying the contents of statements of intent on constitutional amendment resolutions. (Legislative Procedure and Arrangements Committee)

Senate Bill No. 2065—Legislative Space Use. This bill updates the procedure for approving use of legislative space during the interim. (Legislative Procedure and Arrangements Committee)

Senate Bill No. 2066—Smoking Area Designation. This bill clarifies that a proprietor of a public facility need not designate a smoking area. (Legislative Procedure and Arrangements Committee)

Senate Bill No. 2067—North Dakota Advisory Commission on Intergovernmental Relations. This bill creates a North Dakota Advisory Commission on Intergovernmental Relations to serve as a forum for discussion and resolution of problems experienced by local governments and as a distribution center for information of assistance to local governments. (Political Subdivisions Committee)

Senate Bill No. 2068—Prefunding Retiree Health Benefits. This bill establishes a retiree health benefits fund to be administered by the Public Employees Retirement System for the purpose of prefunding hospital and medical benefits coverage under the uniform group insurance program for retired members of the Public Employees Retirement System and Highway Patrolmen's Retirement System. (Retirement Committee)

Senate Concurrent Resolution No. 4001—In Lieu of Property Tax and Other Payments to School Districts Study. This resolution directs the Legislative Council to study in lieu of property tax payments to school districts; school district revenues derived from oil, gas, and coal taxes; and other payments to school districts other than from the state to determine whether to include these funds as local resources when measuring a school district's contribution to the foundation program. (Education Finance Committee)

Senate Concurrent Resolution No. 4002—Equalization Factors Study. This resolution directs the Legislative Council to study the use of various factors in addition to property wealth which could be used in the education finance formula to equalize educational opportunities for students and to meet the state constitutional guarantee of a free and uniform system of public school education. (Education Finance Committee)

Senate Concurrent Resolution No. 4003—County Superintendents of Schools Study. This resolution directs the Legislative Council to study the various duties of county superintendents of schools with respect to reorganization, annexation, and dissolution of school districts; tuition hearings and appeals; appeals relating to the placement of students in other districts; and various other matters. (Education Finance Committee)

Senate Concurrent Resolution No. 4004—Game and Fish Laws and Rules Study. This resolution directs the Legislative Council to study the state's game and fish laws and rules. (Judicial Process Committee)

Senate Concurrent Resolution No. 4005—Removal of the Lieutenant Governor as Presiding Officer of the Senate. This resolution proposes a constitutional amendment to remove the Lieutenant Governor as presiding officer of the Senate and allow the Senate to select the presiding officer from among its members. (Judiciary Committee)

Senate Concurrent Resolution No. 4006—Retiree Health Benefits Study. This resolution directs the Legislative Council to study issues and options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and judges and state employees who do not participate under the Public Employees Retirement System or the Highway Patrolmen's Retirement System. (Retirement Committee)

