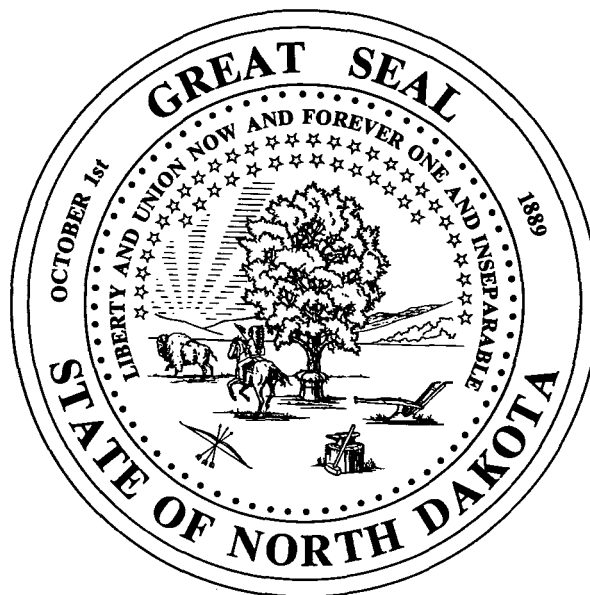


REPORT
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL

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



FIFTY-SIXTH LEGISLATIVE ASSEMBLY
1999

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SUMMARY

BRIEFLY—THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative agency rulemaking actions from November 1996 through October 1998. The Council approved extensions of time for three agencies to adopt rules and withdrew a committee objection filed in 1992. The Council voided a Public Service Commission rule that had been adopted on a trial basis to give local telecommunications service providers the right to deny a customer access to long-distance services if the customer is delinquent in payment for long-distance services. The Council considered voiding of rules of the Game and Fish Department, relating to hunting and fishing guides and outfitters, and of the Department of Human Services, relating to licensure of child care facilities, but withdrew the motions after amendments were made to the rules in question. The Council considered voiding of rules of the State Department of Health relating to the state trauma system but withdrew the motion after receiving more information about the operation of the system.

The Council recommends House Bill No. 1023 to provide that an administrative rule will be effective only until August 1 after the next regular legislative session following the effective date of the rule unless the rule is designated by the Administrative Rules Committee as procedural or interpretative. The Council recommends House Bill No. 1024 to allow the Administrative Rules Committee to call up administrative rules for review and those rules would be subject to the authority of the committee to file an objection or to void the rule. The Council recommends House Bill No. 1025 to provide that an agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs. The Council recommends House Bill No. 1026 to provide that an agency may adopt an administrative rule only when the rule falls within an area in which the agency has been specifically required or authorized to adopt rules. The Council recommends Senate Bill No. 2027 to require administrative rulemaking notices to be published in each official county newspaper rather than in each daily newspaper in the state.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations studied the feasibility and desirability of restructuring county government. The Council makes no recommendation regarding the restructuring of county government.

The commission received testimony and reports regarding the shift of liability from the state to political subdivisions and mill levy consolidation.

The commission administered a program of local government efficiency planning grants pursuant to North Dakota Century Code (NDCC) Section 54-35.2-02.1. The commission received final reports about the remaining two grants. Because the local government efficiency planning grant program has not received an appropriation since the 1993-95 biennium, the Council recommends Senate Bill No. 2028 to repeal the local program.

BUDGET SECTION

The Council received reports from the Office of Management and Budget on the status of the state general fund. The Council also received reports from the Office of Management and Budget on the 1997 flood disaster and irregularities in the fiscal practices of the state.

The Council approved nonresident tuition rates proposed by the Board of Higher Education and recommends Senate Bill No. 2029 to eliminate the Budget Section approval requirement. The Council authorized the expenditure of other funds for capital projects at the Williston Research Extension Center, the University of North Dakota, and North Dakota State University and recommends Senate Bill No. 2030 to authorize the University of North Dakota to construct a building for use as a university bookstore and other retail businesses and to appropriate \$4.5 million for the construction. The Council also received a report on Federal Emergency Management Agency reimbursements to the University of North Dakota.

The Council received reports from the Department of Human Services on the status of various computer projects, welfare fraud detection programs, full-time equivalent positions, the adult developmentally disabled children subsidy pilot program, and block grant accountability.

The Council approved the sale of Westwood Park property to the Walsh County Historical Society and received reports on the balance of the Job Insurance Trust Fund; the administrative costs of regional and tribal children's services coordinating committees; Veterans Home management, budgeting, and accounting practices; an assessment of the State Historical Society; salary adjustments provided by the Workers Compensation Bureau; and federal funds received by state agencies.

The Council recommends Senate Concurrent Resolution No. 4001 to authorize the Budget Section to hold legislative hearings required for the receipt of federal block grant funds.

The Council considered and approved 94 requests for increased spending authority or transfers of spending

authority which were approved by the Emergency Commission.

BUDGET COMMITTEE ON GOVERNMENT FINANCE

The Council studied the current budget process, the results of the program-based performance budgeting pilot project, budget reforms in other states, and the feasibility of developing a legislative budget. The Council recommends Senate Bill No. 2031 to create a legislative budget committee under the Legislative Council to coordinate and direct activities involved in the development of budget recommendations during the interim and as needed during the session to assist the Legislative Assembly in developing the final legislative budget. The Council recommends that if the program-based performance budgeting pilot project continues, the Appropriations Committees review agency performance and create, with agency involvement, performance measures for these agencies. The Council expresses support for the Department of Human Services using the budget presentation format recommended by the Public Administration Service and approved by the Budget Committee on Human Services and recommends that the Legislative Assembly be supportive of other agencies making their budget presentations using a similar format. The Council recommends that these items be considered as part of future changes to the budgeting process: (1) the involvement of new technology in budget presentations; (2) the availability of budgetary information online; (3) the effect of budget recommendations on future budgets; and (4) adequate information be provided supporting agency budget requests, executive budget recommendations, statements of purpose of amendment, and fiscal notes.

The Council studied the state's investment process as it relates to the state bonding fund and fire and tornado fund and monitored the performance of all investments of the state investment board and the board of university and school lands.

The Council studied the adequacy of transportation funding in the state.

The Council monitored agency compliance with legislative intent included in the 1997-99 appropriations, reviewed the status of major state agency and institution appropriations, and received reports on oil tax revenues.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Council monitored mental health and foster care services, including changes in the role of the State Hospital, psychosocial rehabilitation centers, and clubhouse projects; the effects of welfare reform on the delivery of mental health and foster care services; methods used to place children in the custody of the division of juvenile services; methods used to place children in residential child care facilities and residential treatment

centers; methods of setting and levels of reimbursement for residential child care facilities and residential treatment centers; and items of legislative intent regarding mental health and foster care services. The Council recommends that the Legislative Assembly, through its Appropriations Committees, review the status of administrative rule changes affecting residential child care facility cost reimbursements and evaluate components of the reimbursement system including the limit on social service rate reimbursement, the limit on salaries eligible for reimbursement, the limit on administrative costs eligible for reimbursement, and the ineligibility for reimbursement of expenditures made with donated or grant income.

The Council received a report from the Department of Human Services on the hiring of full-time equivalent positions at the human service centers, the State Hospital, and the Developmental Center in addition to those authorized for the 1997-99 biennium.

The Council received a report from the Office of Management and Budget on state employee compensation issues. The Council recognizes that "compression" within pay grades is a problem and recommends that the Legislative Assembly provide, to the extent possible, that a portion of salary increase funding approved by the Legislative Assembly be distributed to employees based on performance in order to help address the compression problem. The Council recognizes that some employees in lower pay grades are not receiving adequate salaries and that the state health insurance plan is an important benefit for state employees, but the levels of deductibles in coinsurance can be a burden for these lower paid employees. The Council recommends that the Legislative Assembly consider options for increasing the salary levels for lower paid employees and lowering health insurance deductibles and coinsurance percentages in the state health insurance contract.

BUDGET COMMITTEE ON HUMAN SERVICES

The Council studied the Department of Human Services. The Council recommends Senate Concurrent Resolution No. 4002 to urge the continued cooperation and coordination among county social service agencies to provide for the delivery and administration of social services in a cost-effective and efficient manner and to provide for reports to the Legislative Council. The Council also recommends Senate Concurrent Resolution No. 4003 to recommend the Department of Human Services implement recommendations to improve its administrative structure and enhance its budget presentation methods.

The Council studied the responsibilities of county social service agencies as distinguished from the responsibilities of regional human service centers and the Department of Human Services and the provision of services to children and their families and persons with

disabilities, including the elderly. The Council recommends Senate Bill No. 2032 to require the Department of Human Services to pay the cost, in excess of the federal share, of assistance provided adopted children with special needs and related administrative costs.

BUDGET COMMITTEE ON LONG-TERM CARE

The Council studied basic care rate equalization, including the cost impacts to the state and private pay residents. The Council recommends Senate Bill No. 2033 to repeal basic care rate equalization and to change the definition of a private pay resident to include a managed care entity as a payer exempt from rate equalization.

The Council monitored the implementation of the projects developed by the Department of Human Services related to the conversion of existing nursing facility or basic care capacity for use by the Alzheimer's and related dementia population and the implementation of an expanded case management system for elderly persons and disabled persons. The Council recommends Senate Bill No. 2034 to authorize the Department of Human Services to continue the approved Alzheimer's and related dementia population pilot projects during the 1999-2001 biennium.

The Council studied the means of expanding home and community-based services availability, options for training additional qualified service providers, the adequacy of geropsychiatric services, and the feasibility of combining service reimbursement payment sources to allow payments to flow to a broadened array of elderly and disabled service options. The Council recommends House Concurrent Resolution No. 3001 to provide for a Legislative Council study of the expansion of psychiatric and geropsychiatric training for general practice and family practice physicians at the University of North Dakota School of Medicine and Health Sciences. The Council recommends Senate Bill No. 2035 to provide an exception to the case mix system of nursing home reimbursement to allow for the establishment of one 14-bed geropsychiatric nursing unit within an existing nursing facility.

The Council studied American Indian long-term care needs and access to appropriate services and the functional relationship between state service units and the American Indian reservation service systems. The Council recommends House Concurrent Resolution No. 3002 to provide for a Legislative Council study of the American Indian long-term care and case management needs.

The Council studied long-term care financing issues to determine the changes necessary to develop alternative services and the feasibility of a managed care system for long-term care services. The Council recommends Senate Concurrent Resolution No. 4004 to provide for a Legislative Council study of an incentives

package to assist rural communities and nursing facilities in closing or significantly reducing bed capacity and providing alternative long-term care services; House Concurrent Resolution No. 3003 to provide for a Legislative Council study to determine if the mill levy match program could be expanded to enhance home and community-based service availability; Senate Bill No. 2036 to repeal basic care and assisted living and to create an adult residential care facility classification effective July 1, 2001; Senate Bill No. 2037 to provide for the implementation of a targeted case management program and a requirement that any Medicaid-eligible individual obtain a preadmission assessment to determine the type of services necessary to maintain that individual; Senate Bill No. 2038 to maintain the moratorium on nursing facility basic care beds through the 1999-2001 biennium and to provide an exception to the basic care bed moratorium for the establishment of a traumatic brain-injured facility in western North Dakota; and House Concurrent Resolution No. 3004 to provide for a Legislative Council study of the swing-bed process. The Council also recommends that the Department of Human Services rebase the long-term care payment reimbursement system.

CHILD SUPPORT COMMITTEE

The Council studied the provision of child support services and child care licensing in this state, and whether child support services and child care licensing can be more efficiently and effectively provided and, if so, by which agency or unit of government. The Council makes no recommendation regarding the provision of child care licensing because it may be premature to make changes regarding the provision of child care licensing services before the impact of the recent funding "swap" is fully understood.

The Council studied the issues of fairness and equity as they relate to the child support guidelines and the issuance and enforcement of child custody and visitation orders. The Council recommends House Bill No. 1027 to authorize courts to order a child support obligee to put a portion of the child support contribution into trust for the child's support and welfare; House Bill No. 1028 to provide that for purposes of determining gross income for purposes of establishing child support, gross income does not include an employee benefit if the employee may not lawfully liquidate the benefit without an income tax penalty and if the employee has no significant influence or control over the nature or amount of the benefit; House Bill No. 1029 to authorize courts to exclude an obligor's income from overtime and second jobs from the determination of gross income for purposes of establishing child support; Senate Bill No. 2039 to provide that the child support guidelines created by the Department of Human Services must include consideration of the length of time a minor child spends with the child's obligor parent; Senate Bill No. 2040 to provide parents

with specific rights and duties and provide that courts must include these rights and duties in child visitation orders and to allow courts, as a part of child visitation enforcement proceedings, to use any appropriate remedy that is available to enforce a child support order; House Concurrent Resolution No. 3005 to provide for a Legislative Council study of the feasibility and desirability of facilitating pro se representation in domestic relations matters; and House Concurrent Resolution No. 3006 to express approval of the actions taken by the State Bar Association of North Dakota Joint Task Force on Family Law to facilitate and promote mediation as a method of addressing family law matters.

COMMERCE AND AGRICULTURE COMMITTEE

The Council studied economic development functions in this state, including those of the Bank of North Dakota, Technology Transfer, Inc., the North Dakota Development Fund, the Department of Economic Development and Finance, and other related state agencies. The Council makes no recommendation regarding this study.

The Council studied the availability of affordable housing in the state. The Council makes no recommendation regarding this study.

The Council received a report regarding administrative, statutory, and unemployment insurance tax structure changes that may be proposed by Job Service North Dakota for consideration of the 56th Legislative Assembly; the laws and rules regarding animal confinement feeding operations in the state; the annual evaluation of research activities and expenditures by the Agricultural Research Board; the annual report of the State Board of Animal Health; the annual report of the Department of Economic Development and Finance regarding loan performance and performance of the department; a report from the Workers Compensation Bureau regarding its safety audit of Roughrider Industries work programs and its performance audit of the modified workers' compensation program; a report from the Workers Compensation Bureau regarding its study of wage-loss benefit structure; a report from the State Board for Vocational and Technical Education regarding its progress in coordinating statewide access to work force training programs; and a report of the Agricultural Experiment Station regarding the study of the feasibility and desirability of industrial hemp production in the state.

CRIMINAL JUSTICE COMMITTEE

The Council studied the awareness of, prevention of, treatment of, effects of, and deterrents to child sexual abuse. The Council recommends House Bill No. 1030 to require a public or private institution offering elementary or secondary education to disclose records to the child fatality review panel or a coroner. The Council studied statutory provisions that relate to sexual offenses. The Council recommends House Bill No. 1031 to require the

letter "Y" to be placed on the driver's license of a felonious sexual offender and an individual who has committed a felony against a child.

The Council studied delinquency and crime prevention and dispositional alternatives. The Council recommends House Bill No. 1032 to except a child from being listed in the law enforcement data base as the result of that child's first adjudication for simple assault.

EDUCATION FINANCE COMMITTEE

The Council studied the financing of elementary and secondary schools, the availability of state support for school construction, the formulas used to equalize state aid for student transportation and special education, funding sources that would be alternatives to property taxes, and other issues related to the financing of elementary and secondary education. The Council recommends Senate Bill No. 2041 to increase from \$25 million to \$40 million the limit for school construction loans made from the coal development trust; Senate Bill No. 2042 to allow for the withholding of state aid payments to a school district if the district fails to make full and timely payments on any evidences of indebtedness sold to the Bond Bank; and House Bill No. 1033 to require that each school district offer all educational grade levels from 1 through 12 on or before June 30, 2002, or become attached, through reorganization or dissolution, to a district that does offer those grade levels.

EDUCATION SERVICES COMMITTEE

The Council studied NDCC Title 15 provisions that relate to elementary and secondary education. The Council recommends House Bill No. 1034 to rewrite those portions of Title 15 which relate to the State Board of Public School Education, the Superintendent of Public Instruction, the Department of Public Instruction, the Compact for Education, the North Dakota Educational Telecommunications Council, schools, school districts, military installation school districts, school boards, county committees, county superintendents of schools, school district boundaries, students, chemical abuse prevention programs, postsecondary enrollment options programs, and adult education. The Council also recommends House Bill No. 1035 to reconcile references to Title 15 found in other portions of the Century Code and House Concurrent Resolution No. 3007 to provide for a Legislative Council study to continue the revision of those provisions of NDCC Title 15 which relate to elementary and secondary education.

The Council studied the desirability of requiring that a core curriculum be taught from kindergarten through grade 12. The Council makes no recommendation concerning this study.

The Council received reports regarding the receipt of county plans assigning the duties of county superintendents of schools, the home schooling of children with

autism, the leadership in educational administration development consortium's training programs for teachers and administrators, and the coordination of statewide access to work force training programs.

ELECTRIC UTILITIES COMMITTEE

The Council studied the impact of competition on the generation, transmission, and distribution of electric energy within this state; reviewed electric industry restructuring initiatives in other states; reviewed federal restructuring initiatives; reviewed electric utility taxation in other states; received information from an electric industry taxation task force; reviewed the operation and effect of the Territorial Integrity Act; and monitored the year 2000 problem as it affects electric utilities. The Council recommends House Bill No. 1036 to authorize the Public Service Commission to request from any North Dakota electric, gas, telephone, or pipeline public utility and generation and transmission rural electric distribution cooperative information on activities by that utility or cooperative to ensure that the year 2000 computer problem is addressed in a timely manner.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Council solicited and reviewed various proposals affecting retirement and health programs of public employees; obtained actuarial and fiscal information on each of these proposals and reported this information to each proponent; and received a report from the Office of Management and Budget and the Public Employees Retirement System concerning pension portability.

The Council studied public employee health insurance benefits and makes no recommendation concerning this study.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Council received project updates from representatives of the Garrison Diversion Conservancy District, State Water Commission, United States Bureau of Reclamation, and the United States Fish and Wildlife Service; information on the Dakota Resources Act of 1998; updates concerning Devils Lake flooding; and information concerning the promised payment plan.

The Council studied the establishment of watershed districts to manage water based on watershed boundaries and makes no recommendation concerning this study.

INFORMATION TECHNOLOGY COMMITTEE

The Council studied emerging technology and evaluated its impact on the state's system of information technology. The Council reviewed the process state agencies followed in developing information technology plans and the development of the statewide information

technology plan. The Council reviewed an inventory of the statewide network and assessed requirements for a statewide network. The Council recommends Senate Bill No. 2043 to establish an information technology department responsible for planning, selection, and implementation of telecommunications for all state agencies and for counties, cities, and public elementary and secondary schools. The Council recommends Senate Bill No. 2044 to establish a Legislative Council information technology committee with responsibility for establishing statewide goals and policy regarding information systems and technology and reviewing activities of the newly created information technology department.

The Council reviewed year 2000 computer compliance efforts and recommends House Bill No. 1037 to limit state and political subdivision liability for failure to become year 2000 compliant.

INSURANCE AND HEALTH CARE COMMITTEE

The Council studied emergency medical services. The Council recommends House Bill No. 1038 to provide that the formula used by the State Department of Health to distribute equipment grants to ambulance services for prehospital emergency medical services equipment must consider the ambulance services' expenses that are not dependent on response volume, and to appropriate \$3,800,000 to the State Department of Health for the purpose of defraying expenses of prehospital emergency medical services; and House Bill No. 1039 to require insurance companies, nonprofit health service corporations, and health maintenance organizations that provide coverage for prehospital emergency medical services to determine reimbursement eligibility for prehospital emergency medical services based on a prudent layperson standard of evaluating the need for the services.

The Council studied the development of a strategic planning process for the future of public health in this state. The Council recommends Senate Bill No. 2045 to consolidate the public health law under one chapter of the North Dakota Century Code, unify the powers and duties of local public health units, and require statewide participation in some type of public health unit.

The Council studied the effects of managed health care on the future viability of the health care delivery system in rural North Dakota. The Council makes no recommendation regarding managed health care legislation; however, the Council recognizes the importance of the Legislative Assembly staying abreast of the effect managed health care might have on rural North Dakota.

The Council studied the feasibility and desirability of implementing hail suppression programs for the reduction of property damage in urban and rural areas and funding the programs through property and casualty line insurance premium taxes. The Council recommends House Bill No. 1040 to provide for a six-year, statewide hail suppression program and to appropriate \$3,100,000

to the State Water Commission for the purpose of implementing the first two years of the program.

The Council received the annual reports from the Commissioner of Insurance relating to the progress of the partnership for long-term care program. The Council recommends Senate Bill No. 2046 to repeal the North Dakota Century Code chapter authorizing the partnership for long-term care program.

The Council received reports regarding the status of the children's health insurance program state plan and obtained information regarding telemedicine in the state.

JUDICIARY COMMITTEE

The Council studied charitable gaming laws to determine whether the laws and rules regarding taxation, enforcement, limitation, conduct, and play of charitable gaming are adequate and appropriate. The Council recommends House Bill No. 1041 to remove statutory provisions on the conduct and play of games of chance, to allow the Gaming Commission to adopt the rules for those games, and to authorize the Gaming Commission to adopt rules to permit an organization to conduct certain poker variations in addition to traditional straight poker; and House Concurrent Resolution No. 3008 to propose a constitutional amendment to permit the Legislative Assembly to provide by law for participation by the state in a multistate lottery.

The Council studied the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system, the issues and problems associated with the continued implementation of court unification, and the effective provision of judicial services to the citizens of the state. The Council recommends House Bill No. 1042 to impose a new fee for four types of filings—a petition for subsequent administration, trust registration, a petition for allowance of a trustee's annual report or other remedies, and an annual report by a guardian—and increases the fee for filing a foreign judgment or decree. The Council urges the Legislative Assembly to enact legislation during the 1999 legislative session which would provide for adequate and proper judicial services, including clerk of district court services, in each county in this state and for funding of district court services by the state judicial system in cooperation with the boards of county commissioners in the counties of the state. The Council also supports legislation that would implement the proposals in the plan developed by the Clerk of Court Consensus Process.

The Council studied the level of and remedies for discrimination in this state. The Council recommends House Bill No. 1043 to repeal the current housing discrimination statutes, create new housing discrimination laws, provide a procedure for filing a housing discrimination claim, provide remedies, and designate the Labor Department as the agency responsible for receiving and investigating housing discrimination claims.

The Council reviewed uniform Acts recommended by the North Dakota Commission on Uniform State Laws, including the Uniform Management of Public Employee Retirement Systems Act; the Uniform Child Custody Jurisdiction and Enforcement Act; the Uniform Principal and Income Act (1997); and the Uniform Guardianship and Protective Proceedings Act (1997).

The Council studied the authority of the Attorney General to enter contingent fee arrangements with private attorneys. The Council recommends Senate Bill No. 2047 to provide that the Attorney General may not appoint a special assistant attorney general in a civil case in which the amount in controversy exceeds \$150,000, and for which the special assistant attorney general is to be compensated by a contingent fee arrangement unless the arrangement is approved by the Emergency Commission.

The Council conducted, at five different locations throughout the state, public hearings on the constitutional measures scheduled to appear on the primary and general election ballots for the purpose of promoting public discussion and debate on the measures and to create a public history.

The Council makes four recommendations as a result of its constitutional and statutory revision responsibilities. The Council recommends Senate Bill No. 2048 to provide that fees collected for certain services of the North Dakota Stockmen's Association must be remitted to the State Treasurer for deposit in the North Dakota Stockmen's Association fund and to make a continuing appropriation of the moneys in the fund; Senate Bill No. 2049 to provide for an affidavit procedure whereby an interested person may have access to a safe deposit box after the death of the owner to determine if the box contains a will or other document that states the owner's wishes regarding a funeral or burial arrangements; House Bill No. 1044 to remove references to the twentieth century in statutory forms and to remove antiquated and gender-specific language; and House Bill No. 1045 to make technical corrections to the North Dakota Century Code.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council accepted 159 audit reports prepared by the State Auditor's office and independent accounting firms. The Council received performance audits on state procurement practices and state personnel systems. The Council also received status reports on the recommendations contained in the child support enforcement program performance audit, the North Dakota agricultural mediation program performance audit, and the Department of Public Instruction performance audit. The Council recommends House Bill No. 1046 to prohibit a state agency or institution from contracting for services to be provided to the agency or institution in the current biennium if the contract provides for the payment for the

services to extend beyond the current biennium. The Council received the state's Comprehensive Annual Financial Report for the year ended June 30, 1996, and for the year ended June 30, 1997.

The Council recommends House Bill No. 1047 to transfer the assets, liabilities, and fund equity of the beginning farmer revolving loan fund to the Bank of North Dakota on July 1, 1999. The Council also recommends Senate Bill No. 2050 to provide for local gaming enforcement grants to be distributed based on the prior quarter's adjusted gross proceeds instead of the current quarter's adjusted gross proceeds.

The Council urged state agencies to cease financial activity with the Lake Agassiz Regional Development Corporation and the Lake Agassiz Regional Council until inappropriate transfers between the corporation and council were resolved; and requested the Attorney General to ask the state's attorneys, city attorneys, and county commissioners of political subdivisions affiliated with the Lake Agassiz Regional Council to take necessary action to dissolve the Lake Agassiz Regional Development Corporation and return its assets to the Lake Agassiz Regional Council.

The Council recommends House Bill No. 1048 to create a centralized debt collection unit within the State Treasurer's office and House Bill No. 1049 to provide that state agency and institution financial audit reports, financial-related audit reports, and performance audit reports prepared by the State Auditor's office or a private firm under contract with the State Auditor's office are confidential until the reports are presented to the Legislative Audit and Fiscal Review Committee.

The Council recommends that the State Auditor proceed with a performance audit of state agency and higher education institution contracts for services and a performance audit of the Department of Transportation.

LEGISLATIVE MANAGEMENT COMMITTEE

The Council reviewed legislative rules and makes a number of recommendations intended to clarify the rules and expedite the legislative process. Among major rules changes are (1) provide for the printing of the list of registered lobbyists in the journals at the end of the session because of the availability of lists through the Internet; (2) provide for automatic transmittal of measures to the other house immediately after the second reading; (3) provide for automatic placement of a vetoed bill on the 11th order of business on the calendar; (4) require a minority report to be signed by more than one member; and (5) provide for all resolutions to be subject to the 40th legislative day crossover deadline.

The Council authorized acquisition of notebook computers for every legislator and enhancements to the computer systems to provide additional information to legislators and the public.

The Council recommends fees for subscriptions to sets of legislative documents and makes several

recommendations concerning the arrangements for the legislative session, including providing computer training to legislators during the organizational session, beginning session employee orientation and training on December 14, and reducing the number of Legislative Assembly employees to 41 Senate employees and 46 House employees, and expanding incoming legislative WATS line service during the session to 24 hours a day, seven days a week by providing an option for constituents to leave messages for legislators.

The Council approved renovation of the legislative chambers, including renovation of the front desk area, new carpeting, and new chairs in each chamber.

The Council reviewed legislative activities leading up to legislative redistricting and recommends Senate Concurrent Resolution No. 4005 to provide for a Legislative Council study of the state of the law and technology with respect to legislative redistricting.

REGULATORY REFORM REVIEW COMMITTEE

The Council studied the state's telecommunications law and the effect of federal legislation on the state's law. The Council recommends House Bill No. 1050 to extend the duration of the Regulatory Reform Review Commission to the year 2003.

TAXATION COMMITTEE

The Council studied the impact of tax-exempt property on school districts. The Council recommends Senate Bill No. 2051 to reinstate a law that was in place from 1995 to 1997 to give an affected school district or township the right to have a member participate as a nonvoting, ex officio member of the governing body of the city or county when that governing body is considering granting an exemption or the right to make payments in lieu of taxes for a new or expanding business.

The Council studied taxation and regulatory incentives for the lignite industry to improve its competitive position in the energy marketplace. The Council makes no recommendation concerning this study.

The Council studied the property tax exemption for charitable organizations. The Council recommends House Bill No. 1051 to allow imposition of special assessments by cities against tax-exempt property of charitable organizations for the proportionate share of costs of police and fire protection and infrastructure expenditures paid from the city's budget.

The Council studied the feasibility and desirability of providing property tax relief through alternative state and local revenue sources. The Council recommends House Bill No. 1052 to increase income limits for eligibility for the homestead credit by \$500 in each of the five income categories.

The Council studied the assessment of agricultural property and inundated lands. The Council recommends

Senate Bill No. 2052 to create a separate property tax valuation category for inundated agricultural land. The bill limits the county average valuation for inundated lands to 10 percent of the valuation of noncropland for the county. The Council recommends Senate Bill No. 2053 to limit the capitalization rate used in the agricultural property tax valuation formula to no less than 10 percent and no more than 11 percent. The Council recommends Senate Bill No. 2054 to incorporate an index of prices paid by farmers in the agricultural property tax valuation formula.

The Council studied application of the farm building property tax exemption. The Council recommends House Bill No. 1053 to allow beginning farmers to qualify for the farm buildings property tax exemption. The Council recommends House Bill No. 1054 to eliminate consideration in farm buildings tax exemption decisions of the criteria established by the North Dakota Supreme Court in 1977. The bill provides that buildings are not

eligible for the exemption if they are primarily used for processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale. The Council recommends House Bill No. 1055 to provide that property tax-exempt farm buildings or residences do not have to be assessed.

WELFARE REFORM COMMITTEE

The Council monitored the state's implementation of welfare reform efforts including the implementation of the training, education, employment, and management program.

The Council studied tribal welfare reform issues. The Council makes no recommendation regarding welfare reform monitoring and tribal welfare reform issues but anticipates that a future interim committee may be necessary to continue to monitor the status of welfare reform and several other issues.

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North Dakota Legislative Council

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January 5, 1999

Honorable Edward T. Schafer
Governor of North Dakota

Members, 56th Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations of 21 interim committees, the Advisory Commission on Intergovernmental Relations, and the Regulatory Reform Review Commission.

Major recommendations include the establishment of an Information Technology Department to replace the Information Services Division and to be responsible for all telecommunications selection for all state agencies and for counties, cities, and public elementary and secondary schools; the creation of a legislative budget committee to coordinate and direct activities involved in the development of budget recommendations during the interim and as needed during legislative sessions in developing a final legislative budget; the repeal of basic care rate equalization; repeal of basic care and assisted living and the creation of an adult residential care facility classification; changes in child support guidelines and protection of parents' rights in visitation cases; a major recodification of statutes relating to elementary and secondary education; the designation of the Labor Department as the agency responsible for housing discrimination claims; the imposition by cities of special assessments against tax-exempt property of charitable organizations for the costs of police and fire protection and infrastructure expenditures; the creation of a separate property tax valuation category for inundated agricultural lands; and a clarification of the law relating to the exemption of farm buildings.

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,

Senator Gary J. Nelson
Chairman
North Dakota Legislative Council

GJN/LMM

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 more accurately reflect 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 that 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 as recommended by the majority and minority leaders, respectively. The Lieutenant Governor, as President of the Senate, appoints three senators from the majority and two from the minority as recommended by the majority and minority leaders, respectively.

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 Administrative Rules Committee, the Employee Benefits Programs 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. The Council provides computer services to the legislative branch, including research and bill drafting capabilities. The Council also maintains 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. Unification of the state's judicial system 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 that have been approved by the voters.

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.

The Legislative Council has permitted the legislative branch to be on the cutting edge of technological innovation. North Dakota was one of the first states to have a computerized bill status system in 1969 and, beginning in 1989, the Legislator's Automated Work Station system has allowed legislators to access legislative documents at their desks in the House and Senate. Beginning in 1997, the Legislative Council has responsibility to study emerging technology and evaluate its impact on the state's system of information technology.

Perhaps of most value to citizen legislators are committees that 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 that have been regularly studied include school finance, health care, property taxes, 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 required to review administrative agency rules to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There is dissatisfaction with administrative rules or statutes relating to administrative rules.
3. There are unclear or ambiguous statutes relating to administrative rules.

The committee may recommend rule changes to an agency, formally object to a rule, or recommend to the Legislative Council the amendment or repeal of the statutory authority for the rule. The committee also can find a rule void or agree with an agency to amend an administrative rule to address committee concerns, without requiring the agency to begin a new rulemaking proceeding.

Fee schedules for medical and hospital services proposed for adoption as administrative rules by the Workers Compensation Bureau must be approved by the committee under NDCC Section 65-02-08.

The Legislative Council delegated to the committee its authority under NDCC Section 28-32-02 to distribute administrative agency notices of proposed rulemaking and to approve extensions of time for administrative agencies to adopt rules and its responsibility under NDCC Section 28-32-15 to receive notice of appeal of an administrative agency's rulemaking action.

Committee members were Representatives LeRoy G. Bernstein (Chairman), Charles Axtman, Chris Christopher, William R. Devlin, Scot Kelsh, Keith Kempenich, Kim Koppelman, Stacey L. Mickelson, Jon O. Nelson, Darrell D. Nottestad, Bob Skarphol, and Rich Wardner and Senators John M. Andrist, Bob Stenehjem, and Steven W. Tomac. Representative Tom D. Freier was a member of the committee until his resignation from the Legislative Assembly on April 6, 1998. Representative Bill Oban was a member of the committee until his death on July 10, 1998.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are those state agencies authorized to adopt rules under the Administrative Agencies Practice Act (NDCC Chapter 28-32). By statute, a rule is an agency's statement of general applicability that implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. 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 publication in the North Dakota Administrative Code (NDAC).

Under NDCC Section 54-35-02.6, it is the standing duty of the committee to review administrative rules adopted under NDCC Chapter 28-32. This continues the rules review process initiated in 1979.

For rules scheduled for review, each adopting agency is requested to provide the committee with information on:

1. Whether the rules resulted from statutory changes made by the most recent regular session of the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation.
3. The rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. Each agency is asked to describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint and to summarize the comments of any person who offered comments at the public hearings on these rules.
5. Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rule is expected to have an impact on the regulated community in excess of \$50,000, and whether a regulatory analysis was issued.
6. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost of staff time used in developing the rules.
7. The subject matter of the rules and the reasons for adopting the rules.
8. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-02.5.

During committee review of the rules, agency testimony is required and any interested party may submit oral or written comments.

Current Rulemaking Statistics

The committee reviewed 2,789 rule sections that were changed from November 1996 through October 1998. Table A shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

For many years, committee members have expressed concern about the volume of administrative rulemaking. The trend of increased rulemaking activity appears to have reversed since 1995.

Although rules differ in length and complexity, comparison of the number of administrative rules sections affected during biennial periods is one method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of NDAC sections amended, repealed, created, superseded, reserved, or redesignated during each designated time period:

Time Period	Number of Sections
July 1979 - October 1980	1,440
November 1980 - August 1982	916
September 1982 - November 1984	1,856
December 1984 - October 1986	1,280
November 1986 - October 1988	2,681
November 1988 - October 1990	2,325
November 1990 - October 1992	3,079
November 1992 - October 1994	3,235
November 1994 - October 1996	2,762
November 1996 - October 1998	2,789

For committee review of rules, the Legislative Council staff prepares an administrative rules supplement containing all rules changes submitted since the previous committee meeting. The supplement is prepared in a style similar to bill drafts, e.g., changes are indicated by overstrike and underscore. The administrative rules supplements for the period November 1996 through October 1998 consisted of 4,123 pages of rules changes. This compares with 3,809 of rules changes during the November 1992-October 1994 biennial period and 3,140 pages of rules changes considered by the committee during the November 1994-October 1996 biennial period.

Extending Time to Adopt Rules

Many rules changes are mandated by changes to federal laws or rules. Most rules changes result from recent statutory changes made by the Legislative Assembly. Any rule change made to implement a statutory change must be adopted within nine months after the effective date of the statutory change unless an extension is granted. The committee considered and granted requests from three agencies for extensions of time to adopt administrative rules. An extension of time was approved for the Secretary of State to adopt rules to govern methods for signing, subscribing, or verifying documents filed by electronic means. Because of the scope and importance of these rules, additional time was required to allow involvement of affected state agencies and the public. An extension was approved to accommodate a change of personnel in the board office for the Board of Animal Health to adopt rules relative to primates, wolves, and wolf hybrids under 1997 legislation. An extension was approved for the Tax

Commissioner to adopt rules implementing statutory revision in 1997 to financial institutions tax laws. The extension was requested due to the complexity of implementing the new financial institutions tax and developing appropriate tax forms and instructions.

Objecting to Rules

The committee may file an objection to any portion of a rule the committee determines to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency. The objection must contain a concise statement of the committee's reasons for its action. Within 14 days after the filing, the adopting agency is to respond to the objection. After receiving the response, the committee may withdraw or modify its objection. An objection shifts the burden of persuasion to the agency in any judicial action regarding the rule to establish that the rule objected to is within the statutory authority delegated to the agency. If the agency fails to meet this burden, the court must declare the portion of the rule objected to invalid and judgment against the agency must include court costs.

Tax Commissioner

The Tax Commissioner requested the committee to remove an objection to NDAC Section 81-03-09-38 filed on November 4, 1992. The rule in question relates to apportionment of income of broadcasters for income tax purposes and representatives of broadcasters had expressed concern to the Administrative Rules Committee in 1992 that the rule would impact determination of income tax liability for broadcasters. Since the filing of the objection, the rule in question has been amended and during the hearings on the amendment to the rule, no comments were received from representatives of broadcasters. The committee approved a motion to remove the objection to the rule.

Voiding of Rules

Under NDCC Section 28-32-03.3, the Administrative Rules Committee may void all or part of a rule within 90 days after the date of the Administrative Code supplement in which the rule change appears or at the first committee meeting after a regular legislative session, for rules appearing in the Administrative Code supplement from November 1 through May 1 encompassing a regular legislative session. The committee may carry over, for one additional meeting, consideration of voiding administrative rules. This allows the committee to act more deliberately in rules decisions and allows agencies additional time to work with affected groups to develop mutually satisfactory rules. The committee may void all or part of a rule if the committee makes the specific finding that with regard to the rule there is:

1. An absence of statutory authority;

2. An emergency relating to public health, safety, or welfare;
3. A failure to comply with express legislative intent or to substantially meet the procedural requirements of NDCC Chapter 28-32 for adoption of the rule;
4. A conflict with state law;
5. Arbitrariness and capriciousness; or
6. A failure to make a written record of its consideration of written and oral submissions respecting the rule under NDCC Section 28-32-02(3).

Within three business days after the committee finds a rule void, the office of the Legislative Council must provide written notice to the adopting agency and the chairman of the Legislative Council. Within 14 days after receipt of the notice, the agency may file a petition with the chairman of the Legislative Council for Legislative Council review of the decision of the committee. If the adopting agency does not file a petition, the rule becomes void on the 15th day after the notice to the adopting agency. If within 60 days after receipt of a petition from the agency the Legislative Council has not disapproved the finding of the committee, the rule is void.

Game and Fish Department

The Game and Fish Department adopted rules to govern activities and licensing of hunting and fishing guides and outfitters. Committee members recognized that several issues covered in the rules had been the subject of proposed 1995 legislation that failed. The committee approved a motion to void the rules on licensing guides and outfitters. Committee members were concerned that the rules as adopted required a guide or outfitter to maintain proof of general liability insurance coverage and certification in adult cardiopulmonary resuscitation and that a guide or outfitter must enter a written contract with each client. These subjects were the topic of the failed legislation, created policy that should be the subject of legislation for consideration by the Legislative Assembly, and appeared to be a fence-building effort of the Guides and Outfitters Association. Game and Fish Department representatives countered that they were advised by individual legislators during the 1995 legislative session that these issues should be addressed through administrative rules and that the department tried to accommodate that suggestion in working on these rules amendments through 1995 and 1996. Department representatives agreed with the Administrative Rules Committee to further amend the rules to eliminate requirements for proof of liability insurance coverage, certification in adult cardiopulmonary resuscitation, and written contracts with clients. Upon agreement with the department on the additional amendments, the committee withdrew its motion to void the rules.

Public Service Commission

The Public Service Commission adopted a rule at the request of telecommunications industry representatives to give local telecommunications service providers the right to deny a customer access to long-distance services if the customer is delinquent in payment for long-distance services. Committee members were concerned that customers may have legitimate reasons for nonpayment of billed long-distance call charges and that the rule would place the Public Service Commission in the position of a bill collector for long-distance service providers. A Public Service Commission representative said the rule was adopted by the commission on a trial basis. The committee approved a motion to void the rule change, and the commission did not seek review so the rule change became void.

Department of Health

The State Department of Health adopted rules to govern the state trauma system. Committee members had numerous questions about operation of the trauma system and its effect on facilities in the state, particularly in small communities. The committee approved a motion to void the trauma system rules. At the subsequent meeting, the committee received a thorough briefing from representatives of the department, medical facilities, the North Dakota Health Care Association, and ambulance services. The committee withdrew its motion to void the rules and agreed with the department on a minor amendment to the rules to resolve concerns about interpretation of terminology relating to activation of trauma codes for major trauma patients.

Industrial Commission

The Industrial Commission adopted rules relating to oil production report filing and seismic or geographical exploration requirements. Among the rules was a requirement that production report signatures must be witnessed. House Bill No. 1194 (1997) eliminated the requirement of notarizing signatures on production reports and had not imposed a requirement that signatures must be witnessed. The committee carried consideration of the rule over for a subsequent meeting to receive further information. A motion to void the rule failed.

Department of Human Services

The Department of Human Services adopted extensive rules governing licensure of child care facilities. A number of individuals affected by the rules disagreed with several aspects of the rules. The committee approved a motion to carry over consideration of the rules to a subsequent meeting and requested that the department work with interested parties to try to reach agreement on issues on which misunderstanding or disagreement existed. The department undertook a mediation process with regard to 39 issues identified as areas for discussion. The mediation process resolved

27 issues, and the department recommended rules amendments to accomplish changes necessary to reflect those agreements. The committee approved a motion to agree with the department on the proposed changes to the rules. Another 10 issues were determined to deal with areas outside the coverage of the pending rules. On the remaining two issues considered in the mediation process, no agreement was reached with regard to requirements for provisional licensing and fire safety. Child care providers withdrew their opposition to the provisional licensing rule and the committee took no action regarding the fire safety requirement rule, so both rules were left as adopted by the department.

Committee Considerations

Committee members expressed appreciation for 1995 legislative changes to the rulemaking process which gave the committee authority to void rules and allowed rules amendments by agreement of the adopting agency. Committee members also expressed appreciation for the cooperative attitude of agencies affected by this authority. Committee members indicated this addition to the rulemaking process makes the process more responsive to public input, improves the final product of the process, and greatly reduces occasions when legislative intervention would be required to settle differences of opinion.

Several committee members raised concerns during discussions of the administrative rules process and statutes. Concern was expressed that the Administrative Code is not being reviewed and kept current by administrative agencies. Concern was expressed that when a problem is pointed out with existing rules, the Administrative Rules Committee lacks authority to address the problem. The committee's authority applies to only rules being reviewed upon creation or amendment and not to rules that have been in existence for an extended period. Concern was expressed that rulemaking authority is too broad and that rules are used to create policy in areas in which legislative consideration should apply. It was suggested that review is required of statutory authority for rulemaking and that the Legislative Assembly must carefully define rulemaking authority in the future to limit agencies to the appropriate use of rules. Several discussions were held about how to better inform the public about pending rulemaking activity.

Department of Public Instruction

The committee requested several briefings from the Department of Public Instruction regarding rulemaking plans of the department. Under 1997 legislation, the department was made an administrative agency for all purposes under the Administrative Agencies Practice Act (NDCC Chapter 28-32). This change becomes effective November 1999, and requires the department to replace all of its informal rules with formally adopted administrative rules to be published in the North Dakota Administrative Code. The committee expressed its concern to

the department that this is an important process that will take time and requires substantial opportunities for public input. Department representatives briefed the committee on four occasions about proposed rulemaking plans and expressed confidence that the department can complete rulemaking activity before November 1999.

Recommendations

The committee recommends House Bill No. 1023 to provide that administrative rules will be effective only until August 1 after the next regular legislative session following the effective date of the rule unless they are designated by the Administrative Rules Committee as procedural or interpretive rules. The bill is intended to force issues of policy to be removed from administrative rules and brought to the consideration of the Legislative Assembly. The committee considered extending sunset to all existing rules but decided against it because of the burden for review of rules which would have been placed on agencies and the committee. Under the recommended bill the only rules created or amended after July 31, 1999, which will remain in effect indefinitely will be rules the committee has designated as procedural or interpretive.

The committee recommends House Bill No. 1024 to allow the Administrative Rules Committee to call up administrative rules for review. Rules called up for review would be subject to the authority of the Administrative Rules Committee to file an objection or to void the rule. Calling a rule up for review requires 30 days' written notice to the adopting agency and a description of concerns with the rule to which the agency is to respond. The committee believes authority to review existing rules is important and will be used only when problems are pointed out, which could be initiated by the adopting agency if minor changes or corrections are needed that do not merit the time and expense of a full rulemaking proceeding. The bill also repeals a provision of law allowing interested parties to file a petition with an agency for reconsideration of a rule. The committee found that the law gives an agency no authority to act in response to a petition for reconsideration, other than the statutory right of agencies to begin a new rulemaking proceeding.

The committee recommends House Bill No. 1025 to provide that an agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs and to require an agency to repeal or amend any existing rule adopted from federal guidelines which is not relevant to state regulatory programs. This bill is an expansion of current law providing that environmental rules are not to incorporate federal guidelines not relevant to North Dakota.

The committee recommends House Bill No. 1026 to provide that an agency may adopt an administrative rule only when the rule falls within an area in which the agency has been specifically required or authorized to

adopt rules by state or federal law or federal rules. The bill also requires the Administrative Rules Committee to review the statutory rulemaking authority of each administrative agency to seek to limit administrative rulemaking to areas in which specific requirement or authorization of rulemaking exists. The bill is intended to initiate refining of the distinction between rules and statutes and provide guidance for the Legislative Assembly and administrative agencies on which matters should be governed by statute or rule.

The committee recommends Senate Bill No. 2027 to require administrative rulemaking notices to be published in each official county newspaper rather than in each

daily newspaper. The bill requires publication of a more abbreviated notice than present law but requires a headline showing the general topic, a statement that rules on the topic will be considered, a telephone number to obtain a copy of the proposed rules, and the time and place of the public hearing. Because the bill requires publication in 52 county newspapers rather than nine daily newspapers, it was estimated that notices would be available to 47 percent more newspaper subscribers but the average cost of newspaper publication of notice would increase from approximately \$800 to approximately \$2,200.

TABLE A

STATISTICAL SUMMARY OF RULEMAKING						
November 1996 Through October 1998			Supplements 209 Through 232			
Agency	Amend	Create	Supersede	Repeal	Special	Reserved
Board of Accountancy	9	1				
Office of Management and Budget	68	36	13	14		
Aeronautics Commission	1					
Commissioner of Agriculture	4					
Department of Banking and Financial Institutions	8	2		1		
Board of Barber Examiners		1				
Credit Review Board	5			1		
Board of Dental Examiners	7					
State Board of Funeral Service	28	25		8		
Game and Fish Department	4	1		4		
Board of Cosmetology	32	1	2			
State Department of Health	420	142		12	24	64
Department of Transportation		1				
Industrial Commission	7	10		2		
Commissioner of Insurance	16	49	2	60	3	
Commissioner of Labor	8					
Board of Animal Health	14	5				
Board of Medical Examiners	3					
Milk Marketing Board	19	8			1	
Board of Nursing	45	73		72		
Board of Optometry	1	4				
State Personnel Board	3	3		3		
Pesticide Control Board	4	4	1			
Board of Pharmacy	2	7		1		
Board of Podiatric Medicine	3					
Committee on Protection and Advocacy	4	4				
Education Standards and Practices Board	18					
Public Service Commission	59	49		1		
Retirement Board	25	4		7		
Secretary of State	3	44		15		3
Securities Commissioner	4			3		
Seed Commission	12					
Department of Human Services	311	187		53	35	22
Board of Social Work Examiners	8	7		22		
Tax Commissioner	17	4		8		
Board of Trustees of the Teachers' Fund for Retirement	18			2		
Water Commission	9	13		60		
Workers Compensation Bureau	66	10		10		
Private Investigative and Security Board	13					
Board of Counselor Examiners	5	3		1		
Office of Administrative Hearings	6	2				1
State Gaming Commission		112		147		
Real Estate Appraiser Qualifications and Ethics Board	9			1		
Sections affected	1,298	812	18	508	63	90
Grand total all sections	2,789					

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

North Dakota Century Code (NDCC) Chapter 54-35.2 establishes the Advisory Commission on Intergovernmental Relations. The commission is directed by law to study local government structure, fiscal and other powers and functions of local governments, relationships between and among local governments and the state or any other government, allocation of state and local resources, and interstate issues involving local governments. The commission also is directed by law to administer grants to political subdivisions for projects to improve efficiency of local governments.

In addition to the statutory required study areas, the Legislative Council requested the commission to study the feasibility and desirability of restructuring county government as described by Senate Concurrent Resolution No. 4014. Senate Concurrent Resolution No. 4014 provided that the study include an examination of examples of consolidation of services to determine the cost-effectiveness and transferability of those consolidations and an examination of methods through which the state may be able to provide affordable technical assistance to counties choosing to consolidate, merge, or share services and a review of the effect of 1993 Session Laws Chapter 401.

North Dakota Century Code Section 54-35.2-01 establishes the membership of the commission as four members of the Legislative Assembly appointed by the Legislative Council, two citizen members appointed by the North Dakota League of Cities, two citizen members appointed by the North Dakota Association of Counties, one citizen member appointed by the North Dakota Township Officers Association, one citizen member appointed by the North Dakota Recreation and Park Association, and the Governor or the Governor's designee. The Legislative Council designates the chairman of the commission. All members of the commission serve a term of two years beginning July 1 of each odd-numbered year. Members whose terms began July 1, 1997, are Senators Tony Grindberg (Chairman) and Jerry Klein; Representatives Leonard J. Jacobs and Jim Torgerson; League of Cities representatives Jeff Fuchs and Bill Sorensen; Association of Counties representatives Erling Karlsbraaten and Stan Lyson; Township Officers Association representative Ken Yantes; Recreation and Park Association representative Randy Bina; and Governor's designee Carter Wood.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

COUNTY REORGANIZATION STUDY

Background

The 1993 Legislative Assembly passed House Bill No. 1347 (Session Laws Chapter 401), which included what is now codified as NDCC Chapters 11-10.2 and 11-10.3. Chapter 11-10.2 allows a county, without requiring the county to be a home rule county, to combine an elective county office with one or more functionally related elective or appointive county offices, separate an elective county office into two or more elective or appointive offices, or redesignate an elective county office as an appointive office or an appointive office as an elective office. Section 11-10.2-01 provides that the option to combine, separate, or designate county offices is in addition to, or in lieu of, other county structural options authorized under Title 11, unless a specific mandate for combining or separating particular county offices is otherwise provided by law.

Chapter 11-10.3 allows a county to combine any county elective office with one or more elective offices of one or more other counties for the purpose of sharing that combined office for the performance of functions and the provision of services among those counties. Section 11-10.3-01 provides that a proposal for combining county elective offices may be accomplished by the boards of county commissioners of the affected counties by entering a joint powers agreement or by initiative of the electors of the affected counties petitioning to request the boards of county commissioners to submit to the electors the question of adopting such a plan. A joint powers agreement entered between counties for combining the functions of a county elective office may be referred to the electors of an affected county by a petition protesting the agreement signed by at least 10 percent of the total number of qualified electors of the county voting for Governor at the most recent gubernatorial election. If a petition is filed and the board of county commissioners does not terminate the agreement, the board must submit the question to a vote of the qualified electors of the county at the next regular election.

Section 11-10.3-03 provides that a proposal for combining appointive offices of two or more counties, appointive offices of a county and another political subdivision, or appointive offices of two or more political subdivisions that are not counties may be implemented through a joint powers agreement. The proposal to combine appointive offices is not subject to a referendum under Chapter 11-10.3. A proposal for combining both elective and appointive offices of two or more counties, between a county and another political subdivision, or between two or more political subdivisions which are not counties is subject to the referendum provision

procedures under Chapter 11-10.3 only in the county or other political subdivision of the elective office.

Section 40-01.1-02, which was also included in House Bill No. 1347, allows the governing body of a political subdivision to establish an advisory committee to study the existing form and powers of the political subdivision for comparison with other forms and powers available under laws of the state. The local advisory study committee may be established by a majority vote of the governing body or by a petition signed by 10 percent or more of the total number of qualified electors of the political subdivision voting for Governor at the most recent gubernatorial election. Section 40-01.1-02 also provides that an election on the question of establishing a five-member advisory study committee for a county or city must be held at the next regular election in the county or city if five years have elapsed since the later of:

1. August 1, 1993;
2. The date of the most recent election held on the question of establishing an advisory study committee; or
3. The date of issue of a written report prepared for a comprehensive study and analysis of the cooperative and the restructuring options available to the county or city conducted by the governing body, an advisory study committee, a home rule charter commission, or through another study process for which a written report was prepared.

Testimony and Commission Considerations

The commission cooperated with the North Dakota Association of Counties for a survey regarding county and community services. The survey focused on four main areas:

1. The quality of services provided by counties;
2. The cost of those services;
3. The issues of consolidation without loss of quality; and
4. The opinions of respondents relating to the structure and organization of county government.

The survey indicated that approximately 55 percent of the respondents believe that the quality of county services was average or poor. However, most respondents of the survey also indicated that the level of spending on the services provided by counties was just about right. Sixty-three percent of the respondents indicated that their county could combine services with another county or political subdivision without losing quality. Respondents in urban areas were more likely to believe that consolidation could be accomplished without losing quality. Fifty-one percent of respondents in rural counties with a population below 2,500 indicated the consolidation could not occur without losing quality. The survey also indicated that when faced with the option of higher taxes or combining services over 75 percent of the

respondents would prefer to combine services. With respect to the structure of county governments, approximately 49 percent of the respondents replied that they were satisfied with the current structure of their county government. However, a great majority of the respondents opposed replacing elected officials with appointive positions.

The commission received testimony from representatives of rural electric cooperatives regarding restructuring of several rural electric cooperatives in North Dakota. Because many rural electric cooperatives have service boundaries based on county boundaries and have a structure and elected boards similar to county government, the methods used in successfully consolidating cooperatives could be applicable to counties when attempting to consolidate services. The planners for the electric cooperatives emphasized that it was important to provide strategic and technical assistance and a process through which grassroots support may be established when proposing a restructuring or consolidation. Restructuring or consolidation efforts generally have been successful when the cooperative members were shown that rates would be lowered and services enhanced as a result of the restructuring or consolidation. Although concerns are often expressed regarding the loss of employees, the closing of offices, and the loss of local control of the cooperative, the efforts to restructure have been successful if guarantees are made that no current employees would lose their jobs, that business offices would not be closed, and that the cooperatives would make investments in local economic development efforts. An important factor in successful consolidations has been the leadership of the elected officials to demonstrate that the consolidation is in the best interests of the cooperative members.

The commission received testimony from local government officials regarding cooperative agreements entered by political subdivisions. Proponents of consolidation testified that many political subdivisions have entered innovative partnerships that have allowed the political subdivisions to provide services more efficiently and with less cost. A representative of county social service agencies testified that county social service agencies have been a ripe area for consolidation and sharing of services. The proponents of consolidation indicated that it is sometimes easier politically for local officials to not pursue consolidation.

A local government official testified that the cost of consolidation of services in counties often exceeds the cost of the county providing the service by itself. In addition, it was contended that consolidation of services in rural counties results in less service to county residents, the loss of employees, and ultimately a reduction in county population.

The commission received testimony from city and county officials regarding the advisory study process required by NDCC Section 40-01.1-02. The North Dakota Association of Counties, in cooperation with the

North Dakota State University Extension Service and the United States Department of Agriculture Rural Development office, established a three-phase process to be used by counties in implementing the advisory study process. Phase 1 is gathering and presenting information to the participants regarding the demographics of the county so that the participants may make informed decisions. In Phase 2, the strategic planning portion of the process, facilitators assisted the participants in identifying the needs of the citizens of the county and in developing recommendations to address those needs. Phase 3 is the implementation phase.

Representatives of the Association of Counties presented a report reviewing the results of the advisory study process conducted in 18 counties. The structure and extent of the study process in each county varied; however, very few counties had completed the three-phase process. According to a representative of the Association of Counties, there was a general lack of public input during the advisory study committee processes in the various counties and the processes did not uncover a great deal of information that will make a significant difference in the future. However, the process was valuable in that it provided a forum through which local governmental officials and citizens were able to meet to discuss important issues.

Conclusion

The commission makes no recommendation with respect to its study of restructuring of county government.

LIABILITY SHIFT FROM STATE TO POLITICAL SUBDIVISIONS

Representatives of local governments expressed concern to the commission regarding the shift of liability from the state to political subdivisions when political subdivisions contract with state agencies. North Dakota Century Code Section 32-12.2-13 states that a contract between the state and a political subdivision may not contain a provision that requires one party to assume the liability of the other or the liability of a third party or to bear the costs of defense of actions against the other or against a third party, unless the agreement was entered in good faith and was set forth in a separate writing signed by both parties and supported by adequate consideration. The commission received testimony indicating that this provision reduces the instances where liability is shifted from the state to political subdivisions to unique circumstances. According to the director of the Risk Management Division of the Office of Management and Budget, the state requires a political subdivision to sign an agreement shifting the risk only when:

1. The benefit to the contracting political subdivision is much greater than to the state;

2. It would be an inappropriate use of state taxpayers' funds to pay costs associated with claims arising from the agreement; or
3. The state has no control over the activities of the political subdivision or its agents related to the agreement.

Representatives of state agencies testified that risk-shifting agreements are used very rarely and that state agencies will attempt to work with political subdivisions to avoid placing overly burdensome insurance requirements on political subdivisions.

MILL LEVY CONSOLIDATION

Between 1981 and 1993, each Legislative Assembly has enacted legislation allowing political subdivisions to increase levy authority in dollars by a specified percentage. This optional levy increase authority was established in 1981, when the property tax system was restructured, to avoid substantial increases or decreases in property tax bases which would have occurred when property was reassessed.

In 1995 the Legislative Assembly enacted Senate Bill No. 2081, which allowed a taxing district to levy up to two percent more in 1995 and up to two percent more in 1996 than was levied in its base year. The bill defines "base year" as the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year. The bill does not allow optional levy increases for taxable years after 1996 and allows taxing districts to levy only up to the amount levied in the base year after 1996.

In 1997 the Legislative Assembly considered, but did not enact, Senate Bill No. 2021, which would have eliminated several special mill levies for cities, counties, and park districts and allowed those entities to include levies for those specific purposes within their general mill levy. The bill would have allowed a growth factor through which the maximum number of mills that may be levied by cities, counties, and park districts would have been tied to the consumer price index. The Legislative Assembly also did not pass Senate Bill No. 2022, which would have eliminated all mill levy limitations for a period of two years for cities, counties, and park districts.

The commission received testimony from local government officials requesting the commission to consider proposing legislation similar to the 1997 legislation which would either eliminate or suspend the mill levy limitations. Proponents of consolidation of mill levies contended that consolidation would provide local officials needed flexibility which may result in reduced mill levies. In addition, supporters of the idea argued that political subdivisions with stagnant or declining tax bases need the ability to increase levies if necessary to maintain the services currently provided. Although commission members generally supported the concept of either suspending mill levies or consolidating mill levies,

commission members were reluctant to recommend legislation because of inadequate time to consider the idea during this interim.

LOCAL GOVERNMENT EFFICIENCY PLANNING GRANTS

In 1991 the Legislative Assembly enacted legislation that provided for local government efficiency planning grants to be administered by the commission. The grants were funded by an appropriation of \$250,000 from the state aid distribution fund. The legislation created NDCC Section 54-35.2-02.1, requiring the commission to administer the program by making up to a \$25,000 grant to any county or city government that planned to increase the efficiency of local governments through restructuring county or city governments, changing county boundaries including consolidation of counties, or consolidating county and city services. A county or city seeking a planning grant must submit a preliminary plan for consideration by the commission. In approving a planning grant, the commission could impose any conditions it deems appropriate including requiring periodic reports or furnishing of matching funds.

During the 1991-92 interim, the commission adopted guidelines to govern its deliberations on planning grant applications and to provide grant applicants notice of the standards that would be applied in evaluating grant applications. During that interim, the commission awarded local government efficiency planning grants to 15 applicants. The total amount awarded in grants was \$198,558.34. Final reports were received for two of the grant projects.

In 1993 the Legislative Assembly appropriated \$51,400 (basically, the amount remaining from the 1991-93 appropriation) to the commission for local government efficiency planning grants. The Legislative Assembly also provided that the commission be permitted to expend appropriated funds for research and studies of statewide significance. In addition, the Legislative Assembly adopted legislation providing that unexpended planning grant funds are to be returned to the state aid distribution fund.

Of the 13 grant projects pending at the end of the 1991-92 interim, 11 delivered final reports to the commission during the 1993-94 interim. One of the 13 grants went unclaimed. The other grant project was still in progress at the end of the 1993-94 interim. The recipient of that grant provided a final report to the commission in February 1996 and returned to the commission \$1,462.24 in unexpended grant funds and interest earned on those funds.

At the end of the 1993-94 interim, the commission awarded grants in the amount of \$24,999 to the North Dakota League of Cities and the North Dakota Association of Counties. The grant to the North Dakota League of Cities was for a project to establish a computer network among cities and the North Dakota League of Cities. The grant to the North Dakota Association of Counties was to establish a task force to examine automation of the process for reporting statements of full consideration and property transactions, electronic exchange of information between the state and counties to enhance the property tax data base, and the feasibility of electronic mail and other file transfers among the state Tax Commissioner, counties, and cities.

During the 1995-96 interim, the commission received periodic reports from each of those entities regarding the status of the grants. The commission requested the North Dakota League of Cities and the North Dakota Association of Counties to file final reports by February 1, 1997. At its first meeting this interim, the commission received final reports from the North Dakota League of Cities and the North Dakota Association of Counties.

Recommendation

The commission recommends Senate Bill No. 2028 to repeal the local government efficiency planning grant program. The local government efficiency planning grant program has not received an appropriation since the 1993-95 biennium. Although the local government efficiency planning grant program has served an important purpose, the program probably will not receive funding in the future. Therefore, the law establishing the program is no longer necessary.

BUDGET SECTION

The Legislative Council's Budget Section is referred to in various sections of the North Dakota Century Code (NDCC) and the Session Laws of North Dakota. Although there are statutory references to the Budget Section, it is not created by statute. The Budget Section is an interim committee appointed by the Legislative Council. By tradition, the membership of the Budget Section consists of the members of the Senate and House Appropriations Committees, the majority and minority leaders and their assistants, and the Speaker of the House.

Budget Section members were Representatives Jack Dalrymple (Chairman), Ole Aarsvold, LeRoy G. Bernstein, James Boehm, Merle Boucher, Rex R. Byerly, Ron Carlisle, Jeff W. Delzer, John Dorso, Gereld F. Gerntholz, Pam Gulleon, Roy Hausauer, Robert Huether, Richard Kunkel, Edward H. Lloyd, Ronald Nichols, Al Soukup, Ken Svedjan, Mike Timm, Ben Tollefson, Francis J. Wald, Janet Wentz, and Gerry Wilkie and Senators Bill L. Bowman, Ray Holmberg, Aaron Krauter, Evan E. Lips, Tim Mathern, Pete Naaden, Donna L. Nalewaja, Gary J. Nelson, David E. Nething, Rolland W. Redlin, Larry J. Robinson, Ken Solberg, Rod St. Aubyn, and Harvey D. Tallackson.

The following individuals were members of the committee for a portion of the interim: Senator William G. Goetz, prior to his resignation on July 10, 1997; Representative Bob Martinson, prior to his resignation on October 14, 1997; Representative Tom D. Freier, prior to his resignation on April 6, 1998; Representative Bill Oban, prior to his death on July 10, 1998.

The Budget Section submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

The following duties, assigned to the Budget Section by statute, were acted on during the 1997-99 biennium:

1. **Higher education campus improvements and building construction (NDCC Section 15-10-12.1)** - This section allows the State Board of Higher Education, subject to Budget Section approval, to construct buildings and campus improvements financed by donations, gifts, grants, and bequests or to sell real property or buildings received by gift or bequest. The Budget Section approval must include a specific dollar limit for each building or campus improvement project.
2. **Nonresident tuition (NDCC Section 15-10-18)** - This section provides that the amount of nonresident tuition charged by institutions of higher education will be determined by the State Board of Higher Education, subject to Budget Section approval.
3. **Actions of the Westwood Park Assets Management Committee (NDCC Section**

25-04-20) - This section directs the Westwood Park Assets Management Committee to take action, subject to Budget Section approval, to sell the property of Westwood Park.

4. **Job insurance trust fund balance (NDCC Section 52-02-17)** - This section requires Job Service North Dakota to report to the Budget Section if the balance of the job insurance trust fund is projected to fall below \$40 million.
5. **Irregularities in the fiscal practices of the state (NDCC Section 54-14-03.1)** - This section requires the Office of the Budget to submit a written report to the Budget Section documenting:
 - a. Any irregularities in the fiscal practices of the state.
 - b. Areas where more uniform and improved fiscal procedures are desirable.
 - c. Any expenditures or governmental activities contrary to law or legislative intent.
 - d. The use of state funds to provide bonuses, cash incentive awards, or temporary salary adjustments for state employees.
6. **Transfers exceeding \$50,000 (NDCC Section 54-16-04(2))** - This section allows the Emergency Commission to authorize, subject to Budget Section approval, a transfer exceeding \$50,000 from one fund or line item to another.
7. **Federal funds not appropriated (NDCC Section 54-16-04.1)** - This section allows the Emergency Commission to authorize, subject to Budget Section approval, the expenditure of federal funds which have not been appropriated and which the Legislative Assembly has not indicated an intent to reject.
8. **Other funds not appropriated (NDCC Section 54-16-04.2)** - This section allows the Emergency Commission to authorize, subject to Budget Section approval, the receipt of moneys from gifts, grants, donations, or other sources which have not been appropriated and which the Legislative Assembly has not indicated an intent to reject.
9. **Advisory Commission on Intergovernmental Relations (ACIR) planning grants (NDCC Section 54-35.2-02.1(3))** - This section requires the ACIR to report annually to the Budget Section on planning grants distributed to counties and cities.
10. **Children's Services Coordinating Committee grants (NDCC Section 54-56-03 and 1997 Senate Bill No. 2014, Section 2)** - These sections provide that the Children's Services Coordinating Committee must seek Budget Section approval before distributing any grants

not specifically authorized by the Legislative Assembly.

11. **Additional full-time equivalent (FTE) positions (1997 House Bill No. 1012)** - Section 7 of this bill requires the human service centers, State Hospital, and the Developmental Center at Westwood Park, Grafton, to report to the Budget Section on the hiring of any FTE positions in addition to those authorized by the Legislative Assembly for the 1997-99 biennium.
12. **Status of the RESPOND computer system (1997 House Bill No. 1012)** - Section 19 of this bill requires the Department of Human Services to provide periodic reports to the Budget Section on the status of the RESPOND computer system, including system costs and benefits and the receipt of federal funds.
13. **Developmentally disabled adult children pilot project (1997 House Bill No. 1012)** - Section 25 of this bill requires the Department of Human Services to seek federal waivers to establish a pilot program to provide a subsidy on behalf of adult developmentally disabled children who reside in their parents' home. The department was required to report to the Budget Section on the status of federal waivers for the project and any recommendations for the project for the 1999-2001 biennium.
14. **Human services block grant accountability (1997 House Bill No. 1012)** - Section 28 of this bill requires the Department of Human Services to report to the Budget Section by June 30, 1998, on human service center, State Hospital, and Developmental Center block grant accountability.
15. **Welfare fraud detection programs (1997 House Bill No. 1012)** - Section 30 of this bill requires the Department of Human Services to provide to the Budget Section periodic reports on welfare fraud detection programs.
16. **Assessment of State Historical Society (1997 House Bill No. 1022)** - Section 4 of this bill directs the State Historical Board to assess and evaluate the programs and services of the State Historical Society and present a report on its findings and recommendations to the Budget Section by June 30, 1998.
17. **Workers Compensation Bureau critical salary adjustments (House Bill No. 1026)** - Section 3 of this bill requires the Workers Compensation Bureau to present a report to the Budget Section on the expenditure of the 1997-99 biennium appropriation of \$350,000 for critical salary adjustments.
18. **State Board of Higher Education allocations for salaries and wages and technology (1997 Senate Bill No. 2003)** - Section 16 of this bill requires the State Board of Higher Education to present periodic reports to the Budget Section on allocations made to the institutions of higher education for salaries and wages and technology and on recommendations regarding the allocation process for the 1999-2001 biennium.
19. **Veterans Home management, budgeting, and accounting practices (1997 Senate Bill No. 2007)** - Section 3 of this bill requires the commandant of the Veterans Home to present periodic reports to the Budget Section regarding the development and implementation of a corrective plan of action to improve the agency's management, budgeting, and accounting practices.
20. **Department of Transportation evaluation of use of airplane (1997 Senate Bill No. 2012)** - Section 4 of this bill requires the Department of Transportation to evaluate the continued use of a 1977 model Cessna airplane and present a report on its evaluation to the Budget Section by November 1998.
21. **Administrative costs of regional and tribal children's services coordinating committees (1997 Senate Bill No. 2014)** - Section 6 of this bill directs the Children's Services Coordinating Committee to conduct an analysis and develop a plan to reduce, by consolidation, the administrative costs of the regional and tribal children's services coordinating committees and present to the Budget Section by October 1, 1998, a report containing its recommendations.
22. **Report from ethanol plants receiving production incentives (1997 Senate Bill No. 2019)** - Section 4 of this bill requires any North Dakota ethanol plant receiving production incentives from the state to file with the Budget Section a statement indicating whether the plant produced a profit during the preceding fiscal year after deducting incentive payments received from the state.
23. **North Dakota Agricultural Experiment Station allocations for salaries and wages (1997 Senate Bill No. 2064)** - Section 6 of this bill requires the vice president of agricultural affairs at North Dakota State University to present periodic reports to the Budget Section on allocations made to agricultural research centers for salaries and wages and on recommendations regarding the allocation process for the 1999-2001 biennium.

The following duties, assigned to the Budget Section by statute or Legislative Council directive, are scheduled to be addressed by the Budget Section at its December 1998 meeting:

1. **Review and report on budget data prepared by the director of the budget (Legislative Council directive)** - Pursuant to Legislative Council directive, the Budget Section is to

review and report on the budget data prepared by the director of the budget and presented to the Legislative Assembly during the organizational session.

2. **Distribution of insurance payments to fire districts (1997 House Bill No. 1010)** - Section 8 of this bill directs the Insurance Commissioner to present a report to the Budget Section in December 1998 containing the results of an analysis of the amount of insurance payments distributed to fire districts during fiscal years 1996, 1997, and 1998, and actions taken to stabilize the distribution of funds to each fire district.

The following duties, assigned to the Budget Section by statute or Legislative Council directive, did not require action by the Budget Section during the 1997-99 biennium:

1. **State Forester reserve account (NDCC Section 4-19-01.2)** - This section allows the State Forester to spend moneys in the State Forester reserve account only after receiving Budget Section approval.
2. **Investment in real property by the Board of University and School Lands (NDCC Section 15-03-04)** - This section prohibits the Board of University and School Lands from purchasing, as sole owner, commercial or residential real property without prior approval of the Legislative Assembly or the Budget Section.
3. **Game and Fish Department land acquisitions (NDCC Section 20.1-02-05.1)** - This section requires the Game and Fish Department to obtain Budget Section approval of every land acquisition of more than 10 acres or \$10,000.
4. **Provision of contract services by the Developmental Center (NDCC Section 25-04-02.2)** - This section provides that, subject to Budget Section approval, the Developmental Center may provide services under contract with a governmental or nongovernmental person.
5. **Termination of food stamp program (NDCC Section 50-06-05.1(17))** - This section provides that, subject to Budget Section approval, the Department of Human Services may terminate the food stamp program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the coupon bonus payments.
6. **Termination of energy assistance program (NDCC Section 50-06-05.1(19))** - This section provides that, subject to Budget Section approval, the Department of Human Services may terminate the energy assistance program if the rate of federal financial participation in

administrative costs is decreased or if the state or counties become financially responsible for the energy assistance program payments.

7. **Transfers resulting in program elimination (NDCC Section 54-16-04(1))** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer which would eliminate or make impossible the accomplishment of a program or objective funded by the Legislative Assembly.
8. **Preliminary planning revolving fund (NDCC Section 54-27-22)** - This section provides that before any funds can be distributed from the preliminary planning revolving fund to a state agency, institution, or department, the Budget Section must approve the distribution.
9. **Cash flow financing (NDCC Section 54-27-23)** - This section provides that in order to meet the cash flow needs of the state, the Office of Management and Budget may borrow, subject to Emergency Commission approval, from special funds on deposit in the state treasury. However, the proceeds of any such indebtedness cannot be used to offset projected deficits in state finances unless first approved by the Budget Section. Additional cash flow financing, subject to certain limitations, must be approved by the Budget Section.
10. **Budget stabilization fund (NDCC Section 54-27.2-03)** - This section provides that any transfer from the budget stabilization fund must be reported to the Budget Section.
11. **Form of budget data (NDCC Section 54-44.1-07)** - This section requires the director of the budget to prepare budget data in the form prescribed by the Legislative Council and to present it to the Legislative Assembly at a time and place set by the Legislative Council. The Legislative Council has assigned this responsibility to the Budget Section.
12. **Objection to budget allotment or expenditure (NDCC Section 54-44.1-12.1)** - This section allows the Budget Section to object to a budget allotment or an expenditure of a budget unit if the allotment or expenditure is contrary to legislative intent.
13. **Budget reductions resulting from initiative or referendum action (NDCC Section 54-44.1-13.1)** - This section provides that, subject to Budget Section approval, the director of the budget may reduce state agency budgets by a percentage sufficient to cover estimated revenue reductions caused by initiative or referendum action.
14. **Workers Compensation Bureau report on reinsurance (NDCC Section 65-02-13.1)** - This

- section requires the Workers Compensation Bureau to report annually to the Budget Section on any reinsurance contracts negotiated by the bureau.
15. **Extraterritorial workers' compensation insurance (NDCC Section 65-08.1-02)** - This section authorizes the Workers Compensation Bureau to establish, subject to Budget Section approval, a casualty insurance organization to provide extraterritorial workers' compensation insurance.
 16. **Welfare reform contingency line item (1997 House Bill No. 1012)** - Section 9 of this bill provides that the Department of Human Services cannot spend the \$159,800 welfare reform contingency line item contained in Section 1 of the bill unless approved by the Budget Section.
 17. **Department of Human Services computer costs (1997 House Bill No. 1012)** - Section 19 of this bill provides that the Department of Human Services must receive Budget Section approval before exceeding the costs for certain computer projects listed in this section. If the total cost of the computer projects is less than the appropriated amount, the department may request Budget Section approval to spend the anticipated savings to start additional projects.
 18. **Waiver of certain requirements relating to the Department of Human Services RESPOND and TEEM projects (1997 House Bill No. 1012)** - Section 19 of this bill provides that unless a cost allocation plan for the receipt of federal funds is approved by the appropriate federal agency, the Department of Human Services cannot spend the 1997-99 biennium general fund appropriation for the RESPOND computer system, unless this requirement is waived by the Budget Section. This bill also requires that the department meet certain requirements provided by the United States Department of Health and Human Services relating to the RESPOND and TEEM projects, unless the requirements are waived by the Budget Section.
 19. **Traumatic brain injury program establishment (1997 House Bill No. 1012)** - Section 29 of this bill provides that the Developmental Center may establish, subject to Budget Section approval, a traumatic brain injury program.
 20. **Transfer of positions to the Division of Independent Study (1997 House Bill No. 1013)** - Section 9 of this bill requires the Department of Public Instruction to report to the Budget Section on any transfers of positions to the Division of Independent Study from the other divisions of the department.
 21. **Expenditure of excess income by the Office of Management and Budget (1997 House Bill No. 1015)** - Section 3 of this bill allows the expenditure, subject to Budget Section approval, of income in excess of \$50,000 more than the amount of estimated income appropriated to the Office of Management and Budget for the 1997-99 biennium.
 22. **Program terminations or reductions due to reduced federal funding (1997 House Bill No. 1015)** - Section 13 of this bill requires state agencies, departments, and institutions to receive Budget Section approval for the following:
 - a. To terminate a program for which federal funding is terminated.
 - b. To prioritize programs as necessary to make programmatic reductions if federal funding for separate programs is combined in a block grant, resulting in a reduction of federal funds available for those programs.
 23. **Expenditures and transfers from internal service and revolving funds (1997 House Bill No. 1015)** - Section 26 of this bill requires institutions under the authority of the State Board of Higher Education to receive Budget Section approval of expenditures or transfers greater than \$50,000 from internal service funds, except for mandatory transfers for servicing-related debt and routine operating expenditures associated with the funds.
 24. **Expenditure of excess local fund revenue by higher education institutions (1997 Senate Bill No. 2003)** - Section 11 of this bill appropriates any local fund revenue received by higher education institutions in addition to the amounts appropriated in Section 1 of this bill and provides that any additional revenue spent must be reported to the Budget Section.
 25. **Transfers between the divisions of the Department of Corrections and Rehabilitation (1997 Senate Bill No. 2016)** - Section 2 of this bill authorizes the Department of Corrections and Rehabilitation to transfer, with prior Budget Section approval, appropriation authority between the divisions of the department.
 26. **State Water Commission bond issuance (1997 House Bill No. 1482)** - This bill allows the State Water Commission to issue bonds for the construction of an outlet to Devils Lake, if the United States authorizes construction of an outlet, and for the completion of a comprehensive statewide water development program, if the United States Congress enacts legislation for the completion of the Garrison Diversion Unit. If either of the contingencies occur and the bonds are issued, the State Water Commission is required to notify the Budget Section.

27. **Federal block grant hearings (1997 House Concurrent Resolution No. 3007)** - This resolution authorizes the Budget Section, through September 30, 1999, to hold any required legislative hearings for federal block grants.
28. **Line item transfers by agencies that received program-based appropriations** - The following agencies involved in the program-based performance budgeting pilot project may transfer from one program line item to another, with prior Budget Section approval, an amount in excess of 10 percent of a line item, as needed to meet established performance measures:
- State Auditor (1997 House Bill No. 1004).
 - Office of Management and Budget (1997 House Bill No. 1015).
 - Parks and Recreation Department (1997 House Bill No. 1023).

- Highway Patrol (1997 Senate Bill No. 2011).
- Department of Transportation (1997 Senate Bill No. 2012).
- Commissioner of University and School Lands (1997 Senate Bill No. 2013).
- Parole and Probation Division of the Department of Corrections and Rehabilitation (1997 Senate Bill No. 2016).

**OFFICE OF MANAGEMENT AND BUDGET
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 for the biennium.

The committee reviewed the following information on the status of the general fund for the 1995-97 biennium:

Unobligated general fund balance - July 1, 1995	\$31,151,278
Add:	
1995-97 biennium general fund revenues (\$4.5 million more than the March 1997 revenue forecast of \$1.377 billion)	1,381,368,976
Obligated general fund balance for authorized carryover expenditures from the 1993-95 biennium	5,526,594
Total general fund revenue and obligated balance available for the 1995-97 biennium	\$1,418,046,848
Less:	
1995-97 biennium expenditures and transfers (\$23.8 million less than the appropriation of \$1.352 billion for the 1995-97 biennium)	1,328,696,762
1995-97 biennium transfer to the Bank of North Dakota pursuant to Section 21 of 1997 House Bill No. 1015, which provided that any balance in the budget stabilization fund on July 1, 1997, be transferred to the Bank of North Dakota. Section 54-27.2-02 provided that any end of biennium balance in the general fund in excess of \$65 million be transferred to the budget stabilization fund (\$9.6 million more than the transfer estimated at the close of the 1997 legislative session)	17,116,290
Obligated general fund balance for authorized carryover expenditures from the 1995-97 biennium	7,233,796
Unobligated general fund balance - June 30, 1997 (Pursuant to Section 54-27.2-02, the end of biennium balance in the general fund in excess of \$65 million (\$17,116,290) was transferred to the budget stabilization fund. Pursuant to Section 21 of 1997 House Bill No. 1015, the July 1, 1997, balance in the budget stabilization fund was transferred to the Bank of North Dakota.)	\$65,000,000

Actual general fund revenue collections through September 30, 1998, were 5.5 percent, or \$48 million, more than projected in the 1997 legislative revenue

forecast. The committee reviewed the following information based on revenue collections through September 30, 1998:

Unobligated general fund balance - July 1, 1997	\$65,000,000
Add:	
General fund collections through September 30, 1998	915,371,818
Remaining forecasted general fund revenue for the 1997-99 biennium (based on the 1997 legislative revenue forecast)	567,764,203
Total estimated general fund revenue for the 1997-99 biennium (\$48 million more than the legislative estimate of \$1.5 billion)	\$1,548,136,021
Less:	
1997-99 biennium general fund appropriations	1,489,240,087
Estimated general fund balance - June 30, 1999 (\$48 million more than the legislative estimate of \$10.9 million - Based on actual revenue collections through September 30, 1998, and remaining forecasted revenue as estimated in the original 1997 legislative revenue forecast.)	\$58,895,934

1997 Flood Disaster

The committee received several reports on the estimated fiscal impact of the 1997 flood disaster and the amount of moneys borrowed by state agencies from the Bank of North Dakota, pursuant to NDCC Section 54-16-13. The reports indicated that the Office of Management and Budget expects the 1999 Legislative Assembly to receive \$15 to \$18 million of deficiency appropriation requests from state agencies to repay moneys borrowed from the Bank of North Dakota. Through September 30, 1998, four state agencies have been authorized to borrow from the Bank of North Dakota pursuant to Section 54-16-13: the Division of Emergency Management, \$16,696,400; the Adjutant General's office, \$10,050,000; the University of North Dakota, \$12,000,000; and UND-Lake Region, \$200,000. Through September 30, 1998, amounts that have been borrowed and will need to be repaid with state funds are as follows: The Division of Emergency Management, \$10,300,000; the Adjutant General's office, \$99,800; the University of North Dakota, \$952,095; and UND-Lake Region, \$200,000.

Fiscal Irregularities

Pursuant to NDCC Section 54-14-03.1, the Budget

Section received a report from the Office of Management and Budget on irregularities in the fiscal practices of the state. Irregularities include the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments for state employees. The report identified temporary salary adjustments provided to employees at the Office of Management and Budget, Secretary of State's office, the Department of Transportation, and the Workers Compensation Bureau.

HIGHER EDUCATION

Nonresident Tuition Rates

Pursuant to NDCC Section 15-10-18, the Budget Section approved nonresident tuition rates proposed by the State Board of Higher Education for the 1997-98 and 1998-99 school years. The nonresident tuition rates approved by the Budget Section did not include tuition rates for students from Minnesota and other surrounding states and provinces, which are governed by reciprocal or unilateral tuition agreements. The nonresident tuition rates approved by the committee were two and two-thirds times the resident tuition rate at each North Dakota institution. The approved nonresident rates are as follows:

	1998-99 Nonresident Tuition Rates	Increase Over 1997-98 Nonresident Tuition Rates	1997-98 Nonresident Tuition Rates	Increase Over 1996-97 Nonresident Tuition Rates
University of North Dakota and North Dakota State University				
Undergraduate	\$6,306	\$336	\$5,970	\$336
Graduate	\$6,868	\$336	\$6,532	\$338
Law	\$7,428	\$336	\$7,092	\$337
Medicine	\$26,834	\$2,216	\$24,618	\$2,030
Minot State University				
Undergraduate	\$5,234	\$240	\$4,994	\$240
Graduate	\$6,868	\$336	\$6,532	\$338
Dickinson State University, Mayville State University, and Valley City State University				
Undergraduate	\$4,892	\$202	\$4,690	\$204
Bismarck State College, UND-Lake Region, UND-Williston, State College of Science, and Minot State University - Bottineau				
Undergraduate	\$4,144	\$0	\$4,144	\$0

The committee discussed the continued need for the Budget Section to approve nonresident tuition rates set by the State Board of Higher Education, pursuant to NDCC Section 15-10-18. It was determined that if the Budget Section approval requirements of Section 15-10-18 were eliminated, the State Board of Higher Education would have increased flexibility to set nonresident rates, but that through the appropriation process, the Legislative Assembly would retain control over the total amount of nonresident tuition collected by the institutions of higher education. The Budget Section recommends Senate Bill No. 2029 to amend Section 15-10-18 to eliminate the requirement that the Budget Section

approve nonresident tuition rates at the institutions of higher education.

Funding Pool Allocations

Pursuant to Section 16 of 1997 Senate Bill No. 2003 and Section 6 of 1997 Senate Bill No. 2064, the Budget Section received reports from the University System on University System allocations for salaries and wages and technology and North Dakota State University allocations to agricultural research centers for salaries and wages. The funding pools provided by the 1997 Legislative Assembly to the University System were \$356 million (\$170.3 million from the state general fund) for salaries

and wages and \$23.6 million (all from the state general fund) for technology. The funding pool provided to North Dakota State University for agricultural research centers salaries and wages was \$40 million (\$25.4 million from the state general fund).

The University System recommended that for the 1999-2001 biennium, the appropriation to the University System office include funding pools for all institutional operating and capital improvement line items and that funding for operating and capital projects be accounted for in separate pools.

Capital Projects

During the 1997-99 biennium, the Budget Section received information relating to the following University System capital projects:

- University of North Dakota - Skywalk from the Johnstone-Fulton-Smith residence hall complex to the Squires-Hancock-Walsh residence hall complex.
- University of North Dakota - Biomedical research facility.
- North Dakota State University - Animal research facility.
- Williston Research Extension Center - Ernie French Center.
- University of North Dakota - Abbott Hall walkway.
- North Dakota State University - Engineering/architecture addition to Ehly Hall.
- University of North Dakota - "University village," including a building to be leased by Barnes & Noble, Inc.
- University of North Dakota - 42nd Street skywalk project.
- Dickinson State University - Student union renovation and addition.

Pursuant to NDCC Section 15-10-12.1, the Budget Section approved the expenditure of an additional \$100,000 of other funds for construction of the Ernie French Center at the Williston Research Extension Center, increasing the spending authority for the project from \$650,000 to \$750,000.

The Budget Section authorized the University of North Dakota to use up to \$1.2 million to be provided by the University of North Dakota Alumni Association and Foundation for the construction of a biomedical research facility, as authorized by 1997 Senate Bill No. 2003. The project is estimated to cost approximately \$6 million, funded through the following sources:

- State bonding proceeds, \$3 million.
- United States Department of Agriculture grants, \$600,000.
- University of North Dakota local funds, \$1.2 million.
- University of North Dakota Alumni Association and Foundation advance, \$1.2 million.

Pursuant to NDCC Section 15-10-12.1, the Budget Section authorized the North Dakota State University to spend up to \$1.6 million of other funds for the construction of an engineering/architecture addition to Ehly Hall, \$400,000 more than the amount authorized by the 1997 Legislative Assembly.

Pursuant to NDCC Section 15-10-12.1, the Budget Section authorized the University of North Dakota to construct a walkway from Abbott Hall to McCannel Hall at an estimated cost of \$190,000. The project will be funded through excess appropriation authority provided by the 1995 Legislative Assembly for the \$4.1 million Abbott Hall renovation project.

The Budget Section received information on the University of North Dakota's plan to develop approximately 150 acres of land adjacent to the campus. The development was referred to as a "university village," where businesses could locate to provide services to students and the Grand Forks community. The university discussed plans to construct a building to be leased by Barnes & Noble, Inc., for use as the university bookstore and other retail businesses. The university plans to construct the proposed building using proceeds from the sale of bookstore inventory, accumulated reserves for bookstore improvements, and the proceeds of revenue bonds issued by the University Alumni Foundation. The Budget Section recommends Senate Bill No. 2030 to appropriate \$4.5 million from special funds and to authorize the construction of a building on the University of North Dakota campus for use as the university bookstore and other retail businesses.

The Budget Section received information on the University of North Dakota 42nd Street skywalk project, which due to increased labor and material costs as a result of the 1997 flood will cost approximately \$1.3 million, \$100,000 more than the amount authorized for the project. Pursuant to NDCC Section 15-10-12.1, the Budget Section increased the authorized amount of the 42nd Street skywalk project from \$1.2 to \$1.3 million of private funds.

The Budget Section received information on a proposed project at Dickinson State University to remodel and expand the student center. The project was authorized by the 1995 Legislative Assembly, but Section 10 of 1995 House Bill No. 1003 provided authority for issuance of the bonds only during the 1995-97 biennium. The entire project, including the remodeling and addition, new furnishings, and asbestos abatement, is anticipated to cost approximately \$3.2 million. The proposed sources of funds for the project are:

Asbestos litigation funds	\$331,000
Auxiliary reserves	1,200,000
Proposed revenue bond proceeds	1,000,000
Oil production royalties	500,000
Private contributions	169,000
Total	\$3,200,000

The Budget Section requested the Legislative Council staff to prepare, for the committee's December 1998 meeting, a bill draft to authorize Dickinson State University to issue and sell self-liquidating, tax-exempt bonds in an amount not to exceed \$1.5 million for the purpose of renovating and expanding the student center at Dickinson State University.

Service, Access, Growth, and Empowerment (SAGE) Project

The Budget Section received information from the North Dakota University System on a proposed project to replace the University System's administrative and student records computer system with a new system, referred to as the SAGE project. The University System proposed financing the project and requesting state appropriations to allow repayment during the next four bienniums. The estimated cost of the project is as follows:

Licensing agreements for software	\$2,500,000
Consulting costs	10,800,000
Consultant travel	1,500,000
Personnel costs	1,700,000
University System travel and training	600,000
Five-year software maintenance costs	1,700,000
Hardware and data base costs	2,600,000
Third-party software	400,000
Five-year network upgrade costs	300,000
Total	\$22,100,000

Federal Emergency Management Agency Reimbursements to the University of North Dakota

The Budget Section received a report on flood damage at the University of North Dakota, reimbursements from the Federal Emergency Management Agency (FEMA), and the university's flood insurance coverage. The committee was informed that FEMA identified approximately \$8.6 million that the university should collect from insurance companies for damages relating to the flood. The Federal Emergency Management Agency deducted that amount from federal reimbursements paid to the university. Seventy-two buildings on the university's campus sustained damage during the 1997 flood. A total of 322 projects for a total of \$48.2 million have been approved or are being reviewed by FEMA as of September 1998. As a condition of receiving federal assistance, the university was required by FEMA to obtain flood insurance for any buildings located in the 100-year floodplain and for other flood-damaged buildings for which insurance coverage was available. The university requested guidance from the Budget Section regarding the type of insurance coverage to purchase. The following options were presented to the Budget Section:

1. Insure buildings at the lower of 80 percent of building value or \$500,000, which would provide flood and sewer damage coverage at an estimated cost of \$94,500 per year.
2. Insure buildings at the level of reimbursement received from FEMA as required by federal regulations, which would provide flood but not sewer backup coverage at an estimated cost of \$56,360 per year.

The Budget Section encouraged the University of North Dakota to purchase the lowest cost insurance coverage available which would satisfy FEMA requirements.

DEPARTMENT OF HUMAN SERVICES

Computer Projects

The 1997 Legislative Assembly appropriated \$32.8 million (\$16 million from the state general fund) for computer system ongoing operations and new development at the Department of Human Services during the 1997-99 biennium. The department's five major technology projects during the 1997-99 biennium are:

1. The training, education, employment, and management (TEEM) project.
2. The State Hospital project.
3. The medical/temporary assistance for needy families (TANF) project.
4. The child care project.
5. The child support enforcement system project.

The department reported that through October 7, 1998, it spent approximately \$4 million for the development of the child support enforcement system and anticipated spending approximately \$2.5 million more prior to October 1, 1999. Because the system was not federally certified by October 1, 1998, the department will be assessed a penalty of approximately \$160,000, which can be reduced by 20 percent if the system is certified by October 1, 1999. The following amounts were budgeted for the biennium and spent through October 7, 1998, for the following computer projects:

Project	Budget for 1997-99 Biennium	Amount Spent Through October 7, 1998
TEEM	\$1,770,248	\$419,412
State Hospital	\$1,800,000	\$720,938
Medical/TANF	\$2,917,229	\$9,353
Child care system	\$329,332	\$0

The Budget Section received information from the Department of Human Services on plans for operating computer networks within the department. The department's 1997-99 biennium appropriation included \$726,195 to operate the department's existing computer network. The information presented to the committee indicated that the department anticipates spending \$167,405 of this amount to provide additional access to the existing network.

The Budget Section also received information from the Department of Human Services on the Medicaid management information system (MMIS). The information presented indicated that the department determined it necessary to begin planning for the MMIS computer system to support anticipated changes in the Medicaid program. The department's plan was as follows:

1. Complete an analysis and evaluation of the current system and its limitations.
2. Complete a cost-benefit analysis of options.
3. Begin a basic system design.
4. Develop a project plan, including priorities and estimated costs.

The 1997 Legislative Assembly did not provide funding specifically for the MMIS computer system project. The Budget Section approved the department's proposal to begin planning, analysis, and design of a Medicaid management information system using existing staff and operating expenses appropriated for the Medicaid program for the 1997-99 biennium.

Pursuant to Section 19 of 1997 House Bill No. 1012, the committee received reports at each meeting on the status of the RESPOND computer system. Because of the interrelationship of the RESPOND and TEEM projects, costs associated with the RESPOND project were reported as part of the TEEM project.

Welfare Fraud Detection Programs

Pursuant to Section 30 of 1997 House Bill No. 1012, the Budget Section received reports from the Department of Human Services on welfare fraud detection programs. The reports indicated that during calendar years 1996 and 1997, \$396,188 was spent on welfare fraud detection programs and \$436,229 was recovered.

Additional FTE Positions at Department of Human Services Agencies and Institutions

Pursuant to Section 7 of 1997 House Bill No. 1012, the Budget Section received a report on FTE positions at human service centers, the State Hospital, and the Developmental Center. The report indicated that human service centers added 8.8 FTE positions at an estimated general fund cost of \$60,447 for the 1997-99 biennium, the State Hospital did not add any FTE positions above the legislatively authorized level, but transferred two FTE positions to human service centers and 8.5 FTE positions to the Department of Corrections and Rehabilitation for the James River Correctional Center. The report also indicated the Developmental Center added 20 FTE positions above the legislatively authorized level.

Pursuant to Section 7 of 1997 House Bill No. 1012, the Budget Section accepted the report presented by the department.

Adult Developmentally Disabled Children Subsidy Pilot Program

Pursuant to Section 25 of 1997 House Bill No. 1012,

the Budget Section received a report from the Department of Human Services on efforts to seek federal waivers and establish a pilot program in one human service region to provide a subsidy on behalf of adult developmentally disabled children, age 22 and older, residing in their parents' homes. This section requires that the program:

- Be limited to no more than five adult developmentally disabled children.
- Be limited to \$500 per month per eligible adult developmentally disabled child.
- Be provided only to parents whose income is no more than the federal poverty level.

The report indicated that the department's request for a federal waiver was denied and that the department had two options in which to proceed:

1. Use the \$10,000 general fund appropriation (which was intended to match federal funds for the pilot program) to conduct a pilot program, on a smaller scale than originally anticipated, for the remainder of the 1997-99 biennium.
2. Develop an 1115 demonstration waiver request, which would require an expansion of the pilot project and would take one to two years to implement.

The Budget Section encouraged the Department of Human Services to proceed, at the department's discretion, to establish a pilot program, terminating on June 30, 1999, unless continued by the 1999 Legislative Assembly, to provide a subsidy on behalf of adult developmentally disabled children who reside in their parents' homes and to develop a request for a federal 1115 demonstration waiver.

Block Grant Accountability

Pursuant to Section 28 of 1997 House Bill No. 1012, the Budget Section received a report from the Department of Human Services on block grant accountability for human service centers, the State Hospital, and the Developmental Center. The 1997 Legislative Assembly provided appropriations in the form of block grants rather than specific line items for each human service center and institution. The report presented by the department included the following:

- For the period from July 1, 1997, to April 30, 1998, the employee turnover at the human service centers, State Hospital, and the Developmental Center averaged between 5.3 and 12.9 percent.
- As of April 30, 1998, there were 111.88 vacant FTE positions among the 1,947.55 FTE positions at the human service centers, State Hospital, and the Developmental Center.
- Block grant funding allowed the human service centers, State Hospital, and Developmental Center the flexibility to manage resources to maximize their effectiveness in serving clients

through contractual arrangements or the direct provision of services.

WESTWOOD PARK ASSETS MANAGEMENT COMMITTEE

The Budget Section received a request, pursuant to NDCC Section 25-04-20, from the Westwood Park Assets Management Committee to approve an amendment to a letter of understanding entered into between the Westwood Park Assets Management Committee, the Department of Human Services, and the Retirement Housing Foundation. During the 1995-97 biennium, the Budget Section approved a letter of understanding that provided the Retirement Housing Foundation a six-month option to lease or purchase property at the Developmental Center for the development of retirement housing. The proposed amendment extended the term of the option for an additional six months, through November 30, 1997. Pursuant to Section 25-04-20, the Budget Section approved the proposed amendment to the letter of understanding entered into between the Westwood Park Assets Management Committee, the Department of Human Services, and the Retirement Housing Foundation.

The Budget Section received a subsequent report that the Retirement Housing Foundation intended to withdraw from the project, but that MetroPlains Development, LLC, was interested in pursuing the project. The committee received a request from the Westwood Park Assets Management Committee to approve a letter of understanding negotiated between the Westwood Park Assets Management Committee, the Department of Human Services, and MetroPlains Development, LLC. The letter of understanding provided that MetroPlains Development, LLC, has until December 31, 1998, to secure financing for the project. Pursuant to NDCC Section 25-04-20, the Budget Section approved the letter of understanding negotiated between the Westwood Park Assets Management Committee, the Department of Human Services, and MetroPlains Development, LLC, which provides for a contingent transfer of ownership to MetroPlains Development, LLC, of the North A, North B, and Refectory properties at Westwood Park, if financing can be obtained for the renovation of those buildings.

Pursuant to NDCC Section 25-04-20, the Budget Section also approved the sale of approximately 14.7 acres of Westwood Park property to the Walsh County Historical Society for the price of \$1 and provided that the sales agreement must include the provision that if the Walsh County Historical Society discontinues its operations, the property will revert to the state of North Dakota.

JOB SERVICE NORTH DAKOTA

Pursuant to NDCC Section 52-02-17, the Budget Section received reports from Job Service North Dakota on the balance of the job insurance trust fund. This

section provides that if the balance in the job insurance trust fund is projected to fall below \$40 million, Job Service North Dakota must present a report to the Budget Section on the condition of the fund, the circumstances leading to the decrease in the fund balance, and a proposal on how to increase the fund balance to \$40 million. The report indicated that if no changes were implemented in administration, unemployment insurance tax rates, or benefit payments, the job insurance trust fund balance would decline to \$22.5 million by the end of 1998. Based on Job Service North Dakota's November 1997 projections, the trust fund balance is estimated to be approximately \$28.5 million at the end of 1998. Job Service North Dakota proposed the following three initiatives to increase the balance in the fund:

1. Administrative initiatives:
 - a. Provide additional assistance to claimants to reduce the duration of the benefit period.
 - b. Provide prompt assessments for displaced workers, including the development of a reemployment plan which may include skill training.
 - c. Change the unemployment benefits' duration schedule.
2. Executive action:
 - a. Increase unemployment insurance tax rates from an average of .86 percent to 1.09 percent. The tax rate change was projected to increase trust fund income by \$6.8 million in 1998.
3. Policy changes:
 - a. The agency will develop suggested policy changes for consideration by the Legislative Assembly in the following areas:
 - (1) The taxable wage ceiling.
 - (2) Employer experience rating and the length of time necessary to establish a rating.
 - (3) Interest and penalties on delinquent accounts.
 - (4) Interpretation of suitability of work.

The Budget Section requested that the chairman of the Legislative Council assign to an appropriate interim committee, the responsibility of receiving reports from Job Service North Dakota relating to any administrative changes, statutory changes, and changes in the unemployment insurance tax structure that may be proposed by the agency for consideration by the 1999 Legislative Assembly. Pursuant to the directive of the Legislative Council chairman, this duty was assigned to the Commerce and Agriculture Committee.

DEPARTMENT OF TRANSPORTATION AIRPLANE EVALUATION

Pursuant to Section 4 of 1997 Senate Bill No. 2012, the Budget Section received reports from the Department of Transportation on the department's evaluation of

the continued use of a 1977 model Cessna airplane. The report indicated that increasing maintenance costs and maintenance time related to the 1977 Cessna model 421 aircraft has resulted in scheduling problems and the department has determined that to provide long-term aircraft service to the Governor's office and other state officials, a new aircraft must be leased or purchased. The report indicated that the department advertised a request for proposals for a two-year lease on a King Air 200 aircraft, with an option to buy the aircraft at any time during the contract. The department determined that of the lease proposals received, the lease proposed by Airfleet Capital, with monthly lease payments of \$66,650, offered the highest long-term cost benefit to the state.

CHILDREN'S SERVICES COORDINATING COMMITTEE

Grants

Pursuant to NDCC Section 54-56-03, the Budget Section received a report from the Children's Services Coordinating Committee on grants to be distributed by the Children's Services Coordinating Committee in addition to specific statewide grants approved by the 1997 Legislative Assembly. The report indicated that five grant applications, for a total of \$120,000, had been approved by the Children's Services Coordinating Committee and that each of the grants provided services to reduce the number of juveniles entering the criminal justice system. Pursuant to Section 54-56-03, the Budget Section authorized the Children's Services Coordinating Committee to distribute five grants for a total of \$120,000.

Administrative Costs

Pursuant to Section 6 of 1997 Senate Bill No. 2014, the Budget Section received reports from the Children's Services Coordinating Committee on administrative costs of the regional and tribal committees. Legislative intent included in Senate Bill No. 2014 provided that because of the relatively high administrative expenses compared to income of some regional and tribal children's services coordinating committees, the state Children's Services Coordinating Committee should conduct an analysis and develop a plan to reduce administrative costs by consolidation of regional and tribal committees. The report indicated that the Children's Services Coordinating Committee determined that it was not feasible to consolidate the local committees due to the geographic size of less populous regions of the state and the large population of other regions. The report indicated that of the \$1,080,000 provided by the 1997 Legislative Assembly for administrative costs of the regional and tribal committees, local committees spent \$505,619 during the first year of the biennium, \$34,381 less than the \$540,000 per year allocation. The report indicated that in addition to the \$505,619, local committees spent \$172,000 that was carried over from the 1995-97

biennium, pursuant to an Attorney General's opinion dated June 3, 1997.

VETERANS HOME MANAGEMENT, BUDGETING, AND ACCOUNTING PRACTICES

Pursuant to Section 3 of 1997 Senate Bill No. 2007, the Budget Section received reports from the Veterans Home on improvements in the management, budgeting, and accounting practices at the Veterans Home. The reports indicated that the home has taken steps to improve its budgeting and accounting procedures, including requiring department administrators to explain any variances between actual and budgeted expenditures and outline a corrective plan of action, if necessary, to address the variances. The report also indicated that the fiscal year 1998 audit of the Veterans Home revealed no problems with the recording and reporting of financial transactions.

HISTORICAL SOCIETY SELF-ASSESSMENT

Pursuant to Section 4 of 1997 House Bill No. 1022, the Budget Section received a report from the State Historical Society on the results of an assessment of the programs and services of the State Historical Society. The report included the following conclusions:

- The State Historical Society has inadequate resources to meet public demands.
- The existing organizational structure is working efficiently.
- The State Historical Society needs to improve public information and marketing efforts.
- The State Historical Society has several needs related to the maintenance, expansion, or improvement of buildings.
- The agency needs to work cooperatively with other state agencies and other organizations to meet technology challenges relating to maintaining and providing public access to state records.
- The agency needs additional staff to seek grants, gifts, and endowments to supplement state funding.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS PLANNING GRANTS

Pursuant to NDCC Section 54-35.2-02.1, the Budget Section received reports on planning grants distributed to cities and counties by the Advisory Commission on Intergovernmental Relations. The reports indicated that at the July 9, 1997, meeting of the Advisory Commission on Intergovernmental Relations, the commission accepted final reports presented by the North Dakota League of Cities and the North Dakota Association of Counties regarding planning grants received from the

commission. The reports also indicated that no new planning grant moneys have been appropriated by the 1995 or 1997 Legislative Assemblies, no additional grant funds are available to be distributed by the commission, and no grants are outstanding. The Budget Section was informed that the Advisory Commission on Intergovernmental Relations approved and recommended to the Legislative Council a bill to repeal Section 54-34.2-02.1, to eliminate the planning grant program and to remove the requirement that the commission report annually to the Budget Section.

WORKERS COMPENSATION BUREAU CRITICAL SALARY ADJUSTMENTS

Pursuant to Section 3 of 1997 House Bill No. 1026, the Budget Section received a report from the Workers Compensation Bureau on the expenditure of the \$350,000 appropriation provided for critical salary adjustments. The report indicated the following:

- During the 1997-99 biennium, no general pay increases were given to bureau employees.
- Individual pay increases ranged from one to nine percent, with an average of 4.75 percent, based on employee job performance.
- The bureau's pay-for-performance program has had a positive impact on employee morale and has reduced staff turnover from 22 percent in 1996 to 11 percent in 1997.

CORRESPONDENCE FROM ETHANOL PLANTS

Pursuant to 1995 Senate Bill No. 2026 and 1997 Senate Bill No. 2019, the Budget Section received reports from North Dakota ethanol plants receiving production incentives from the state. The Alchem, Ltd., plant was the only plant to receive production incentives from the state during calendar years 1996 and 1997. The correspondence indicated that after deducting payments received from the state, the Alchem, Ltd., plant did not produce a profit.

LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

The Budget Section reviewed a Legislative Council memorandum that indicated that of the 12 block grant programs listed in the 1998 catalog of federal domestic assistance, only the community services block grant will require a public hearing to be held by the Legislative Assembly. The required public hearing will be held as part of the appropriation hearing for the Office of Management and Budget during the 1999 legislative session.

The Budget Section recommends Senate Concurrent Resolution No. 4001 to authorize the Budget Section to hold any public legislative hearings required for the receipt of federal block grant funds during the period

from the recess or adjournment of the 56th Legislative Assembly through September 30, 2001.

FEDERAL FUNDS

The Budget Section reviewed a Legislative Council memorandum on federal funds anticipated to be received by state agencies and institutions for bienniums ending June 30, 1999, and June 30, 2001. The report indicated that for the 1997-99 biennium, state agencies and institutions anticipate receiving \$1.628 billion of federal funds, approximately \$177 million more than the amount appropriated. For the 1999-2001 biennium, state agencies and institutions anticipate receiving approximately \$1.604 billion of federal funds.

LEGISLATIVE COUNCIL REPORTS

The Budget Section received the following reports prepared by the Legislative Council staff:

- *An Analysis of the 55th Legislative Assembly Changes to Recommended Appropriations in the Executive Budget - 1997-99 Biennium.* The report included information on legislative appropriations, general fund revenues, special fund balances, and historical appropriation statistics for the 1967-69 through 1997-99 bienniums.
- *Capital Construction Projects - Authorization of Expansions by the Budget Section.*
- *Capital Construction Projects With a Required Local Match - 1989-91 to 1997-99 Bienniums.*
- *State and Federal Historic Building Preservation Laws.*

BUDGET TOUR REPORTS

The following Budget Section members were assigned to Budget Section tour groups:

Budget Section Northeast Tour Group

Members: Representatives Richard Kunkel (Chairman), Merle Boucher, John Dorso, Pam Gulleon, Mike Timm, Francis J. Wald; Senators David E. Nething, Larry J. Robinson.

Institutions: Mayville State University, School for the Blind, University of North Dakota, Mill and Elevator, Developmental Center at Westwood Park.

Budget Section Southeast Tour Group

Members: Senators Ken Solberg (Chairman), Aaron Krauter, Pete Naaden, Gary J. Nelson, Rolland W. Redlin; Representatives Ole Aarsvold, James Boehm, Rex R. Byerly, Robert Huether.

Institutions: Valley City State University, Veterans Home, North Dakota State College of Science, North Dakota State University, Main Research Center, Agronomy Seed Farm.

In addition, budget tours were also conducted during the 1997-99 biennium by the Budget Committee on Government Finance, Budget Committee on

Government Services, Budget Committee on Human Services, Welfare Reform Committee, and the Budget Committee on Long-Term Care.

The Budget Section reviewed memorandums summarizing the visitations of the budget committees and the budget tour groups. These memorandums will be compiled for submission to the Appropriations Committees during the 1999 legislative session.

The Budget Committee on Government Finance, Senator David E. Nething, Chairman, toured Bismarck State College, State Penitentiary, Missouri River Correctional Center, Youth Correctional Center, Roughrider Industries, and James River Correctional Center.

The Budget Committee on Government Services, Representative Janet Wentz, Chairman, toured the South Central Human Service Center, State Hospital, James River Correctional Center, Badlands Human Service Center, Dickinson State University, Dickinson Research Extension Center, North Central Human Service Center, Minot State University - Bottineau, Forest Service, Minot State University, State Fair, North Central Research Extension Center, and Peace Garden. The Budget Committee on Government Services recommended that the 1999 Legislative Assembly provide funding for the State Hospital to purchase a new boiler, rather than to purchase a used one or repair the current boiler.

The Budget Committee on Human Services, Senator Timm Mathern, Chairman, toured the West Central Human Service Center, Southeast Human Service Center, and Northeast Human Service Center.

The Welfare Reform Committee, Senator Jim Yockim, Chairman, toured the Northwest Human Service Center, UND-Williston, and Williston Research Extension Center.

The Budget Committee on Long-Term Care, Senator Aaron Krauter, Chairman, toured the School for the Deaf, UND-Lake Region, and Lake Region Human Service Center.

AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION

Pursuant to NDCC Sections 54-16-04, 54-16-04.1, and 54-16-04.2, the Budget Section considered agency requests that had been authorized by the Emergency Commission and forwarded to the Budget Section.

From the committee's June 18, 1997, meeting to the committee's October 7, 1998, meeting, the Budget Section considered 94 requests, all of which were approved.

The attached appendix provides a description of each agency request considered by the Budget Section.

OTHER ACTION

The Budget Section received a report from the Information Services Division of the Office of Management and Budget on guidelines developed by the division for

use by state agencies in preparing information technology plans, as required by 1997 House Bill No. 1034.

The Budget Section received a report from Roughrider Industries on plans to convert its computer system from a mainframe-based system to a personal computer-based network system.

The Budget Section received a report from the Office of Management and Budget on possible changes to the economic forecasting service used by the Office of Management and Budget and the state of North Dakota. The Budget Section received a report from the Office of Management and Budget on the North Dakota risk management program. The report indicated that the Risk Management Division established an excess insurance program to provide protection for the risk management fund in circumstances in which the fund could be exposed to liability in excess of the statutory caps provided in NDCC Section 32-12.2-02. The Budget Section received a report from the Office of Management and Budget on actual-to-planned performance for the fiscal year ended June 30, 1997, for each of the agencies involved in the program-based performance budgeting pilot project.

The Budget Section received a report from the North Dakota University System on the State Board of Higher Education's study of alternative models for charging tuition. The current tuition model is referred to as a flat rate model, under which students pay a per credit hour rate for each credit taken up to 12 hours per semester and a flat tuition rate for credit hours over 12 per semester. The report indicated that the University System was studying two new tuition models, a per credit hour model that would require students to pay a uniform rate for each credit hour taken, and a combined per credit hour/flat rate model that would require students to pay a per credit hour rate for all credits taken up to 15 or 16 credit hours.

The Budget Section received a report from the Department of Human Services on the children's health insurance program. The report indicated that the children's health insurance program allows states to develop health insurance coverage for children of working families whose income is too much to qualify for Medicaid but is not adequate to purchase private health insurance. The department implemented Phase 1 of the program by expanding Medicaid coverage to 18-year old children whose family income is below 100 percent of the federal poverty level. This change was effective on October 1, 1998. Phase 2 of the program will be addressed through legislation to be considered by the 1999 Legislative Assembly.

The Budget Section received a report from the Department of Human Services on the welfare-to-work program. The report indicated that the Department of Human Services plans to submit a state welfare-to-work plan to the federal government, which, if approved, will allow North Dakota to receive approximately \$2.7 million

of federal funds during federal fiscal year 1998 and approximately \$2.5 million of federal funds during federal fiscal year 1999. The report indicated that \$1 of state match will be required for every \$2 of federal funds received. The department plans to use savings from reduced TANF caseloads to provide the state match. The state plan has been approved and the department

plans to implement the program in November 1998 in cooperation with Job Service North Dakota.

This report presents Budget Section activities through October 1998. Because one of the major responsibilities of the Budget Section is to review the executive budget, which by law is not presented to the Legislative Assembly until after December 1, a supplement to this report will be submitted for distribution at a later date.

APPENDIX

Pursuant to North Dakota Century Code Sections 54-16-04, 54-16-04.1, and 54-16-04.2, the Budget Section considered 94 agency requests that were authorized by the Emergency Commission. All requests considered were approved by the Budget Section. The following is a list of agency requests approved through October 1998:

1. Department of Agriculture

- June 18, 1997 - To increase other funds spending authority and the Safe Send program line item by \$75,000 of federal funds from the Environmental Protection Agency for the collection and disposal of flood-damaged hazardous waste.
- June 18, 1997 - To increase other funds spending authority by \$100,400 for the agriculture disaster response center.
- December 3, 1997 - To increase other funds spending authority and the state waterbank program line item by \$500,000 from the Game and Fish Department for waterbank contracts, especially those in the Devils Lake Basin.
- December 3, 1997 - To increase federal funds spending authority and the Safe Send line item by \$182,295 for the collection and disposal of flood-damaged hazardous waste collected in the Red River Valley as a result of the 1997 flood.

2. Council on the Arts

- October 7, 1998 - To increase federal funds spending authority and the grants line item by \$231,824 from the National Endowment for the Arts (\$229,500) and carryover spending authority from the 1995-97 bienium (\$2,324).

3. Attorney General

- June 10, 1998 - To increase other funds spending authority by \$107,333 (\$30,000 for salaries and wages, \$60,000 for operating expenses, and \$17,333 for equipment) from the fire and tornado fund, the Federal Emergency Management Agency, and an insurance company relating to flood damage to the agency's Grand Forks office.

4. Bismarck State College

- June 10, 1998 - To increase other funds spending authority by \$250,668 (\$100,000 for equipment and \$150,668 for capital improvements) of additional tuition income for instructional equipment and various capital projects.

5. Department of Corrections and Rehabilitation

- June 18, 1997 - To transfer \$180,000 of spending authority from the operating expenses line item to the grants line item for

federal grants to be distributed to local juvenile delinquency prevention programs.

- June 18, 1997 - To transfer \$150,000 of spending authority from salaries and wages to operating expenses for higher than anticipated inmate medical costs.
- October 8, 1997 - To increase federal funds spending authority and the capital improvements - medium security facility line item by \$1,351,445 for additional federal crime bill funds and to transfer \$150,160 of spending authority from salaries and wages to the capital improvements - medium security facility line item for the James River Correctional Center.
- October 8, 1997 - To increase federal funds spending authority and the capital improvements line item by \$15,761 from the Federal Emergency Management Agency for road repairs.
- October 8, 1997 - To transfer spending authority of \$162,200 from the operating expenses line item to the equipment line item for computer equipment for the information systems project which will combine the data bases of the Penitentiary and the Parole and Probation Division.
- October 8, 1997 - To increase other funds spending authority by \$91,051 for capital improvements (\$61,531) and operating expenses (\$29,520) for federal funds available from the Office of Intergovernmental Assistance and the Attorney General's office for a heating system project at the Missouri River Correctional Center and the housing of Penitentiary inmates in local jails.
- October 8, 1997 - To increase other funds spending authority by \$12,937 of federal funds available from the Attorney General's office for operating expenses (\$7,137) and equipment (\$5,800) for the residential substance abuse treatment program.
- June 10, 1998 - To increase other funds spending authority and the operating expenses line item by \$12,000 of federal funds for drug and alcohol use prevention and awareness programs.
- June 10, 1998 - To increase other funds spending authority by \$450,000 (\$50,000 for salaries and wages, \$200,000 for operating expenses, and \$200,000 for grants) of federal funds for temporary and overtime salaries, salary equity adjustments, the relocation of two community offices, computer support services, staff training, and grants to local entities.

- June 10, 1998 - To increase other funds spending authority and the grants line item by \$1,567,900 of federal funds for community programs for juvenile offenders.
 - June 10, 1998 - To increase other funds spending authority and the salaries and wages line item by \$23,436 of federal funds for employment skills training for juveniles and the employment of adult supervisors for juvenile workers.
 - October 7, 1998 - To transfer spending authority of \$35,000 from operating expenses to salaries and wages and to increase federal funds spending authority and the salaries and wages line item by \$5,597 for a carpentry trades instructor and a part-time carpentry trades assistant.
 - October 7, 1998 - To increase federal funds spending authority and the capital improvements line item by \$9,300 for flood-related repairs to a gravel road.
 - October 7, 1998 - To increase other funds spending authority and the capital improvements - medium security facility line item by \$316,752 of federal funds (\$285,077) and special funds derived from Roughrider Industries operations (\$31,675) for the construction of a Roughrider Industries building at the James River Correctional Center.
 - October 7, 1998 - To increase federal funds spending authority by \$61,052 for salaries and wages (\$11,952) and equipment (\$49,100) and to transfer spending authority of \$15,400 from salaries and wages to equipment to expand the workplace and community transition training for incarcerated youth offenders program, to purchase computers, and to purchase an electronic fingerprint scanning unit.
6. School for the Deaf
- June 18, 1997 - To transfer \$76,640 from salaries and wages to equipment (\$1,840) and capital improvements (\$74,800) for closed circuit television for the dormitories, asbestos removal, and heating system improvements.
7. Dickinson Research Extension Center
- June 10, 1998 - To increase other funds spending authority and the operating expenses line item by \$150,000 of additional crop and livestock income for increased costs relating to equipment rentals and state fleet vehicle usage.
8. Dickinson State University
- October 7, 1998 - To increase other funds spending authority and the capital improvements line item by \$79,667 of excess income for projects including window replacements at Stoxen Library.
9. Department of Economic Development and Finance
- March 4, 1998 - To increase other funds spending authority and the operating expenses line item by \$225,000 to conduct and collect fees for economic development training activities.
10. Emergency Management
- June 18, 1997 - To increase other funds spending authority by \$496,200 for salaries and wages (\$441,200), operating expenses (\$30,000), and equipment (\$25,000) relating to Presidential disaster declarations for flooding.
 - October 8, 1997 - To increase federal funds spending authority by \$107,408,650 for disaster recovery programs.
 - October 7, 1998 - To increase federal funds spending authority by \$50,000 for salaries and wages (\$16,500) and operating expenses (\$33,500) for a program to promote disaster-resistant communities.
 - October 7, 1998 - To increase spending authority by \$7,052,500 (\$6,075,000 of federal funds, \$977,500 from a disaster loan) for salaries and wages (\$130,000), operating expenses (\$57,500), and grants (\$6,865,000) for disaster-related work.
11. Department of Health
- March 4, 1998 - To increase other funds spending authority by \$1,638,000 for grants (\$1,087,000), equipment (\$165,000), and operating expenses (\$386,000) for the STOP violence against women program, family violence programs, DUI analysis equipment, and to identify flood-related health problems.
12. Highway Patrol
- June 18, 1997 - To increase other funds spending authority and the field operations program line item by \$116,000 of federal funds to:
 - Purchase portable weigh scales for \$75,000.
 - Renovate a scale house for \$10,000.
 - Pay reimbursable flood emergency operations costs of \$31,000.
 - June 18, 1997 - To increase other funds spending authority and the field operations program line item by \$90,000 of federal funds for the operation of the motor carrier safety assistance program.
 - October 8, 1997 - To increase federal funds spending authority and the field operations

line item by \$110,000 for federal funds which will be provided to the North Dakota State University Upper Great Plains Transportation Institute for the development of software for the motor carrier safety assistance program.

- December 3, 1997 - To increase federal funds spending authority and the field operations line item by \$174,000 to conduct an analysis of United States Highway 52 and to develop a training agenda for motor carriers safety assistance program administrators.
- June 10, 1998 - To increase other funds spending authority and the field operations line item by \$11,000 of federal funds to remodel two weigh/inspection stations.
- October 7, 1998 - To increase federal funds spending authority by \$88,000 for the field operations division (\$80,000) and the Law Enforcement Training Academy (\$8,000) for radar equipment, tire deflators, and training for local law enforcement officers.
- October 7, 1998 - To increase federal funds spending authority and the field operations line item by \$303,000 for the mobile data communications system project (\$203,000) and the motor carrier safety assistance program (\$100,000).
- October 7, 1998 - To increase other funds spending authority by \$33,000 for building improvements at a weigh station (\$3,000 - field operations line item) and replacement of a boiler at the Law Enforcement Training Academy (\$30,000 - Law Enforcement Training Academy line item).

13. Historical Society

- October 8, 1997 - To increase federal funds spending authority by \$21,760 for salaries and wages (\$2,000) and operating expenses (\$19,760) for training and professional development for persons dealing with historical records.
- October 8, 1997 - To increase federal funds spending authority by \$261,600 for salaries and wages (\$49,800), operating expenses (\$77,100), and equipment (\$134,700) for shelving, collections movement, and a collections records management system.

14. Department of Human Services

- June 18, 1997 - To increase other funds spending authority by \$600,000 for the 1997-99 biennium to allow the department to continue to receive and spend federal funds for disaster-related mental health services previously approved by the Emergency Commission for the 1995-97 biennium.

- October 8, 1997 - To increase federal funds spending authority and the operating expenses line item of the program and policy subdivision by \$361,000 of carryover funds from the 1995-97 biennium for completion of the substance abuse needs assessment project.
- October 8, 1997 - To increase other funds spending authority by \$1,285,604 for the North Central Human Service Center (\$339,000) and the West Central Human Service Center (\$946,604) for carryover funds from the 1995-97 biennium and federal funds for the mental health partnership grant program and to transfer spending authority of \$932,526 from the program and policy subdivision to the West Central Human Service Center for the mental health partnership grant program.
- October 8, 1997 - To increase federal funds spending authority by \$3,705,062 for the program and policy subdivision for crisis counselors to support disaster victims.
- October 8, 1997 - To increase federal funds spending authority by \$201,300 for the economic assistance subdivision for grants to counties for computer equipment relating to the adoption assistance information system.
- October 8, 1997 - To transfer spending authority of \$100,000 from the economic assistance subdivision to the management and councils subdivision for salaries and wages for an executive assistant position.
- December 3, 1997 - To transfer one FTE position and salaries and wages of \$83,757 from the management and councils subdivision to the program and policy subdivision for the mental health information enhancement plan and to transfer \$124,540 from the grants line of the program and policy subdivision to the field services subdivision for the Northwest Human Service Center (\$68,880) and the North Central Human Service Center (\$55,660) to provide services through regional transition coordinators.
- December 3, 1997 - To increase other funds spending authority by \$150,000 from the Children's Services Coordinating Committee for the West Central Human Service Center (\$50,000), North Central Human Service Center (\$50,000), and Southeast Human Service Center (\$50,000) for matching funds for the Medicaid program.
- December 3, 1997 - To increase federal funds spending authority by \$1,764,616 for operating expenses (\$134,344), equipment

(\$4,499), and grants (\$1,625,773) relating to refugee services, family preservation services, adoption services, and foster care.

- December 3, 1997 - To increase federal funds spending authority by \$233,591 for salaries and wages (\$210,424) and operating expenses (\$23,167) for disability determination services.
- December 3, 1997 - To increase federal funds spending authority and the grants line item of the program and policy subdivision by \$62,011 for flood-related assistance services to elderly individuals in the Grand Forks area.
- March 4, 1998 - To transfer federal funds spending authority of \$652,000 from economic assistance to field services for mental health services.
- March 4, 1998 - To transfer spending authority of \$290,449 from program and policy to management and councils for salaries and wages (\$258,426) and operating expenses (\$32,023) for a public information specialist and American Indian liaison.
- March 4, 1998 - To transfer spending authority of \$58,430 from program and policy to field services for grants to provide transitional coordinators to assist disabled students.
- June 10, 1998 - To transfer \$713,055 from operating expenses to capital improvements under the field services subdivision for capital improvements at the State Hospital.
- June 10, 1998 - To transfer spending authority of \$10,084,294 (\$623,822 for salaries and wages and \$9,460,472 for operating expenses) from the economic assistance subdivision to the management and councils subdivision to consolidate the department's information management services within the management and councils subdivision.
- October 7, 1998 - To increase other funds spending authority and the capital improvements line item of the Developmental Center by \$31,962 to replace a dehumidifier in the center's swimming pool area.

15. Industrial Commission

- June 18, 1997 - To increase other funds spending authority by \$39,850 of federal funds from the Environmental Protection Agency for digitized topographical information relating to oil-producing counties.
- October 7, 1998 - To increase federal funds spending authority by \$58,000 for salaries and wages (\$47,500) and operating expenses (\$10,500) for geological survey projects.

16. Information Services Division

- June 18, 1997 - To increase other funds spending authority and the operating expenses line item by \$300,000 of additional revenue to be received during the 1995-97 biennium.

17. Job Service North Dakota

- October 8, 1997 - To increase federal funds spending authority and the operating expenses line item by \$15,000 for consultant fees and travel relating to implementation of the statewide "one-stop" system.
- October 8, 1997 - To increase federal funds spending authority by \$6,588,309 for salaries and wages (\$296,768), operating expenses (\$88,246), equipment (\$93,000), and grants (\$6,110,295) for the veterans' employment program, disaster unemployment assistance program, and emergency dislocated worker project.
- October 8, 1997 - To increase other funds spending authority by \$15,000 for salaries and wages (\$12,087) and operating expenses (\$2,913) for moneys to be provided by the University of North Dakota to provide employment-related services at the university.
- October 8, 1997 - To increase other funds spending authority and the operating expenses line item by \$10,000 for moneys to be received from the National Governors Association for contracted services and travel relating to an incumbent worker training project.
- December 3, 1997 - To increase other funds spending authority by \$46,735 for salaries and wages (\$1,735) and grants (\$45,000) for the continuation of a Department of Veterans Affairs grant which began in 1995-97.
- March 4, 1998 - To increase other funds spending authority by \$229,084 (\$184,081 for salaries and wages, \$45,003 for equipment) of federal funds to be received from the Department of Human Services for the job opportunities and basic skills (JOBS) program.
- March 4, 1998 - To increase federal funds spending authority by \$2,418,720 for salaries and wages (\$150,024), operating expenses (\$2,116,696), and equipment (\$152,000) for an interstate benefit inquiry system and to upgrade computer equipment and software for year 2000 processing.

- March 4, 1998 - To increase other funds spending authority and the new jobs program line item by \$37,209 for additional administrative revenue for the new jobs program.
 - June 10, 1998 - To increase other funds spending authority by \$862,000 (\$231,414 for salaries and wages, \$153,786 for operating expenses, and \$476,800 for grants) of federal funds to provide services to dislocated farmers, ranchers, and their families.
 - October 7, 1998 - To increase other funds spending authority and the grants line item by \$66,000 for the summer youth employment program in Grand Forks.
 - October 7, 1998 - To increase federal funds spending authority by \$1,722,600 for salaries and wages (\$117,450), operating expenses (\$39,150), and grants (\$1,566,000) for temporary income to persons unemployed as a result of ground saturation disasters.
 - October 7, 1998 - To increase federal funds spending authority by \$333,647 for operating expenses (\$262,647) and equipment (\$71,000) to install an interstate benefit inquiry system (\$26,000), pay for the unemployment insurance portion of a performance audit (\$54,847), implement law changes (\$167,000), and implement the North American industry classification system (\$85,800).
 - October 7, 1998 - To increase other funds spending authority by \$1,368,438 for salaries and wages (\$850,206), operating expenses (\$284,328), equipment (\$40,000), and grants (\$193,904) for the welfare-to-work program.
18. State Library
- June 10, 1998 - To increase other funds spending authority by \$185,000 (\$115,000 for grants, \$20,000 for equipment, and \$50,000 for operating expenses) of federal funds for technology grants to school and public libraries and the purchase of computers, equipment, software, and reference materials.
19. Office of Management and Budget
- June 18, 1997 - To increase 1997-99 biennium spending authority by \$72,000 from the state contingencies appropriation to pay the United States Department of Health and Human Services its share of fire and tornado fund money previously transferred to the general fund.
 - October 8, 1997 - To increase other funds spending authority by \$156,746 to be received from the Office of Intergovernmental Assistance for the replacement of fluorescent lighting ballasts in the State Capitol.
- October 8, 1997 - To increase other funds spending authority by \$70,534 to be received from the Office of Intergovernmental Assistance for heating and cooling system improvements in the judicial wing of the State Capitol.
 - October 8, 1997 - To transfer spending authority of \$128,000 from the fiscal management division to administration to provide for a deputy director for the agency.
 - June 10, 1998 - To increase other funds spending authority and the facility management line item by \$48,000 of other funds available from the Office of Intergovernmental Assistance to install a natural gas boiler system in the Liberty Memorial Building.
20. North Dakota State College of Science
- June 18, 1997 - To increase other funds spending authority and the operating expenses line item by \$125,000 of excess tuition income for utility costs which were higher than anticipated during the 1996-97 winter.
21. North Dakota State University
- June 10, 1998 - To increase other funds spending authority by \$1 million of local funds anticipated to be collected for the skills and technology training center.
22. Department of Public Instruction
- June 18, 1997 - To increase other funds spending authority and the teacher certification line item by \$70,000 to allow the transfer to the Educational Standards and Practices Board of certification fees collected by the department during the 1995-97 biennium.
 - December 3, 1997 - To increase federal funds spending authority and the operating expenses line item by \$1,037,791 for state mathematics assessments.
 - December 3, 1997 - To increase federal funds spending authority by \$3,125,000 for salaries and wages (\$69,895), operating expenses (\$86,355), and grants (\$2,968,750) for technology grants and related administration.
 - October 7, 1998 - To increase other funds spending authority and the grants - SENDIT line item by \$122,600 for Internet access fees paid by schools.
23. Public Service Commission
- June 10, 1998 - To increase other funds

spending authority by \$51,000 of federal funds for the elimination of safety hazards at an abandoned coal mine in Morton County.

24. Securities Commissioner
 - October 8, 1997 - To increase other funds spending authority and the securities protection line item by \$120,000 for moneys deposited in the securities protection fund.
25. Department of Transportation
 - March 4, 1998 - To increase other funds spending authority and the motor vehicle program line item by \$469,303 to be received from Unisys, Inc., relating to delays in completion of the vehicle registration and titling system.
 - March 4, 1998 - To increase other funds spending authority and the highway program line item by \$93,034,453 (\$74,137,335 of federal funds and \$18,897,118 of state special funds) for emergency work related to flooding in the Devils Lake Basin and other areas of the state.
26. UND-Lake Region
 - October 8, 1997 - To authorize the agency to obtain a \$200,000 loan from the Bank of North Dakota and to increase other funds spending authority and the capital improvements line item by the same amount for parking lot repairs and drainage improvements.
27. Veterans Home
 - June 18, 1997 - To transfer spending authority of \$209,000 from the capital improvements line item to salaries and wages (\$153,500) and operating expenses (\$55,500).
28. Water Commission
 - June 18, 1997 - To increase spending authority by \$128,000 from the state contingencies appropriation for the available storage acreage program in the Devils Lake Basin.
 - June 10, 1998 - To increase other funds spending authority and the operating expenses line item by \$50,000 of federal funds for travel expenses relating to providing flood assistance to eastern North Dakota.

BUDGET COMMITTEE ON GOVERNMENT FINANCE

The Budget Committee on Government Finance was assigned four areas of responsibility. House Concurrent Resolution No. 3045 directed a study of the current budget process, the results of the program-based performance budgeting pilot project, budget reforms in other states, and the feasibility of developing a legislative budget. House Concurrent Resolution No. 3002 directed a study of the state's investment process as it relates to the state bonding fund and fire and tornado fund and the monitoring of the performance of all investments of the State Investment Board and the Board of University and School Lands. Senate Concurrent Resolution No. 4019 directed a study of transportation funding. The committee was also assigned the responsibility of monitoring the status of state agency appropriations.

Committee members were Senators David E. Nething (Chairman), Rod St. Aubyn, Bob Stenehjem, and Harvey D. Tallackson and Representatives Rick Berg, Jeff W. Delzer, Bette Grande, Roy Hausauer, Keith Kempenich, Matthew M. Klein, William E. Kretschmar, Ronald Nichols, Elwood Thorpe, Ben Tollefson, and Gerry Wilkie.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

BUDGET PROCESS STUDY

House Concurrent Resolution No. 3045 directed the Legislative Council to study the current budget process including:

1. The results of the program-based performance budgeting pilot project.
2. Budgeting reforms in other states.
3. How agency and institution appropriation balances at the end of the biennium should be handled.
4. The benefits that new information technology could provide in budget development and budget presentation.
5. The effect of budget recommendations on future biennial budgets.
6. The detailed information supporting agency budget requests and the executive budget recommendation.
7. Alternative budgeting methods that use performance reviews to evaluate proposed agency budgets.
8. The feasibility of developing a legislative budget (Legislative Council directive).

Background

The committee reviewed the history of the fiscal process in North Dakota. The committee learned that in the 1960s, the Legislative Assembly determined that the

state needed to improve its fiscal processes. As a result, the Office of Management and Budget (OMB) was established, the state accounting system was created, the Governor was given the opportunity to recommend a budget to the Legislative Assembly, and the Legislative Budget Analyst and Auditor position of the Legislative Council was created to provide staff services to the Legislative Assembly on the budget. Major issues that led to these changes include:

1. The number of agency expenditures made without legislative oversight.
2. Appropriations that continued beyond the end of each biennium.
3. The number of continuing appropriations.

Since then, the Budget Section has often asked for improvements in the supporting information included in budget requests and the executive budget. The Budget Section has stressed the need for budget changes to be categorized as new programs, workload changes, inflationary increases, or by other categories to assist in analyzing the budget. The Legislative Assembly has stressed the importance of monitoring full-time equivalent (FTE) employees of state agencies and state government in total.

The committee reviewed the current budgeting process. The committee learned that state agencies prepare their budget requests based on the previous biennium's authorized budget levels. Changes to the previous level are identified and explained. Agencies' budget requests are prepared by program and by object code, such as salaries and wages, operating expenses, etc., for each program. The Office of Management and Budget reviews the budget requests and revenue forecasts and develops the executive budget recommendation presented to the Legislative Assembly at the organizational session in December. The Office of Management and Budget also prepares the bills for introduction to the Legislative Assembly necessary to implement the executive budget recommendations, including agency appropriation bills, bills containing proposed revenue changes, and bills making organizational or other changes recommended in the executive budget. The Legislative Assembly holds public hearings, considers, and acts on these appropriation bills as well as other bills containing appropriations or affecting revenues in order to develop the biennial state budget for North Dakota by the close of the legislative session.

Legislative Budget

The committee considered the feasibility of developing a legislative budget.

North Dakota and Other States

The committee reviewed previous legislative budget discussions occurring in North Dakota and budget

processes in other states that involve a legislative budget being introduced as an alternative to the executive budget. The committee learned that in 1981, the Legislative Assembly considered, but did not approve, Senate Bill No. 2426 that would have provided for a legislative budget to be developed by a subcommittee of the Budget Section. Of the other states reviewed, the committee learned that four states—Arizona, Colorado, New Mexico, and Texas develop legislative budgets as an alternative to the executive budget.

In Arizona, the legislative budget is prepared primarily by legislative staff and leadership from September through December before each legislative session. Both the executive recommendation and the legislative budget are presented to the legislature during the first week of the regular session.

In Colorado, a joint budget committee, consisting of six members, is responsible for developing the legislative budget from November through March by meeting three to four days per week. The executive budget is the starting point for the joint budget committee to develop its legislative budget.

In New Mexico, the legislative budget is prepared from September through December of each year preceding the legislative session by a 16-member interim Legislative Finance Committee. The committee meets three to four days per week from September through December to develop the budget with the assistance of the legislative fiscal staff. Both the executive and legislative budgets are presented to the legislature on the first day of the regular session which begins in January.

In Texas, the legislative budget is prepared from March through December of each even-numbered year by the Legislative Budget Board staff. Legislative leadership provides staff with general budget guidelines, but a legislative committee does not oversee the development of the legislative budget. The legislative budget in Texas is the primary budget document considered by the full legislature during the session. Although the Governor may recommend a detailed executive budget, recent Texas governors have made general budget recommendations for the legislature to consider rather than a comprehensive detailed executive budget.

Legislative Budget Procedures

The committee considered procedures that could be involved in the development of a legislative budget. The committee considered additional budget-related activities that could occur during the interim and during the session to result in the completion of a legislative budget by the close of the legislative session.

Interim enhancements would expand interim budget-related activities of the legislative branch through the Legislative Council's committee structure. The Legislative Council budget committees could:

1. Monitor the implementation of agency budgets, including legislative intent items.
2. Conduct selected agency program reviews or studies.

3. Conduct budget tours.
4. Receive agency and public testimony regarding the implementation of an agency's current budget and development of the next biennial budget.
5. Provide input for agency budget development.
6. Review agency budget requests.
7. Identify major budget issues and priorities.
8. Request specific budget-related information to be prepared by agencies and presented to Appropriations Committees during the next legislative session.
9. Make observations and report major budget findings.
10. Make budget recommendations.
11. Monitor revenue collections and be involved in preliminary revenue estimate development for the next biennium.

Legislative session activities would result in completing the legislative budget by the close of the regular session as follows:

1. The Legislative Assembly would use the Legislative Council's budget report, agency budget requests, the executive budget recommendation, and analyses prepared by the legislative fiscal staff to develop the legislative budget by the close of the regular session.
2. The Legislative Assembly would adopt or develop its legislative revenue forecast considering the recommendations of the Legislative Council and the executive budget revenue forecast recommendation.
3. Appropriation bills would be prepared by the Appropriations Committees during the session rather than being introduced in support of the executive budget recommendation. The Appropriations Committees would have available for consideration in the development of the appropriation bills, agency budget requests, the executive budget recommendation, Legislative Council budget recommendations and priorities, legislative budget initiatives and priorities, and additional budget-related information prepared by agencies as a result of interim committee work.
4. After the close of the session, the legislative fiscal staff would prepare a report on the approved legislative budget which would include supporting information, including a comparison to the executive budget.

Interim Committees and Activities

The committee received a report from the Legislative Council staff indicating that the Legislative Council may need to create a legislative budget committee and four interim budget committees to review, analyze, and evaluate programs, budgets, and budget requests of agencies in order to develop budget recommendations to

assist the Legislative Assembly in approving a legislative budget by the close of the legislative session.

The following types of activities could be assigned to the interim committees:

1. The monitoring of the implementation of agency budgets as approved by the Legislative Assembly.
2. The monitoring of income and expenditures of agencies compared to their projected income and expenditures.
3. The reviewing of agency programs as directed by the legislative budget committee.
4. The conducting of budget-related studies as directed by the Legislative Assembly or the legislative budget committee.
5. The visiting of state institutions (budget tours).
6. The consideration of alternative budget scenarios for an agency.
7. The reviewing, analyzing, and evaluating of programs and activities of an agency.
8. The reviewing of agency program goals and objectives and the monitoring of their progress toward achieving the goals and objectives.
9. The reviewing of performance measures of agencies and monitoring their actual performance.
10. The reviewing of agency budget requests.
11. The reviewing of input from agency personnel and the public regarding agency budgets and performance.
12. The identification of legislative priorities relating to agency budgets.
13. The identification of major budget issues the Legislative Assembly should consider addressing.
14. The development of budget-related recommendations.
15. The monitoring of general fund revenue collections of the current biennium.
16. The monitoring of special fund revenues and balances and federal fund receipts of the current biennium and project revenues and receipts for the subsequent budgeting cycle.
17. The development of, in cooperation with the Tax Department and OMB, recommendations relating to general fund revenue projections for the subsequent budgeting cycle.
18. The reporting of findings and recommendations to the legislative budget committee.

It is anticipated that the legislative budget committee and other interim budget committees would focus on major agency issues, legislative concerns, budget initiatives, and alternative budget scenarios rather than recommending a specific funding level for an entire agency's budget.

Estimated Cost

The estimated biennial cost of travel and per diem for

the legislative budget committee and four interim budget committees totals \$141,080. The estimated biennial cost of two additional fiscal staff positions and one support position to meet the additional demand for staff services totals \$298,402. These estimates could be more or less depending on:

1. The extent to which studies now assigned to interim budget committees are done by the committees created to assist the legislative budget committee.
2. The number and length of meetings of these new committees. The estimate assumes a similar meeting schedule as current interim budget committees.
3. The extent to which studies now assigned to interim budget committees are conducted by other Legislative Council committees or by additional Legislative Council committees.

The schedule below presents the detail of these cost estimates:

	Estimated Biennial Cost
Salaries and wages	
Committee member per diem	\$57,690
Permanent employees - Three FTE	246,974
Total	\$304,664
Operating expenses	
Committee member travel	\$83,390
Data processing	24,128
Other	12,300
Total	\$119,818
Equipment	\$15,000
Total	\$439,482

If statutory changes are made providing for the Legislative Council to develop a comprehensive legislative budget proposal for presentation at the organizational session, an estimated two additional interim budget committees, four additional staff positions, and related per diem, travel, and other operating and equipment funding would be needed. The fiscal impact of this proposal would total \$971,041, or \$531,559 more than the proposal reviewed above involving only budget-related recommendations.

Benefits and Concerns

The committee discussed benefits and concerns of developing a legislative budget and receiving testimony from state agency representatives regarding this topic. Major items heard and discussed include:

1. The need for legislators to receive budgetary information earlier to assist in making budgetary decisions.
2. Concern regarding the limited amount of time available during the legislative session for legislators to adequately address budget concerns. Additional time spent prior to the session would be valuable in analyzing agency budgets during the session.

3. Developing a legislative budget would, to a greater extent, involve legislators not serving on Appropriations Committees in the budgeting process.
4. Because of the interim budget activities, Appropriations Committee members might be more familiar with budget information which could potentially speed up the process during the session.
5. Being involved in agency budget development and reviewing budget requests prior to the session will familiarize legislators with agency budgets and could especially benefit legislators who may serve on Appropriations Committees for the first time.
6. More legislators would be involved in the budgeting process and the minority party would have more input in budget development.
7. Legislators might refrain from recommending programs that differ from those included in the executive budget because of the way a change is reported in relation to the executive budget. The development of a legislative budget may allow more legislative initiatives to be considered.
8. At times leadership now is put in a position of reacting to changes made to the executive budget rather than speaking to a legislative position. A legislative budget may allow legislative initiatives to be considered equally with the executive budget.
9. Under the current budget process, the Legislative Assembly reacts to budget issues and recommendations rather than being proactive in developing budget recommendations to address budget issues through the development of a legislative budget.
10. In the development of a legislative budget, agency performance should be considered and included as supporting information for budget recommendations.
11. Concern that activities involved in a legislative budget will duplicate activities of OMB.
12. Concern regarding the additional amount of time legislators would spend meeting prior to the session.
13. Concern that extensive interim committee work will need to be done at the same time as a number of legislators will be campaigning for reelection.
14. Concern that agencies may need to work with two sets of budget guidelines if the Legislative Assembly also sets budget guidelines.
15. Concern that estimated costs may increase substantially in future years if legislative budget development is expanded to include specific recommendations in all areas of the state budget.

Recommendations

The committee recommends Senate Bill No. 2031 to provide for a legislative budget that includes the following:

1. The Legislative Council would create a legislative budget committee to coordinate and direct activities involved in the development of budget recommendations to assist the Legislative Assembly as it develops the final legislative budget. The legislative budget committee composition would be determined by the Legislative Council. With the advice of the legislative budget committee, the Legislative Council would create additional committees to assist the legislative budget committee in performing its duties and responsibilities. This will allow for greater involvement by the Legislative Assembly and allow more legislators to have input in the budgeting process of state government. A goal of the budgeting process is to include historic and anticipated agency performance as supporting information for budget recommendations.
2. The legislative budget committee would:
 - a. Develop by June 1 of the year preceding the legislative session, a preliminary legislative budget report, subject to Legislative Council approval. The report would include goals for revenues, major appropriations, and the ending general fund balance for the next biennium.
 - b. Develop budget guidelines and parameters, subject to Legislative Council approval, for the interim budget committees to utilize in the development of their budget recommendations.
 - c. Advise the Legislative Council on the interim budget committee structure needed to address legislative budget issues.
 - d. Assign budget-related studies identified by the Legislative Assembly (in a concurrent resolution or section of a bill) to the interim budget committees. The legislative budget committee could assign other budget-related studies it determines necessary to interim budget committees during the interim.
 - e. Assign program reviews it determines necessary to other committees designated by the Legislative Council to have budget responsibilities.
 - f. Review, analyze, and evaluate budgets, budget requests, programs, and activities of state agencies, institutions, and departments.
 - g. Monitor agency performance by using performance measures when appropriate.
 - h. Develop budget forms, guidelines, or requests for supporting data that agencies

would have to include in their budget requests. These forms, guidelines, or other requests would be incorporated by OMB into the budget request forms and budget guidelines issued by OMB for the agencies to use when preparing their budget requests. Agencies would continue to prepare only one request.

- i. Conduct hearings it determines necessary to perform its duties and responsibilities. Interim committees designated by the Legislative Council to have budget responsibilities would also hold hearings necessary to assist the legislative budget committee in performing its duties and responsibilities. Hearings could be held jointly with OMB's executive budget hearings.
 - j. Review and approve any reports or recommendations of the interim committees as designated by the Legislative Council.
 - k. Develop budget-related recommendations to assist the Legislative Assembly as it develops policy and provides appropriations for the operations of state government. The recommendations could relate to the state budget or any part of the state budget, including general fund revenues and appropriations, special funds or federal funds, funding or operations of state agencies, and assistance to political subdivisions.
 - l. Present a report on its budget-related recommendations to the Legislative Council in November and to the Legislative Assembly.
 - m. Provide assistance during the legislative session as requested by legislative leadership.
3. Agencies, including OMB and the Tax Department, would be required to cooperate with legislative committees and provide requested information, including economic and revenue projection information.
 4. The Governor would continue to present the executive budget at the organizational session.
 5. The appropriation bills would be prepared by the Appropriations Committees during the session rather than being introduced in support of the executive budget recommendations. A section is added providing that the Legislative Assembly is to adopt rules to provide for the consideration of budget recommendations made by the Governor and the Legislative Council and to provide for preparation of appropriation bills by the Appropriations Committees based on hearings during the legislative session on agency budget requests.
 6. The fiscal staff, under the supervision of the Legislative Budget Analyst and Auditor, would provide staff services to the legislative budget

committee and associated committees to assist these committees in performing their duties and responsibilities. Services by other members of the Legislative Council staff would also be available to provide such assistance as may be necessary for the Legislative Council to carry out these provisions. The fiscal staff would continue to analyze the executive budget and would provide comparisons to the budget recommendations resulting from the interim work prior to the start of the legislative session. After the close of each legislative session, the fiscal staff would prepare a report on the legislative budget as approved by the Legislative Assembly.

Performance Budgeting

Pilot Project

The committee reviewed the history of the program-based performance budgeting pilot project. The committee learned that the 1993-94 interim Budget Section requested that OMB ask all agencies and institutions to include, to the extent possible, service efforts and accomplishments in the 1995-97 budget request forms and to use this information to support the executive budget. The Office of Management and Budget developed a pilot project to incorporate service efforts and accomplishments into the budgeting process. The Office of Management and Budget chose the 14 agencies listed below to be involved in the program-based performance budgeting pilot project for the 1995-97 biennium.

1. OMB.
2. Information Services Division.
3. State Auditor.
4. Central Services Division.
5. Board of University and School Lands.
6. Department of Human Services - Aging Services - Vocational Rehabilitation.
7. Insurance Department.
8. Securities Commissioner.
9. Highway Patrol.
10. Department of Corrections and Rehabilitation - Parole and Probation.
11. Department of Economic Development and Finance.
12. Department of Tourism.
13. Parks and Recreation Department.
14. Department of Transportation.

Budget requests of these pilot agencies included information in support of meeting statewide and agency goals, objectives, and strategies. Under each major program of the agency, goals, objectives, and strategies are listed as well as the description and justification of the strategy and performance measures, including outcome, output, efficiency, effectiveness, and explanatory measures. The appropriation bills for these agencies included program line items rather than object code line items.

The 1995 Legislative Assembly chose to appropriate

funds on a program basis for 9 of the 14 pilot agencies as follows:

1. OMB.
2. Information Services Division.
3. State Auditor.
4. Central Services Division.
5. Board of University and School Lands.
6. Highway Patrol.
7. Department of Corrections and Rehabilitation - Parole and Probation.
8. Parks and Recreation Department.
9. Department of Transportation.

The remaining five agencies received object code line item appropriations but were expected to continue to monitor and strive to achieve their performance measure goals and objectives. These agencies include:

1. Department of Human Services - Aging Services - Vocational Rehabilitation.
2. Insurance Department.
3. Securities Commissioner.
4. Department of Economic Development and Finance.
5. Department of Tourism.

The 1995-96 interim Budget Section reviewed reports on the pilot project and asked OMB to continue to work with only the nine agencies in the development of the 1997-99 biennium budget requests and executive recommendation and that those agencies be subject to program reviews. In addition, the Budget Section asked that the appropriation bills for the 1997 Legislative Assembly for the agencies with program line items include a separate section identifying the amounts for salaries and wages, operating expenses, equipment, and grants for each agency. The 1997 Legislative Assembly continued the program line item appropriations for the nine pilot agencies and object code line item appropriations for the remaining five agencies and asked that they continue to monitor their performance measures.

Status of Pilot Project

The committee heard reports from agencies involved in the program-based performance budgeting pilot project regarding its benefits, concerns, and usefulness. Agencies reporting included OMB, Central Services Division, Insurance Department, Department of Transportation, and the State Auditor's office. Major comments made include:

1. A statewide strategic planning process should be developed by the legislative and executive branches to meet budgetary and program evaluation needs and to evaluate state agency performance.
2. Appropriation bills should include each agency's mission, goals, and objectives and, when applicable, performance measures.
3. More comprehensive agency program reviews and program authorization reviews should be conducted.

4. The Legislative Assembly should appropriate moneys by program, and state agencies should allocate costs to programs to reflect their true costs.
5. Although the state has not received a substantial amount of input from residents or customers in the development of the state's strategic plan, more input will be sought if performance budgeting becomes the primary budgeting method for North Dakota.
6. Performance measure information is used by state agencies to assist in obtaining federal grants.
7. Legislative decisions on agency funding should be related to the effect the funding decision has on the performance of an agency.
8. Performance budgeting benefits include:
 - a. Requiring agencies to do strategic planning in order to develop specific measures relating to goals and objectives.
 - b. Requiring management to be accountable for fulfilling the purpose of the agency and achieving its goals in addition to being accountable for the amount of financial resources used.
 - c. Allowing management flexibility in using financial resources to achieve goals.
 - d. Assisting management in planning for future needs and identifying possible problems by tracing performance measures.
9. It is difficult for agencies to meet performance measures that it has no control over, such as agencies that are dependent upon federal funds to operate their programs.
10. In some instances, measures do not accurately reflect departmental activities.
11. Concern was expressed regarding the amount of data collection and report preparation that is required as a part of the project.
12. It is important to develop meaningful and useful performance measures.
13. Each agency should develop a strategic business plan before implementing performance budgeting.
14. It is important to educate employees on the use of performance measures and to include employees in the development of measures.
15. Concern was expressed that information gathered and reported is not useful to the agency.
16. The Office of Management and Budget does not plan to prepare any further performance measure reports pertaining to the pilot project unless a report is specifically requested.

Other States

The committee reviewed the status among other states in the development of performance measures as part of the budgeting process, the use of performance measures by legislators, the extent to which

performance measures are monitored, and how the results are reported to the legislature. The committee learned that all 16 states reviewed, to some extent, are utilizing performance measures. In some states, state law requires agencies to develop performance measures while in others it is a part of the budget preparation process. While performance measures are a more recent development in most states and a few of the states indicated that the measures may be used more in the future, most states indicated that from a legislative perspective, the performance measure information is not being used as anticipated when the performance measure concept was first initiated. Exceptions include Montana, Texas, Florida, and Louisiana. Montana reported that 13 state agencies are involved in a performance budgeting pilot project, and for these agencies, the performance measures are included in agency appropriation bills. Texas began performance budgeting in 1992 and provides its appropriations by goal and strategy line items. The appropriations bill in Texas includes performance measures for each goal and strategy of an agency. In Florida, agencies are beginning to implement performance budgeting which involves a three-year implementation process for each agency. The performance information is included in budget documents and incorporated into the appropriation bills during the session. In Louisiana, state agencies include their performance measures in budget documents, and the measures are included in agency appropriation bills.

Other Considerations

Other information received and discussed by the committee regarding performance budgeting includes:

1. Program budgeting provides the mechanics for setting priorities of agencies, but the current performance budgeting system lacks accountability.
2. Adequate education needs to be provided to users of performance budgeting information.
3. It is important that the Legislative Assembly be involved in setting appropriate measures for agencies.
4. Performance budgeting causes agencies to evaluate their operations.
5. There are concerns that actual performance measure data available to the Legislative Assembly for decisionmaking may not be current.
6. Information was presented on performance budgeting received by the Legislative Council staff at a performance budgeting conference in Texas entitled *Managing for Results - Decision-making in the Age of Accountability*. Major items presented include:
 - a. Performance-based budgeting provides a report card on agency performance.
 - b. The number of measures should be limited to those of most importance and those that are pertinent to decisionmaking.

- c. The federal government is becoming more involved and is beginning to require states to provide performance information relating to federal funds received.
- d. Adequate training is necessary for those involved in performance budgeting.
- e. Funding will drive agency actions before performance measures.
- f. Measures should not be used for which the agency has no control.
- g. Base line data and benchmarks for comparison purposes when evaluating data reported should be developed.

Recommendations

The committee recommends that if the program-based performance budgeting pilot project continues, that the Appropriations Committees review agency performance and create, with agency input, performance measures for these agencies.

In Senate Bill No. 2031, providing for a legislative budget, the committee included a provision providing that a goal of the budgeting process is to include historic and anticipated agency performance as supporting information for budget recommendations.

Other Budgeting Issues

Other budgeting issues considered by the committee include:

1. How agency and institution appropriation balances at the end of a biennium should be handled.
2. The benefits that new information technology could provide in budget development and budget presentation.
3. The effect of budget recommendations on future biennial budgets.
4. The detailed information supporting agency budget requests and the executive recommendation.
5. Alternative budgeting methods that use performance reviews to evaluate proposed agency budgets.
6. Other budgeting issues.

How Agency and Institution Appropriation Balances at the End of the Biennium Should be Handled

The committee identified 13 sections of appropriation bills approved by the 1997 Legislative Assembly allowing agencies to continue appropriation authority beyond the close of the budget cycle. Ten of these sections allowed agencies to continue appropriation authority beyond the 1995-97 biennium. Three of the sections authorize agencies to continue 1997-99 appropriations beyond June 30, 1999. The amount of authority continued beyond June 30, 1997, totaled \$8,060,622. This amount is in addition to agency capital improvements carryover authorized by the Office of Management and Budget pursuant to North Dakota Century Code Section

54-44.1-11 which for the 1995-97 biennium appropriations totaled \$2,511,602.

The committee's review of selected other states revealed that most other states' policies are similar to those of North Dakota which provide that any unspent appropriation authority is canceled at the close of the budget cycle unless an exception is provided by the Legislative Assembly. States with differing policies include Iowa, South Dakota, Michigan, and Oklahoma. Iowa allows agencies to retain 25 percent of their unspent appropriation authority relating to general operating funding that may be spent for technology improvements during the next budgeting cycle. South Dakota allows federal or other funds to be continued for one year, if approved, and allows general fund authority to be continued for one year to pay for contractual obligations, if approved. Any other unspent general fund authority is canceled at the close of the budget cycle, and funds in the amount of the unspent authority are transferred to a budget reserve fund up to a cumulative maximum of five percent of the state's general fund appropriation. Michigan deposits funds equal to the amount of its unspent general fund appropriation authority in Michigan's budget stabilization fund. Oklahoma agencies may continue appropriation authority but the estimated unspent amount is used to reduce appropriations for the subsequent budget cycle.

Major committee discussion and other testimony received by the committee regarding how to handle unspent appropriation authority at the end of the biennium include:

1. The policy of the Legislative Council staff has been to advise that any unspent authority at the end of each budget cycle should be canceled, and if necessary funds be reappropriated for the following biennium. This allows the Legislative Assembly the opportunity to review unspent authority and its use. If too much carryover authority is approved, the biennial state budget will not be accurate and the Appropriations Committees may find it too difficult to determine funding priorities if agencies have access to funds in carryover accounts.
2. In the past, the Legislative Assembly has authorized certain agency appropriations to continue beyond the close of the biennium based on the merit of each request.
3. The Office of Management and Budget has introduced legislation in the past which would have allowed agencies to keep a portion of their unspent appropriation authority for one-time expenditures; however, the Legislative Assembly did not approve the proposal.
4. If the state had a system for measuring agency performance, allowing agencies to retain a portion of their unspent appropriations could be an incentive for improving agency performance.
5. Transferring an amount equal to the state's unspent appropriation authority to a budget

reserve fund at the end of each biennium might provide funding stability if budget reductions become necessary in the future due to revenue shortfalls.

6. The Legislative Assembly should retain control of agency appropriations by canceling appropriation authority at the close of the budget cycle.

Determine the Benefits that New Information Technology Could Provide in Budget Development and Budget Presentation

The committee reviewed technology that may improve budget presentations including:

1. Overheads.
2. Slides.
3. Computer-generated presentations.
4. Audio.
5. Video.
6. Additional supporting information available at the hearing to respond to questions.
7. Ability to have interactive video access to experts or other groups to provide information to the committee.

The committee discussed budgetary information that should be available on-line including:

1. Reports of OMB including budget requests, budget recommendations, budget summary, and others.
2. Reports from the Legislative Council staff including budget status, fiscal impact reports, agency summaries, budget analysis reports, and others.
3. Agency information including testimony, supporting documents, and other agency information.
4. Fiscal notes.

The committee heard a report on changes being considered to the Legislative Council's budget status system. The system, used for monitoring the development of the state budget during the legislative session, is being considered for enhancements to be compatible with OMB's Statewide Integrated Budget and Reporting (SIBR) System as well as the Legislative Assembly's personal computer based system, and to provide additional information to legislators and others on the development of the state budget. The committee learned that because of the amount of time needed for the development of the system, it would not be developed until the 1999-2000 interim if funding is again approved by the Legislative Assembly.

The Effect of Budget Recommendations on Future Biennial Budgets

Items affecting future budgets considered by the committee include:

1. One-time revenues.
2. One-time expenditures.
3. New program expenditures.

4. Discontinued program expenditures.
5. Leases or other contractual obligations of agencies, if continued beyond one biennium.
6. Delayed effective date legislation.

The committee discussed ways to present the effect of budget recommendations on future budgets by:

1. Requiring this information to be included on budget request forms.
2. Requiring this information to be included in executive budget documents.
3. Continuing to include this information in fiscal notes.
4. Encouraging the Legislative Assembly, when possible, to include this information in its budget-related documents.

Other Budgeting Issues

Other budgeting issues considered by the committee and reports and information received by the committee include:

1. In addition to the review of budgeting methods in other states discussed previously in this report, the committee also reviewed other states' budgeting methods relating to general budgeting, revenue forecasting, appropriation bills, agency flexibility to move funds between line items, budget monitoring or program reviews conducted between legislative sessions, involvement of legislators not serving on appropriations in the budgeting process, and fiscal notes.
2. A report comparing original legislative general fund revenue estimates for the biennium to actual collections for the 1981-83 biennium through the 1995-97 biennium. The committee learned that the percentage variances during this period ranged from (15.6 percent) to 3.8 percent.
3. The committee reviewed legislative fiscal staff services among the states. The committee learned that legislative fiscal staff services provided for state legislatures varies among the states. Some states, such as North Dakota, South Dakota, Vermont, West Virginia, and Wyoming, have four or five fiscal staff professionals each while Michigan has 46 fiscal staff professionals, and Texas has 99 fiscal staff professional positions. In 14 of the 50 states, the state provides funding for each legislator to hire the legislator's own full-time professional staff.
4. The committee reviewed zero-based budgeting and its use in North Dakota and other states. The committee learned that the purpose of zero-based budgeting is to reevaluate and reexamine all programs and expenditures for each budget cycle by analyzing workload and efficiency measures to determine priorities or alternative levels of funding for each program or

expenditure. Through this system, each program is justified in its entirety each time a new budget is developed. In North Dakota, the 1977-78 Budget Section reviewed zero-base budgeting, and although North Dakota did not adopt zero-base budgeting as its primary budgeting tool, a number of its components were incorporated into budget request forms used by agencies over the years in preparation of their budget requests submitted to OMB and to the Legislative Assembly. These components include:

- a. Preparing decision packages that identify agency services that would be provided at a funding level less than 100 percent of an agency's current funding level, usually 80 or 90 percent.
- b. Requiring agencies to submit a 95 or 97 percent budget request compared to current funding levels.
- c. Ranking agency activities in priority order above a certain level.
- d. Identifying program goals and objectives.
- e. Explaining the effect of not funding an activity within an agency.

Other states that report utilizing zero-base budgeting to some extent in their budget preparation process include Colorado, Iowa, Nebraska, and Oregon. Colorado utilizes zero-base budgeting for the preparation of approximately six agency budgets and intends to increase the number of agencies each year. The other three states, Iowa, Nebraska, and Oregon, use a modified zero-base budgeting system that does not require agencies to prioritize all of their programs. However, an agency may be required to prioritize programmatic funding being requested over a certain percentage of the current funding level or to prepare reduction decision packages to show the programmatic funding reductions in priority order if a funding level of less than 100 percent is approved.

5. The committee reviewed a recommendation made by the Public Administration Service, a consultant assisting the Budget Committee on Human Services in its study of the Department of Human Services, to improve budget presentations of the Department of Human Services. The recommendation provides that budget presentations for committees of the Legislative Assembly be presented as a "budget in brief" that includes the following:
 - a. Review the Governor's guidance under which the budget is being submitted.
 - b. Identify the overall goals of the department for the biennium, identifying any significant changes from the previous biennium and reasons for the change.

- c. Highlight pertinent trends, projections, and influences on the budget.
- d. Provide an overall high-level summary of the expenditures necessary to support the goals and identify federal, state, local, and private shares.
- e. Provide a high-level summary of projected revenue by revenue source.
- f. Identify specific initiatives that result in improved services, increased efficiencies and effectiveness, and those that support special projects.
- g. Identify new programs and major modifications to existing ones and the reason for the change.
- h. Identify programs and services that are candidates for elimination and why. Describe the impact of eliminating these programs.
- i. Provide rhetorical questions and answers and how a legislator can obtain additional information.

Committee discussion regarding other budget issues includes:

1. Concern regarding the lack of fiscal note supporting information for legislators to use in reviewing the accuracy of fiscal notes.
2. Support for budget tours and the possibility of enhancing budget tours and strengthening budget monitoring systems in order to inform more legislators on agency budgets.
3. The possibility of combining zero-base budgeting and performance budgeting to provide valuable information for agencies and the Legislative Assembly.
4. Both performance budgeting and zero-base budgeting attempt to achieve the same goal—to examine programs independently to determine benefits received. By using these systems, the Legislative Assembly may make more informed decisions on funding levels for specific programs.
5. If the Legislative Assembly approves the development of a legislative budget, supporting information prepared by agencies will need to be made available to the Legislative Assembly to a greater extent than currently provided.
6. Simplified budget reports are needed that legislators can use to relay budget information to their respective caucuses and constituencies.

Recommendations

The committee expresses support for the Department of Human Services using the budget presentation format listed below recommended by the Public Administration Service and approved by the Budget Committee on Human Services and recommends that the Legislative Assembly be supportive of other agencies making their budget presentations using a similar format:

1. Review the Governor's guidance under which the budget is being submitted.
2. Identify the overall goals of the department for the biennium, identifying any significant changes from the previous biennium and reasons for the change.
3. Highlight pertinent trends, projections, and influences on the budget.
4. Provide an overall high-level summary of the expenditures necessary to support the department's goals and identify federal, state, local, and private shares.
5. Provide a high-level summary of projected revenue by revenue source.
6. Identify specific initiatives that result in improved services, increased efficiencies and effectiveness, and those that support special projects.
7. Identify new programs and major modifications to existing ones and the reason for the change.
8. Identify programs and services that are candidates for elimination and why. Describe the impact of eliminating these programs.
9. Provide rhetorical questions and answers and how a legislator can obtain additional information.

The committee recommends that, as future changes are made to the budgeting process, the following items be considered as part of those changes:

1. The involvement of new technology in budget presentations that may include:
 - a. Overheads.
 - b. Slides.
 - c. Computer-generated presentations.
 - d. Audio.
 - e. Video.
 - f. Additional supporting information available at the hearing to respond to questions.
 - g. Ability to have interactive video access to experts or other groups to provide information to the committee.
2. The availability of budgetary information on-line that may include:
 - a. Office of Management and Budget reports, including budget requests, budget recommendations, budget summaries, and other budgetary information.
 - b. Legislative Council staff reports, including budget status, fiscal impact reports, agency summaries, budget analysis reports, and other budgetary information.
 - c. Agency information, including testimony, supporting documents, and other information.
 - d. Fiscal notes.
3. The effect of budget recommendations that involve one-time revenues, one-time expenditures, new program expenditures, discontinued program expenditures, leases or other contractual obligations, and delayed effective

date legislation on future budgets by:

- a. Requiring this information to be included on budget request forms.
 - b. Requiring this information to be included in executive budget documents.
 - c. Continuing to include this information in fiscal notes.
 - d. Encouraging the Legislative Assembly, when possible, to include this information in its budget-related documents.
4. Adequate information be provided supporting agency budget requests, executive budget recommendations, statements of purpose of amendment, and fiscal notes.

INVESTMENT PROCESS STUDY

House Concurrent Resolution No. 3002 directed the Legislative Council to study the state's investment process as it relates to the state bonding fund and the fire and tornado fund and to monitor the performance of all investments of the State Investment Board and the Board of University and School Lands.

Bonding Fund and Fire and Tornado Fund Investments

The bonding fund was created in 1915 and is maintained for bond coverage of public employees. The bonding fund is managed by the Insurance Commissioner, and the amount of coverage provided to each state agency is determined by the commissioner based on the amount of money and property handled and the opportunity for default. North Dakota Century Code (NDCC) Section 26.1-21-09 provides that premiums for bond coverage are to be determined by the Insurance Commissioner but may be waived if the state bonding fund balance is in excess of \$2.5 million. No premiums have been charged, possibly since 1953, because the bonding fund's balance has exceeded \$2.5 million.

The fire and tornado fund originated in 1919 and is maintained to insure various political subdivisions and state agencies against loss to public buildings and permanent fixtures. North Dakota Century Code Section 26.1-22-14 requires that if the fire and tornado fund balance is less than \$12 million, the Insurance Commissioner must increase assessments on policies.

The committee learned that the July 1, 1997, bonding fund balance was \$3,882,000 and on August 31, 1998, the balance was \$3,936,000. The July 1, 1997, fire and tornado fund balance was \$14,869,000 and on August 31, 1998, the balance was \$15,653,000.

The committee reviewed investment returns for the bonding fund and fire and tornado fund as follows:

Period	Total Return	
	Bonding Fund	Fire and Tornado Fund
Fiscal year 1996	6.98%	6.45%
Fiscal year 1997	9.49%	9.67%
Fiscal year 1998	14.33%	14.38%
First quarter of fiscal year 1999	-3.5%	-3.6%

The committee learned that the State Investment Board is responsible for investing the moneys of the bonding fund and fire and tornado fund under the direction of the Insurance Department.

The committee learned that on August 1, 1997, the State Investment Board, with the approval of the Insurance Department, changed the investment policy of the bonding fund and the fire and tornado fund. Previously, the investment policy provided for short-term fixed income and cash equivalent investments for the moneys of the bonding fund and fire and tornado fund. Under the new policy, the State Investment Board pooled the moneys of the various insurance-related funds, including the bonding fund, fire and tornado fund, insurance regulatory trust fund, petroleum tank release compensation fund, risk management fund, National Guard tuition trust fund, and the workers' compensation fund into an insurance trust. By pooling the funds, moneys of the bonding fund and fire and tornado fund may be invested in longer-term investments because a larger pool of funds is available to meet cash flow needs. The following schedule shows the previous asset allocation of the bonding fund and the fire and tornado fund:

Asset Class	Bonding Fund	Fire and Tornado Fund
Equities	10%	10%
Fixed income	20%	30%
Cash equivalents	70%	60%
Total	100%	100%

The schedule below presents the new asset allocation of the bonding fund and fire and tornado fund:

Asset Class	Percentage
Large capital domestic equity	15%
Small capital domestic equity	5%
Convertible bonds	10%
International equity	10%
Fixed income	50%
Cash equivalents	10%
Total	100%

The committee learned that while the new investment policy is still fiscally conservative, it is more aggressive in the investment of its funds which should improve investment returns.

The committee learned that the Insurance Department and the State Investment Board with the assistance of a consultant, developed and reviewed various investment policy scenarios that would meet their investment goals and yet maintain the safety and liquidity of the funds to meet statutory requirements. The new investment policy resulted from these discussions.

The committee learned that the value of the insurance trust, the investment pool containing the funds of the bonding fund, fire and tornado fund, workers' compensation fund, and other insurance-related funds, in November 1997 totaled \$637.2 million, \$30 million of which was in cash equivalent investments, and in August 1998, the trust had assets totaling \$678.2 million,

\$52.7 million of which was in cash equivalent investments.

The committee received information on the various types of investments of the bonding fund and fire and tornado fund as follows:

1. Large capital domestic equity - Invested in S&P 500 index fund and managed by State Street.
2. Small capital domestic equity - Managed by Nicholas-Applegate in growth companies that demonstrate earnings acceleration, sustainable growth, and positive relative price momentum.
3. Convertible bonds - Managed by the Trust Company of the West and invested in high-quality fixed income instruments that are convertible to equity.
4. International equity - Managed by Capital Guardian Trust, which conducts extensive research and uses a portfolio management team system of segment specialists.
5. Fixed income - Managed by the Bank of North Dakota and Western Asset Management. Both managers are restricted to investment grade securities.
6. Cash equivalents - Managed by the Bank of North Dakota and involves money market securities that provide liquidity and risk reduction.

The committee considered an option for increasing investment returns on the bonding fund and the fire and tornado fund. The committee considered adding provisions in statute that would enable the Insurance Commissioner to invest more fire and tornado fund and

bonding fund moneys in longer term investments by authorizing the Insurance Commissioner to obtain loans from the Bank of North Dakota to pay major claims or other major payments that may arise until the moneys invested are available. The committee determined that because the moneys in the bonding fund and the fire and tornado fund are now commingled with other insurance-related funds for investment purposes, the State Investment Board is easily able to make cash available for required distributions from these funds. Even very large distributions would not likely cause the need for security liquidations because the cash equivalent amount in the insurance trust is over \$30 million.

The committee also considered the possibility of lowering the statutory minimum balances of these funds, which for the bonding fund is \$2.5 million and for the fire and tornado fund is \$12 million. By lowering these minimum balances, a more aggressive investment strategy could be considered for these funds which could potentially increase returns beyond those projected under the current investment strategy; however, the potential for greater losses also increases. The committee reviewed three investment scenarios—scenario 1 is the current investment policy, scenario 2 is a somewhat more aggressive policy, and scenario 3 is even more aggressive. The committee reviewed projected returns of these scenarios under a normal investment environment, a pessimistic environment, and an optimistic environment. Under each scenario, the fire and tornado fund begins with a balance of \$16,162,000 while the bonding fund begins with a balance of \$4,038,000.

Asset Class	Asset Allocation		
	Scenario 1	Scenario 2	Scenario 3
Large capital United States equity	15%	30%	35%
Small capital United States equity	5%	15%	20%
Convertible bonds	10%	10%	10%
International equity	10%	15%	15%
Fixed income	50%	20%	15%
Cash equivalents	10%	10%	5%
Total	100%	100%	100%

Environment	Years	Fire and Tornado Fund		
		Scenario 1	Scenario 2	Scenario 3
Normal	1	\$17,422,636	\$17,551,932	\$17,600,418
	2	\$18,796,406	\$19,054,998	\$19,184,294
Pessimistic	1	\$14,691,258	\$14,044,778	\$13,753,862
	2	\$13,576,080	\$12,396,254	\$11,814,422
Optimistic	1	\$18,521,652	\$18,861,054	\$19,038,836
	2	\$21,253,030	\$22,044,968	\$22,465,180

Environment	Years	Bonding Fund		
		Scenario 1	Scenario 2	Scenario 3
Normal	1	\$4,352,964	\$4,385,268	\$4,397,382
	2	\$4,696,194	\$4,760,802	\$4,793,106
Pessimistic	1	\$3,670,542	\$3,509,022	\$3,436,338
	2	\$3,391,920	\$3,097,146	\$2,951,778
Optimistic	1	\$4,627,548	\$4,712,346	\$4,756,764
	2	\$5,309,970	\$5,507,832	\$5,612,820

The committee learned that if the balance in the fire and tornado fund would become less than \$12 million, the Insurance Commissioner would calculate the amount necessary to provide a \$12 million balance in the fund and increase the premium on each policy of the fund for the next year by the percentage necessary to return the fund to a \$12 million level. If the bonding fund balance would become less than \$2.5 million, premiums, as determined by the Insurance Commissioner, would be charged and collected until the fund balance is \$3 million, at which time premiums would again be waived. Currently, premiums are not charged on the bonding fund because the balance is above the \$2.5 million level.

Although the stock market dropped substantially during the first quarter of fiscal year 1999, at the end of August 1998, the bonding fund balance was \$3,936,000, \$1,436,000 more than the minimum balance requirement of \$2.5 million. The fire and tornado fund balance at the end of August 1998 was \$15,653,000, \$3,653,000 more than the minimum balance requirement.

The committee reviewed fiscal year-end balances and claims paid relating to the bonding fund and fire and tornado fund since 1991 as follows:

Balances		
Fiscal Year Ending	Fire and Tornado Fund	Bonding Fund
1996	\$14,546,818	\$3,722,552
1995	\$13,384,455	\$3,477,185
1994	\$20,557,570	\$5,966,324
1993	\$23,883,277	\$6,391,757
1992	\$21,995,864	\$6,019,814
1991	\$18,526,923	\$5,444,202

Claims		
Fiscal Year Ending	Fire and Tornado Fund	Bonding Fund
1996	\$4,400,111	\$320,261
1995	1,713,796	207,840
1994	847,867	173,673
1993	758,117	30,726
1992	429,257	50,406
1991	523,108	0
Total	\$8,672,256	\$782,906

Other State Investment Office Investments

The committee monitored the investments of the State Investment Board. The following schedule presents investment returns for funds invested by the State Investment Board:

Investment Performance (Percentages)				
Fund	Fiscal Year 1996	Fiscal Year 1997	Fiscal Year 1998	Fiscal Year 1999 - First Quarter ¹
Insurance Trust				
Consolidated	9.32	16.07	15.22	-5.42
Workers' compensation	9.50	16.57	15.82	-5.59
Fire and tornado	6.45	9.67	14.38	-3.60
Bonding	6.98	9.49	14.33	-3.50
Insurance regulatory trust	9.05	11.18	11.62	-3.13
Petroleum tank release compensation	8.18	12.66	13.26	-4.14
Risk management	N/A	N/A	12.39	1.26
Veterans' postwar trust	N/A	N/A	15.97 (6 mos.)	-12.48
Pension Trust				
Consolidated	15.85	19.48	14.71	-7.15
Public Employees Retirement System	16.09	19.71	16.07	-5.40
Teachers' fund for retirement	15.63	19.29	14.05	-8.27
Bismarck police	14.45	18.24	17.29	-5.01
Bismarck employees	14.50	18.25	17.35	-4.94
Job Service	24.70	27.89	22.36	-9.80

¹ September returns are unreconciled and are subject to change.

Board of University and School Lands Investments

The committee monitored investments of the Land Department. The committee learned that the Land Department administers the following permanent educational trust funds:

- Common schools.
- North Dakota State University.
- School for the Blind.
- School for the Deaf.
- State Hospital.
- Ellendale - Income earned on the Ellendale trust fund is allocated equally to the School for the Blind, Dickinson State University, Minot State University, Minot State University - Bottineau,

Veterans Home, State Hospital, and State College of Science.

- Valley City State University.
- Mayville State University.
- Youth Correctional Center.
- State College of Science.
- School of Mines - Income earned by the School of Mines trust fund is distributed to the University of North Dakota.
- Veterans Home.
- University of North Dakota.

The Land Department also administers investments of the capitol building fund, coal development trust fund, and the lands and minerals trust fund.

The committee learned that the long-range goal of Land Department investments is to increase both principal and income at a rate greater than or equal to the rate of inflation. To accomplish this goal, the Board of University and School Lands intends, over the next 8 to 12 years, to increase the percentage of assets invested in the equity and convertible securities from approximately 39 percent of total assets to approximately 50 to 60 percent.

The committee learned that the purpose of the Land Department's fixed income assets is to generate long-term, predictable income and cash flows needed to meet the board's distribution goals. The purpose of the Land Department's equity and convertible securities

investments is to provide the fund growth needed to increase both trust assets and distributions at a rate greater than or equal to inflation.

The committee received information on turnover ratios, total return, realized income and gains, and expense ratios for each fund manager utilized by the board. The committee learned that the fee rate paid by the Land Department on its fiscal year 1997 investments averaged .31 percent and .30 percent in fiscal year 1998.

The committee received information from the Land Department on its total permanent educational trust assets, its asset allocation percentages, and investment returns as follows:

	June 30, 1996	June 30, 1997	June 30, 1998	September 30, 1998 (Estimate)
Total assets	\$389,000,000	\$427,690,000	\$465,115,000	\$443,216,000
Asset Allocation Percentages				
Fixed income	63.8%	60.0%	57.2%	59.9%
Cash equivalents	1.0%	1.0%	1.0%	1.8%
Convertible securities	7.4%	9.0%	9.6%	9.0%
Small/Mid-capital equities	7.4%	9.0%	9.6%	8.4%
Large capital equities	13.0%	12.0%	13.0%	12.2%
International securities	7.4%	9.0%	9.6%	8.7%
Total	100%	100%	100%	100%

Investment Returns	Fiscal Year 1997	Fiscal Year 1998
Permanent educational trust assets:		
Fixed income	7.79%	7.77%
Equity and convertible securities	19.77%	16.78%
Capitol building fund	5.07%	5.19%
Lands and minerals trust fund	5.56%	6.04%
Coal development trust fund	5.38%	4.22%

Bank of North Dakota Returns

The committee received information from the Bank of North Dakota on interest rates paid on state deposits.

The following schedule compares the Bank of North Dakota rates to other North Dakota financial institutions and the United States Treasury:

Length of Investment	Average North Dakota Financial Institution	Bank of North Dakota	United States Treasury Rates
90 days	4.38%	4.13%	5.10%
180 days	5.18%	4.29%	5.26%
One year	5.34%	5.50%	5.42%
Two years	5.61%	5.75%	5.73%
Three years	5.78%	5.85%	5.81%
Four years	5.85%	5.90%	5.87%
Five years	6.00%	6.00%	5.92%

The committee learned that because Bank of North Dakota profits are transferred to the general fund, based on the Bank of North Dakota's 1996 earnings, the state will receive an additional 7.5 percent return on its investments.

Other Information

The committee learned that the 1995-96 interim committee that studied the investment process was informed that the reason the bonding fund received low investment returns was because the majority of its investments were short term to accommodate any legislative transfers of bonding fund moneys to the general fund.

The committee reviewed investment study findings from the 1995-96 interim. The committee learned that based on a survey of state agencies asking for suggestions to improve investment returns on state investments, the following major suggestions were received:

1. Allow for additional investment options.
2. Change the responsibility for investing funds.
3. Keep more or all of the earnings on the fund instead of the earnings going to the general fund.
4. Increase Bank of North Dakota interest rates.

Recommendations

The committee recognized that bonding fund and fire and tornado fund investment returns increased substantially in fiscal year 1998 as a result of the change in investment policy, and the committee makes no recommendations regarding its state investment process study.

TRANSPORTATION FUNDING STUDY

Senate Concurrent Resolution No. 4019 directed the Legislative Council to study the adequacy of transportation funding in North Dakota.

North Dakota Highway System

North Dakota has 167 miles of public roads for every 1,000 people in the state. The Department of Transportation is responsible for maintaining and improving 7,379 miles of state highways, including 2,723 miles of state highways that are on the national highway system. The state highway system consists of seven percent of the total public roads in North Dakota but carries approximately 61 percent of the total vehicle miles traveled. The following schedule presents North Dakota road miles:

System	Miles
National highway system	2,723
State highway system	4,656
County roads	19,464
Township roads	56,258
Local city streets	3,730
Trails	19,818
Total	106,649

Roads are generally designed for a 20-year life. The average age of the North Dakota highway system is 17 years. Approximately 40 percent of the state's highways are over 20 years old. To maintain the 20-year cycle of surface improvements to the state system, the department would need to resurface or reconstruct approximately 400 miles each year. During the past five years, the department has resurfaced or reconstructed approximately 180 miles per year.

The following schedule provides average improvement costs on the state highway system:

Improvement	Cost Per Mile (1997)
Seal coat (by contract)	\$13,000
Four-inch asphalt overlay	\$150,000
Asphalt surfacing reconstruction (includes subgrade repair and resurfacing)	\$370,000
Total reconstruction (includes grading and asphalt surfacing)	\$550,000
Interstate concrete recycling (two lanes in one direction)	\$950,000

Highway Revenues and Distributions

The committee reviewed highway-related revenues and the distribution of those funds. The committee learned that the major sources of state funding for highways in North Dakota are motor vehicle fuel taxes, special fuel taxes, special fuel excise taxes, and motor vehicle registration fees.

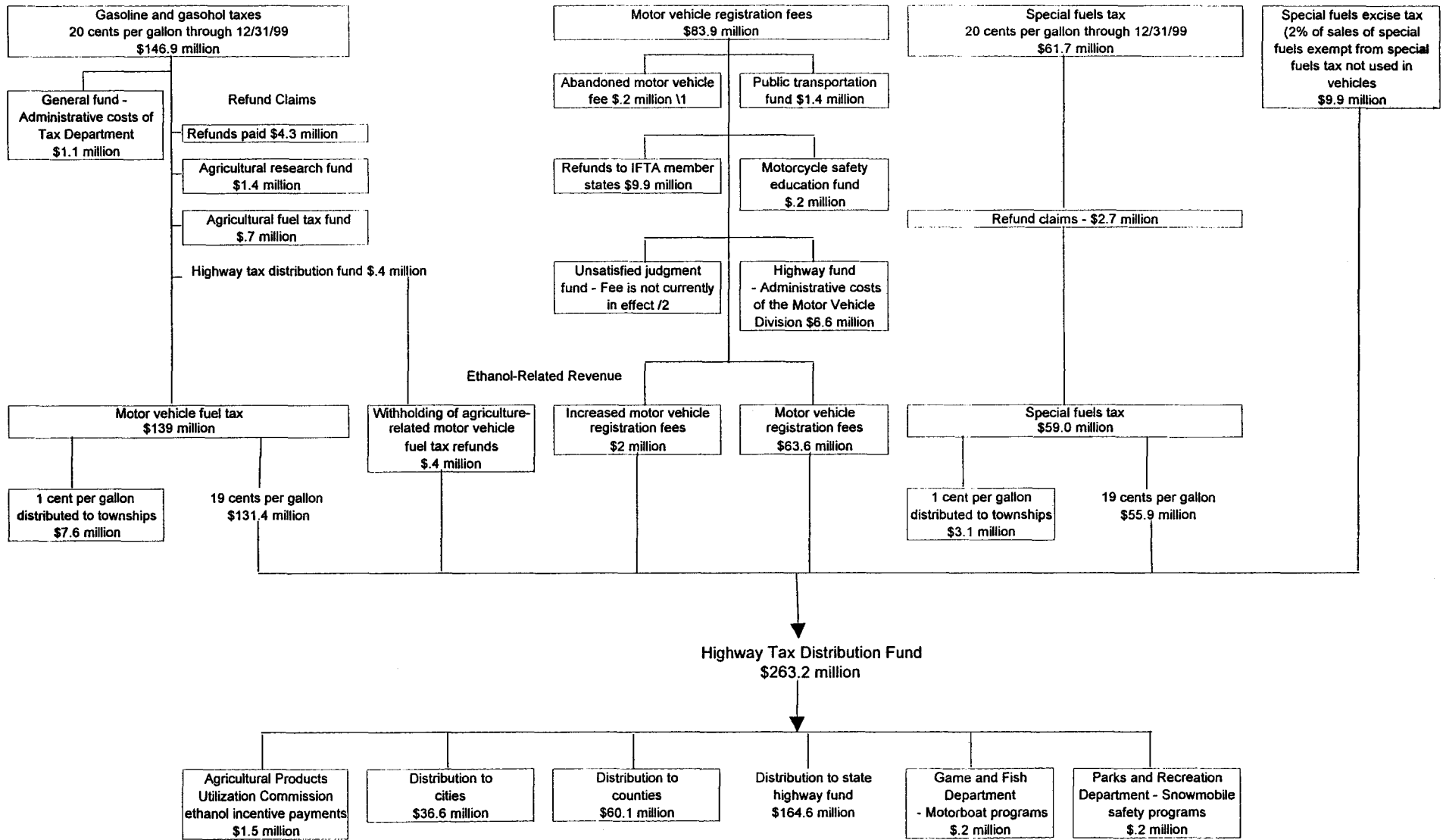
The North Dakota motor vehicle fuel tax and special fuel tax are 20 cents per gallon; however, three cents of these taxes is scheduled to expire on January 1, 2000, unless a change is made by the 1999 Legislative Assembly.

A one-cent gas tax over the 20 cents per gallon raises an estimated \$3.5 million per year or \$7 million per biennium. A one-cent special fuels (diesel) tax over the current 20 cents per gallon raises an estimated \$1.5 million per year or \$3 million per biennium. Of the \$10 million total for a biennium, \$6.3 million or 63 percent is deposited in the state highway fund and \$3.7 million or 37 percent is distributed to cities and counties.

A \$1 increase in motor vehicle registration fees is estimated to generate \$750,000 per year or \$1.5 million per biennium. Of the \$1.5 million total for the biennium, \$945,000 or 63 percent is deposited in the state highway fund and \$555,000 or 37 percent is distributed to cities and counties.

The committee learned that state agencies other than the Department of Transportation that were appropriated funding from the highway tax distribution fund or the highway fund for the 1997-99 biennium include the Highway Patrol (\$22 million), Agricultural Products Utilization Commission (\$1.5 million), Game and Fish Department (\$200,000), and the Parks and Recreation Department (\$200,000). The following schedules present the estimated 1997-99 sources and uses of funds of the highway tax distribution fund and estimated 1997-99 sources and uses of funds of the state highway fund:

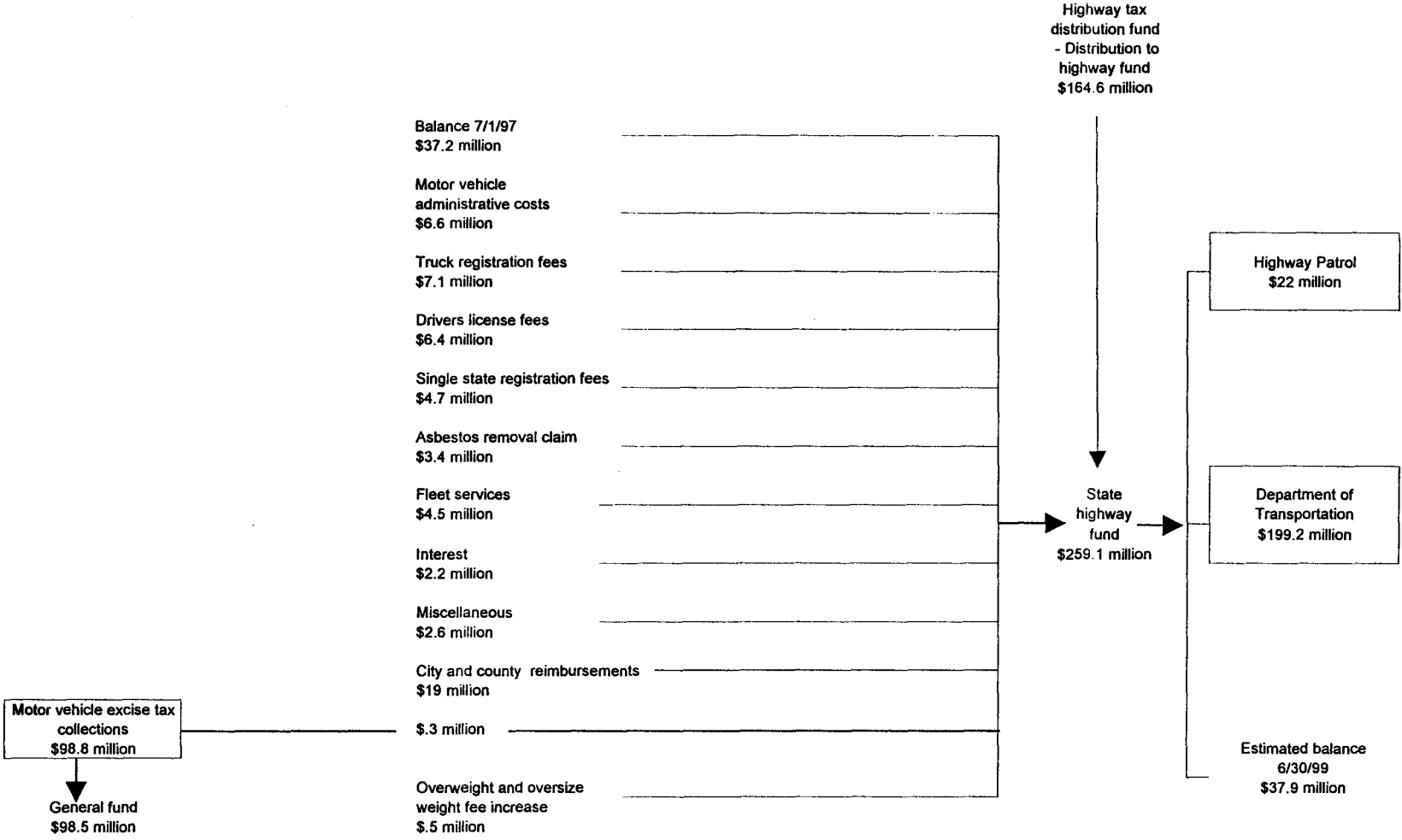
HIGHWAY TAX DISTRIBUTION FUND
Sources and Uses of Funds
1997-99 Biennium



1 The abandoned motor vehicle fee of \$2 on each initial North Dakota vehicle title is imposed only if the balance in the abandoned motor vehicle disposal fund is \$100,000 or less. The fee is suspended when the fund balance is \$250,000 or more.

2 An additional \$1 fee is imposed on motor vehicle registrations for a period of one year if the balance in the unsatisfied judgment fund is less than \$300,000. The fee is suspended for the following year if the balance in the fund is \$300,000 or more on July 1.

STATE HIGHWAY FUND
Sources and Uses of Funds
1997-99 Biennium



Highway Construction Priorities and Plans

The committee reviewed the prioritization process relating to highway construction projects and the highway construction projects planned for 1998, 1999, and 2000. The committee learned that the following factors are considered when prioritizing highway projects:

1. Pavement condition.
2. Maintenance costs.
3. Truck volume.
4. Major traffic generators.
5. Low spring load restrictions to commercial and industrial facilities.
6. Route continuity resulting from spring load restrictions.
7. Public comments.

The committee learned that the department plans on making 151 miles of improvements to the state highway system in 1998, 142 miles in 1999, and 152 in 2000. Regarding urban projects, a total of \$37 million of projects is currently scheduled to be completed in fiscal

years 1998 and 1999. Approximately \$26 million of this amount will be provided from federal funds.

Highway Revenue Considerations

The committee reviewed the major sources of funding for highways in North Dakota and surrounding states. The committee learned that major sources of funding for highways in North Dakota and Minnesota are motor vehicle fuel taxes and motor vehicle registration fees. These funds are distributed to cities, counties, and the state based on a percentage formula. South Dakota's major sources of funding for highways include motor vehicle fuel taxes, motor vehicle excise taxes, motor vehicle registration fees, and county wheel taxes. Montana's major sources of funding for highways include motor vehicle fuel taxes and gross vehicle weight fees that are a component of motor vehicle registration fees. The committee reviewed the following schedule comparing motor vehicle fuel tax rates and motor vehicle registration fees among these states:

	Motor Fuel Tax Rates (per gallon)			Motor Vehicle Registration Fees			
	Gasoline	Diesel Fuel	Gasohol	Passenger Car ¹	Pickup ²	Tractor Trailer ³	Farm Truck ⁴
North Dakota	\$.20	\$.20	\$.20	\$70	\$58	\$1,036	\$207
South Dakota	\$.21	\$.21	\$.19	\$30	\$30	\$1,457	\$126
Montana	\$.27	\$.2775	\$.27	\$342	\$484	\$1,522	\$695
Minnesota	\$.20	\$.20	\$.20	\$235 ⁵	\$315 ⁵	\$1,760	\$322

¹ A 1997 car with a purchase price of \$20,000 and a weight of 3,400 pounds.

² A 1997 pickup with a purchase price of \$25,000 and an unladen weight of 4,000 pounds and 8,000 pounds gross vehicle weight.

³ A 1997 large commercial truck with a purchase price of \$100,000 and a combined gross weight of 80,000 pounds.

⁴ A 1997 twin-drive tandem-axle 4.5-ton truck with a box and hoist with a \$50,000 purchase price and licensed at 46,000 pounds.

⁵ Registration fees in Minnesota are based on the make and model and the manufacturer's suggested retail price (MSRP) for the vehicle. The amounts shown are for a 1997 midsized passenger vehicle with an MSRP of \$20,000 and a 1997 half-ton pickup with an MSRP of \$25,000.

NOTE: All vehicles are being licensed in 1998 for the second year.

The committee learned that gasoline and gasohol consumption in North Dakota has declined by approximately nine percent from 1979 to 1996, even though the annual vehicle miles of travel have increased by almost one billion miles during this time. Revenue from the sale of gasoline and gasohol has increased by 100 percent primarily because of increasing state motor fuel taxes from eight cents per gallon in 1979 to 20 cents per gallon in 1996.

The committee heard presentations suggesting legislation to change the point of fuel tax collections from the retailer to the terminal. The committee learned that a number of states that have made this change report an increase in fuel tax collections as a result. The committee learned that the Tax Department is researching the possibility of making this change. The Tax Department is uncertain of the fiscal impact that may result in North Dakota, but the department believes its administrative costs may be reduced. If the point of taxation is changed to the terminal level, only 20 companies rather than 550 would be involved in submitting

these taxes. As a result, the department could conduct more frequent audits of these 20 companies than it does now on the 550. Currently, approximately 40 to 70 of the 550 dealers are audited each year.

The committee heard a presentation from representatives of the North Dakota Petroleum Marketers Association indicating it is not in support of changing the point of taxation on gasoline, but suggested other ways to increase highway revenues including:

1. The Tax Department should crosscheck information it has available to verify that the taxes being remitted are correct.
2. The Tax Department should audit diesel fuel refunds being submitted for accuracy.
3. The Highway Patrol should check on-road vehicle fuel tanks for dyed fuel. Dyed fuel is only to be used in off-road vehicles.

The committee learned that the Tax Department will have the ability to crosscheck information submitted to detect incorrect returns beginning in August 1998.

County and City Highway Needs

The committee heard reports from representatives of the North Dakota League of Cities and North Dakota Association of Counties on transportation funding and needs. The committee learned that in total, county and township roads comprise over 75,000 miles and that estimated 1997 revenues available for maintenance and improvements on these roads total \$46 million statewide. The testimony indicated that counties have an average of \$600 of dedicated state and local revenue for every mile of road.

The committee heard information on the number of bridges under county responsibility and the estimated maintenance costs of county roads. The committee learned that counties need an additional \$15 million of revenues per year to meet their road and bridge maintenance needs.

The committee received information from the North Dakota League of Cities based on a survey of cities with populations over 3,000 to determine their current transportation needs and available funding. Based on this information, the committee learned that all 13 cities indicated a shortfall in revenues to meet street improvement needs. Major issues presented to the committee by the North Dakota League of Cities include:

1. Replacement of expensive equipment is becoming beyond the reach of many cities.
2. The current distribution formula for state highway funds that has been in place for 20 years does not reflect the current funding needs of cities and counties.
3. The state needs to prioritize the construction of truck routes around cities.

The committee learned that \$108 million of urban projects have been identified but are currently not scheduled because of the unavailability of funds.

Federal Highway Funds

1997-99 Biennium

The committee reviewed the distribution of federal highway funds received by North Dakota. The committee learned that federal funds are generally allocated as follows:

Program	Percentage
Interstate system	30%
Remaining state highways	25%
Counties	11.6%
Urban areas ¹	16%
Miscellaneous programs ²	17.4%

¹ Includes 13 cities with a population of 5,000 or more.

² Miscellaneous programs include bridge replacement on the state and urban system, rail signals, safety projects, transportation enhancements, state planning and research, and metropolitan planning.

The committee learned that the previous federal highway bill—the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)—expired on September 30, 1997, and that federal highway funds would be provided at a much lower level through a six-month extension act until the new highway bill was passed. As a result, the department used advanced construction for \$26.5 million worth of projects during the summer of 1998 until the federal highway bill was enacted. Advanced construction involves the department contracting for more highway projects than federal funding is available for. The state provides money for the entire cost of the project with the assumption that the federal funds will be available for reimbursing the state for the federal share at a later date when the new highway bill is approved.

TEA21

The committee learned that Congress passed the Transportation Equity Act for the 21st Century (TEA21) on May 22, 1998, and President Clinton signed the bill on June 9, 1998.

Under the previous federal highway bill, North Dakota received approximately .62 percent of the total federal highway funds, and under the new bill, North Dakota will receive approximately .65 percent. As a result, North Dakota will receive about \$1.83 for every dollar that it submits in federal motor fuel taxes.

The committee learned that federal funds for highway construction will be provided to the state under the following major categories:

1. Interstate - For interstate highway projects.
2. National highway system - For highways in the state designated as major roads or principal arterials. Approximately 2,700 miles of North Dakota highways have this designation, including the interstates and all or portions of Highways 2, 5, 12, 13, 23, 52, 57, 81, 83, 85, 200, and 281.
3. Surface transportation program - For the remainder of the state highway system and for federal funds provided to cities and counties.

The TEA21 is a six-year bill and includes highway funding apportionments to the states for each of those years; however, because the amounts actually available to the states (obligational authority) must be appropriated each year by Congress, based on previous appropriations, the department expects its obligational authority to be somewhat less than the apportionments contained in TEA21. The following schedules present the estimated federal fund apportionments and estimated obligational authority for various highway funding categories for the years 1996 through 2003:

North Dakota Federal Highway Fund Apportionments for the Years 1996 Through 2003 (Amounts Shown in Millions)							
Federal Fiscal Year	Interstate	National Highway	Surface Transportation	Bridge	Recreation and Priority/Demo Projects	Other	Total
FY1996 (actual)	\$18.2	\$21.4	\$38.3	\$5.4	\$11.6	\$13.5	\$108.4
FY1997 (actual)	\$20.5	\$24.4	\$41.8	\$6.2	\$13.2	\$16.5	\$122.6
FY1998 (actual)	\$22.2	\$58.5	\$26.8	\$7.7	\$2.6	\$30.4	\$148.2
FY1999 (estimate)	\$25.6	\$68.2	\$30.0	\$8.7	\$3.5	\$33.8	\$169.8
FY2000 (estimate)	\$25.9	\$69.1	\$30.3	\$8.8	\$4.2	\$34.6	\$172.9
FY2001 (estimate)	\$26.5	\$70.5	\$31.0	\$9.0	\$4.2	\$35.1	\$176.3
FY2002 (estimate)	\$27.0	\$71.9	\$31.5	\$9.3	\$4.5	\$35.4	\$179.6
FY2003 (estimate)	\$27.5	\$73.6	\$32.2	\$9.5	\$4.5	\$35.6	\$182.9

North Dakota Federal Highway Fund Obligational Authority for the Years 1996 Through 2003 (Amounts Shown in Millions)							
Federal Fiscal Year	Interstate	National Highway	Surface Transportation	Bridge	Recreation and Priority/Demo Projects	Other	Total
FY1996 (actual)	\$18.2	\$21.7	\$39.7	\$10.5	\$8.2	\$13.8	\$112.1
FY1997 (actual)	\$20.6	\$24.8	\$39.4	\$6.7	\$9.4	\$9.7	\$110.6
FY1998 (actual)	\$20.5	\$51.0	\$30.6	\$1.5	\$1.4	\$26.6	\$131.6
FY1999 (estimate)	\$25.6	\$68.2	\$28.8	\$5.2	\$4.5	\$25.8	\$158.1
FY2000 (estimate)	\$25.9	\$69.1	\$20.3	\$9.7	\$0.8	\$33.3	\$159.1
FY2001 (estimate)	\$26.5	\$70.5	\$31.0	\$8.0	\$11.9	\$25.1	\$173.0
FY2002 (estimate)	\$27.0	\$71.9	\$31.5	\$8.6	\$2.2	\$25.6	\$166.8
FY2003 (estimate)	\$27.5	\$73.6	\$32.2	\$8.7	\$7.6	\$25.2	\$174.8

The following schedules present the estimated distributions by year and by biennium of federal highway funds to the state, counties, and cities, and associated

matching requirements under TEA21 with comparative numbers shown for fiscal years 1996 and 1997:

State, County, and City Matching Requirements for the Years 1996 Through 2003 (Amounts Shown in Millions)										
Federal Fiscal Year	Federal Funds to State ¹	Required State Match ¹	Federal Funds to Counties	Required County Match	Federal Funds to Cities	Required City Match	Federal Funds to Others	Required Match	Total Federal Funds	Total Required Match
FY1996 (actual)	\$74.3	\$15.2	\$19.9	\$4.9	\$16.1	\$2.7	\$1.8	\$0.5	\$112.1	\$23.3
FY1997 (actual)	\$76.7	\$15.4	\$12.4	\$3.1	\$19.7	\$3.8	\$1.1	\$0.3	\$109.9	\$22.6
FY1998 (actual)	\$104.1	\$19.9	\$12.9	\$3.2	\$16.8	\$2.7	\$1.0	\$0.3	\$134.8	\$26.1
FY1999 (estimate)	\$109.9	\$24.2	\$21.6	\$5.4	\$24.6	\$4.6	\$2.0	\$0.5	\$158.1	\$34.7
FY2000 (estimate)	\$112.3	\$21.5	\$18.6	\$4.7	\$26.2	\$5.7	\$2.0	\$0.5	\$159.1	\$32.4
FY2001 (estimate)	\$124.5	\$27.2	\$19.6	\$4.9	\$26.8	\$3.6	\$2.1	\$0.6	\$173.0	\$36.3
FY2002 (estimate)	\$115.8	\$23.2	\$20.2	\$5.0	\$28.6	\$6.0	\$2.2	\$0.5	\$166.8	\$34.7
FY2003 (estimate)	\$125.3	\$25.9	\$20.7	\$5.2	\$26.6	\$5.1	\$2.2	\$0.6	\$174.8	\$36.8

¹ Includes the state share on projects that may involve the state and a city or the state and a county.

North Dakota Highway Funding State, County, and City Matching Requirements for the 1997-99, 1999-2001, and 2001-03 Bienniums (Amounts Shown in Millions)										
Biennium	Federal Funds to State ¹	Required State Match ¹	Federal Funds to Counties	Required County Match	Federal Funds to Cities	Required City Match	Federal Funds to Others	Required Match	Total Federal Funds	Total Required Match
1997-99	\$180.8	\$35.4	\$25.3	\$6.3	\$36.5	\$6.5	\$2.1	\$0.5	\$244.7	\$48.7
1999-2001	\$222.2	\$45.7	\$40.2	\$10.0	\$50.8	\$10.3	\$4.0	\$1.0	\$317.2	\$67.0
2001-03	\$240.2	\$50.4	\$39.8	\$10.0	\$55.4	\$9.6	\$4.4	\$1.1	\$339.8	\$71.1

¹ Includes the state share on projects that may involve the state and a city or the state and a county.

Additional Matching Funds Needed

The Department of Transportation estimates the need for an additional \$20 million of state highway fund revenues for the 1999-2001 biennium to provide adequate funding for the state highway construction program funding provided under TEA21 and other department needs. If the additional funding is provided solely from a motor fuel tax increase, the department estimates that a 23.3 cent per gallon motor fuel tax rate would be needed, 3.3 cents more than the current rate of 20 cents per gallon. If the additional funding is provided solely

from motor vehicle registration fees, these fees would need to be increased by approximately \$21 per year.

To match the increase in federal highway funds to cities and counties, the Department of Transportation estimates that cities will need an additional \$4 million in matching funds per biennium and counties will need an additional \$4 million in matching funds per biennium. Under traditional state highway fund distributions, if increased revenues provide the \$20 million of additional funding estimated to be needed by the department, cities and counties will receive an adequate amount of

increased funding to provide for their additional matching requirements.

Department of Transportation's 1997-99 budget and its 1999-2001 budget request. The following schedule provides a comparison of the department's 1999-2001 budget request to its 1997-99 budget by major program:

1999-2001 BUDGET REQUEST

The committee received information on the

Department of Transportation 1999-2001 Budget Request			
	1999-2001 Budget Request ¹	1997-99 Budget	Increase (Decrease)
Administration	\$21,437,907	\$22,383,770	(\$945,863)
Motor vehicle	10,504,277	7,094,615	3,409,662
Driver's license	9,142,707	8,950,358	192,349
Highways	543,728,642	489,965,256	53,763,386
Fleet Services	34,608,151	30,662,535	3,945,616
Total	\$619,421,684	\$559,056,534	\$60,365,150
Federal funds	\$361,865,767	\$308,354,061	\$53,511,706
Special funds	257,555,917	250,702,473	6,853,444
Total	\$619,421,684	\$559,056,534	\$60,365,150

¹ Includes \$82.2 million of optional adjustment requests of the Department of Transportation.

Major budget changes included in the Department of Transportation's 1999-2001 budget request are listed on

the following schedule:

	Federal Funds	Special Funds	Total
Base budget changes:			
Pay plan adjustments (includes cost to continue the July 1, 1998, three percent salary increase for both years of the 1999-2001 biennium)	\$2,238,807	(\$1,422,382)	\$816,425
Reductions made to comply with the Governor's 95 percent budget guideline		(6,372,719)	(6,372,719)
Costs to continue current operations	(12,628,680)	(3,666,047)	(16,294,727)
Subtotal (base budget changes)	(\$10,389,873)	(\$11,461,148)	(\$21,851,021)
Optional adjustment requests:			
Additional federal highway construction funds available under TEA21 (Transportation Equity Act for the 21st Century)	\$63,901,579	\$14,027,175	\$77,928,754
Restoration of out-of-state travel funding reduced by 25 percent in the 95 percent budget request		107,214	107,214
New license plate issue		2,827,623	2,827,623
Automate an additional 10 driver's license sites. Currently, 26 of the 44 sites are automated. The remaining eight sites would be eliminated.		100,000	100,000
Teleconference system for the department's central office and its eight district offices		162,080	162,080
Workstations for one division in the central office and one district		108,000	108,000
Expand the Devils Lake shop and replace an additional seven section buildings		982,500	982,500
Subtotal (optional adjustments)	\$63,901,579	\$18,314,592	\$82,216,171
Total budget changes	\$53,511,706	\$6,853,444	\$60,365,150

NOTE: For informational purposes only, the estimated cost of a three percent per year salary increase for the 1999-2001 biennium for employees of the Department of Transportation totals \$3,827,153, \$2,104,934 of which is federal funds and \$1,722,219 of special funds. This funding is not reflected in the amounts on this schedule.

Public Transit

The committee reviewed funding for public transportation programs in the state. The committee learned that 47 public transportation systems operate in North Dakota. Major sources of funding for these programs include federal funds, state public transportation funds, city or county mill levy revenues, fees, and donations. The state provides public transportation aid to these programs from funds generated from a \$1 fee on motor vehicle registrations. The fee generates approximately \$750,000 per year. These public transportation funds

are disbursed annually based on a formula included in NDCC Section 39-04.2-04. The formula provides that transportation providers in each county are entitled to receive up to \$6,100 per year plus a per capita amount determined by the director of the Department of Transportation based on the population in the county. If more than one transportation provider operates in a single county, the formula-generated amount must be divided among the providers. If no transportation provider is operating in a county, no funding is provided to that county.

Federal funds distributed to public transportation providers include urban transit grants and rural transit grants. Bismarck, Fargo, and Grand Forks are eligible to receive urban transit grants, while other areas of the state are eligible for rural transit grants. Bismarck, Fargo, and Grand Forks receive their federal transit funds directly from the federal government, while other areas of the state receive their federal funds through the Department of Transportation. The federal funds distributed by the state are allocated to individual programs based on need, ridership, geographic size, and funding history. The federal funds require a 50 percent state or

local match if used for operating and a 20 percent match if used for capital equipment purchases. The state funds do not require any local match but may be used by the provider as a match for the federal funds.

The committee learned that under TEA21 a substantial increase is expected in public transit funds. The following schedule presents the actual federal transit funding distributed in fiscal years 1997 and 1998 and estimated funding to be provided for public transportation systems in the state under TEA21 through fiscal year 2003:

Fiscal Year	Bismarck	Fargo	Grand Forks	Rural	Total
FY1997 (actual)	\$413,373	\$597,844	\$422,327	\$569,817	\$2,003,361 ¹
FY1998 (actual)	\$504,681	\$729,898	\$515,611	\$554,818	\$2,305,008 ¹
FY1999 (estimate)	\$555,520	\$803,425	\$567,551	\$1,121,982	\$3,048,478 ²
FY2000 (estimate)	\$603,492	\$872,804	\$616,562	\$1,209,632	\$3,302,490 ²
FY2001 (estimate)	\$652,418	\$943,564	\$666,547	\$1,299,025	\$3,561,554 ²
FY2002 (estimate)	\$701,096	\$1,013,964	\$716,279	\$1,387,963	\$3,819,302 ²
FY2003 (estimate)	\$750,221	\$1,085,012	\$766,468	\$1,477,720	\$4,079,421 ²

¹ Amounts shown are for the state fiscal year ending June 30 of each year.

² Amounts shown are for the federal fiscal year ending September 30 of each year.

NOTE: The amounts shown for years 1999 through 2003 are the apportionments included in TEA21. The actual amounts that will be available to North Dakota must be appropriated each year by Congress and may be less than the amount apportioned in TEA21.

The committee heard testimony from public transportation providers and consumers of public transportation regarding the following issues, suggestions, and concerns:

1. The need for a \$1 increase in motor vehicle registration fees dedicated for public transportation aid. Currently, \$1 of each motor vehicle registration fee is dedicated to public transportation aid. With the proposed increase, \$2 would be dedicated for public transportation aid. Reasons given for needing the additional funding include:
 - a. Additional matching funds will need to be provided by public transportation providers in order to receive additional federal funds available for public transit under TEA21.
 - b. The need for expanded service hours especially during evenings and weekends.
2. Transportation difficulties encountered by the elderly and persons with disabilities especially in rural areas of the state.
3. The need for public transportation services on evenings and weekends to allow individuals relying on public transportation systems to obtain employment.
4. Even with the reasonable fares charged by public transportation providers, the fares can be a financial burden for low-income individuals.
5. Although North Dakota serves the most people with disabilities per capita of any state in the nation, it is estimated that only one-third of the eligible population is receiving services of the transit system.

6. It is difficult for individuals relying on public transportation systems to be involved in social activities that usually occur on evenings and weekends because of the lack of public transportation during these times.

Other Reports and Committee Considerations

The committee reviewed the status of the multistate infrastructure bank approved by the 1997 Legislative Assembly. The Legislative Assembly authorized the director to cooperate with other states to establish, maintain, and operate a multistate infrastructure bank for highway project funding. The director may transfer up to 10 percent of eligible federal highway construction funds and the required state match to the bank, and the funding may be used as determined by the members of the multistate infrastructure bank as authorized by law. The committee learned that the Department of Transportation has developed the bank along with South Dakota, Nebraska, and Wyoming to assist in financing transportation projects. Because of the bank, the department has received an additional \$1.7 million of federal funds for highway projects which has been deposited in the multistate infrastructure bank along with the \$.4 million of required state match.

The committee reviewed the status of the Department of Transportation's aircraft. The 1997 Legislative Assembly provided that the Department of Transportation evaluate the continued use of its 1977 model Cessna airplane, including an analysis of the cost of continued maintenance and repair of the plane and options for replacement which may include selling or trading the airplane and leasing or purchasing a new or

used airplane. The department was to present a report on its evaluation to the Budget Section by November 1998. The department's cost study indicated that two engines will need to be replaced in three to four years at an estimated cost of \$126,000. The department reported to the Budget Section in June 1998 that it entered into a two-year lease on a King Air 200 aircraft with an option to buy at any time during the contract. The monthly lease payments on the plane are \$66,650.

The committee heard a report from the Associated General Contractors expressing concern that highway fund moneys are being used for nonhighway purposes and suggesting that the Highway Patrol be provided funding from the general fund rather than the highway fund. The testimony indicated that because these highway funds are not available to the Department of Transportation, the department's ability to provide adequate maintenance and improvements on the highway system is greatly reduced.

The committee heard a presentation by representatives of the North Dakota Motor Carriers Association indicating that the trucking industry plays a vital role in North Dakota's economy. The committee heard that an estimated \$12,956 of federal and state taxes are paid per year on an 80,000 pound tractor/semitrailer with an annual mileage of 100,000 miles. To provide additional funding for highways in North Dakota, the Motor Carriers Association suggested that 50 percent of the funding for the Highway Patrol be provided from the general fund and 50 percent from the highway fund rather than the current method of funding the Highway Patrol almost entirely from the highway fund.

The committee learned that since the passage of the North American Free Trade Agreement (NAFTA), North Dakota has seen a tremendous increase in truck traffic at the border crossings. In 1997 298,500 trucks entered North Dakota from Canada compared to 151,500 in 1990.

The committee discussed highway funding issues. Major items discussed include:

1. The Department of Transportation has expressed the need to continue the three-cent per gallon motor vehicle fuel tax (20 cents compared to 17 cents) that is scheduled to expire on January 1, 2000, and the need for an additional \$20 million of state highway fund revenues per biennium to be used for matching additional federal funds and other department needs.
2. The possibility of reducing the number of miles of paved roads in the state which would improve the maintenance cycle on remaining roads in the system.
3. In order to provide additional highway funding in North Dakota, all funding options should be considered including increasing fuel taxes, increasing motor vehicle registration fees, and reprioritizing the use of funds currently collected.

4. Concern that over 5,000 miles of county roads are paved. The maintenance costs required on paved roads are much greater than on unpaved roads.
5. Additional funding may be made available for highway construction if a portion of funding for the Highway Patrol is provided from sources other than the highway fund.
6. The need expressed by public transportation providers and consumers for increasing the motor vehicle registration fee dedicated for public transportation by \$1, from \$1 to \$2, to match additional federal funds and to expand services.

Recommendations

The committee made no recommendations regarding its transportation funding study.

BUDGET MONITORING

Status of the State General Fund

The committee heard reports from OMB regarding the status of the state general fund. The committee learned that the revised revenue forecast for the 1997-99 biennium anticipates revenues exceeding the legislative forecast by \$50.2 million. At the committee's last meeting, the committee learned that the projected June 30, 1999, general fund balance is \$58.9 million, \$48 million more than the \$10.9 million estimate made at the close of the 1997 Legislative Assembly. This projected balance is based on actual revenues collected through September 30, 1998, and original revenue projections for the remainder of the biennium.

The committee received a report prepared by the Legislative Council staff on major fiscal issues affecting the 1999-2001 biennium general fund budget, including preliminary revenue estimates, deficiency appropriations, and funding needing to be continued from 1997-99 authorizations. Incorporating these preliminary estimates, the report indicated an estimated June 30, 2001, general fund balance of \$14 million.

Agency Compliance With Legislative Intent

The committee received a report prepared by the Legislative Council staff on state agency compliance with legislative intent for the 1997-99 biennium. The report is based on information gathered by the Legislative Council staff during visitations with agency administrators and fiscal personnel in early 1998. The report contains information on agency compliance with legislative intent, agency changes, budget concerns, staff changes, and other areas regarding agency operations and appropriations. In addition, the report includes a number of analyses of special funds, including their projected June 30, 1999, balance as compared to the projection made at the close of the 1997 legislative session.

Status of Appropriations of Major Agencies

Since the 1975-76 interim, a Legislative Council interim committee has been assigned the responsibility of monitoring the status of major state agency and institution appropriations. The Budget Committee on Government Finance was assigned this responsibility for the 1997-98 interim. The committee's review emphasized the expenditures of major state agencies, including the institutions of higher education and the charitable and penal institutions, the foundation aid program, and major program appropriations of the Department of Human Services.

In summary, the reports given to the committee regarding budget monitoring indicated the following:

1. Actual general fund expenditures for the Department of Human Services through August 1998 for the TANF (temporary assistance for needy families) program were \$671,000 less than the original budget. Actual developmental disabilities grants through May 1998 were \$252,000 less than the original budget. The department's estimate of traditional medical assistance expenditures for the biennium total \$132.7 million, \$1.2 million less than the department's revised estimate.
2. Total expenditures at the charitable and penal institutions for the first year of the 1997-99 biennium were \$76,065,190, \$2,735,005 (3.5 percent) less than the estimated

expenditures of \$78,800,195. Total revenues for the same period were \$33,033,217, \$1,116,611 (3.5 percent) more than the estimated revenues of \$31,916,606.

3. For the first year of the 1997-99 biennium, the average monthly student, resident, and inmate population at the charitable and penal institutions averaged 1,862.6, 52.4 fewer than the estimated population of 1,915. The average monthly FTE positions for the same institutions totaled 1,494.12, 40.5 fewer than the estimated FTE level of 1,534.62.
4. Total expenditures at the institutions of higher education for the first year of the 1997-99 biennium were \$220,742,074, which was \$11,622,988 (five percent) less than estimated expenditures of \$232,365,062. Income for the year totaled \$75,307,270, or \$4,105,016 (5.2 percent) less than estimated income of \$79,412,286.
5. For the first year of the 1997-99 biennium, FTE student enrollment at the institutions of higher education totaled 28,308 students, 902 (3.1 percent) less than estimated FTE student enrollment of 29,210 students.
6. The following schedule compares estimated and actual foundation aid program payments for the 1997-99 biennium:

	1997-99 Biennium Appropriation	1997-98 Actual Payments	1998-99 Estimated Payments	Estimated Remaining Balance
Statutory per student payments	\$501,886,540	\$241,817,263	\$249,706,447 ²	\$10,362,830
Less mill levy and excess fund balance deduct	72,298,601	35,629,288	36,967,986 ³	(298,673)
General fund per student payments	\$429,587,939 ¹	\$206,187,975	\$212,738,461	\$10,661,503
Transportation payments	36,768,320	17,882,508	18,000,000	885,812
Total general fund - Foundation aid program	\$466,356,259	\$224,070,483	\$230,738,461	\$11,547,315 ⁴

¹ Appropriation for per student payments - Section 11 of 1997 House Bill No. 1013 provided that up to \$300,000 of the amount appropriated for foundation aid must be used by the Department of Public Instruction to provide payments to school districts for educating students with limited English proficiency, pursuant to North Dakota Century Code (NDCC) Section 15-40.1-07.7.

² Statutory per student payments - 1998-99 - The estimated 1998-99 per student payments are based on a 1.5 percent decline in weighted student units from 1998-99, as estimated by the Department of Public Instruction.

³ Mill levy and excess fund balance deduct - 1998-99 - Due to an increase in the statewide property valuation, the 1998-99 mill deduct will be approximately \$36.77 million, \$100,000 more than the amount used to calculate the foundation aid appropriation. The excess fund balance deduct (NDCC Section 15-40.1-06) for 1998-99 is currently estimated to be approximately \$200,000, \$100,000 more than the amount used to calculate the appropriation.

⁴ Estimated remaining balance - The estimated June 30, 1999, remaining foundation aid balance is approximately \$11.5 million, which, if distributed as foundation aid per student payments, will result in an additional payment of approximately \$95 per weighted student.

7. The following schedule compares estimated and actual per student payments, tuition fund

distributions, and weighted student units for the 1997-99 biennium:

	Legislative Estimate	Actual 1997-98 and Current Estimate 1998-99	Actual/Current Estimate Increase (Decrease) From Legislative Estimate
1997-98			
Per student payments	\$1,954	\$1,954	\$0
Tuition fund distributions	204	216	12
Total payments	\$2,158	\$2,170	\$12
Weighted student units	125,691	123,791	(1,900)
1998-99			
Per student payments	\$2,032	\$2,032	\$0
Tuition fund distributions	204	216	12
Total payments	\$2,236	\$2,248	\$12
Weighted student units	125,585	121,967	(3,618)

Oil Reports

The committee received periodic reports on oil tax revenues, oil production, oil market prices, and other oil issues during the interim. For fiscal year 1998, oil and gas production tax collections were \$15,744,939, or \$1,099,426 less than the estimated collections of \$16,844,365. Oil extraction tax collections for fiscal year 1998 were \$9,373,217, or \$2,691,783 less than estimated collections of \$12,065,000. Production for fiscal year 1998 was 36,741,294 barrels, 699,797 barrels more than the estimated production of 36,041,497. Average price per barrel during fiscal year 1998 was \$14.02, which was \$4.10 less than the estimated price per barrel for the year of \$18.12.

BUDGET TOURS

During the interim, the Budget Committee on Government Finance functioned as a budget tour group of the Budget Section and visited the Youth Correctional Center, State Penitentiary, Roughrider Industries, Missouri River Correctional Center, James River Correctional Center, State Hospital, proposed site of the Jamestown Bypass Highway Project, and Bismarck State College. The committee heard about institutional needs for major improvements and 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 submitted in report form to the Appropriations Committees during the 1999 legislative session.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Budget Committee on Government Services was assigned responsibilities in four areas. Senate Concurrent Resolution No. 4001 directed the Legislative Council to monitor mental health and foster care services, including changes in the role of the State Hospital, psychosocial rehabilitation centers, and clubhouse projects; the effect of welfare reform on the delivery of mental health and foster care services; methods used to place children in the custody of the Division of Juvenile Services; methods used to place children in residential child care facilities and residential treatment centers; methods of setting and levels of reimbursements for residential child care facilities and residential treatment centers; and items of legislative intent regarding mental health and foster care services. Section 7 of House Bill No. 1012 provided that the Legislative Council receive a report from the Department of Human Services on any hiring of full-time equivalent positions at the human service centers, the State Hospital, and the Developmental Center at Westwood Park, Grafton, in addition to those authorized by the Legislative Assembly for the 1997-99 biennium. Section 17 of House Bill No. 1015 provided that the Legislative Council receive a report from the Office of Management and Budget on state employee compensation issues. North Dakota Century Code (NDCC) Section 54-40-01 provides that an agency may enter into an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized to perform by law. The proposed agreement must be submitted for approval to the Legislative Assembly or a committee of the Legislative Council if the Legislative Assembly is not in session.

Committee members were Representatives Janet Wentz (Chairman), James O. Coats, Jeff W. Delzer, April Fairfield, James A. Kerzman, Amy N. Kliniske, Richard Kunkel, Edward H. Lloyd, Jon O. Nelson, Carol A. Niemeier, Al Soukup, and Elwood Thorpe and Senators Elroy N. Lindaas and Rolland W. Redlin. Representative Bob Martinson was also a member of the committee until he resigned from the Legislative Assembly on October 14, 1997.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

MONITORING MENTAL HEALTH AND FOSTER CARE SERVICES

Senate Concurrent Resolution No. 4001 directed the Legislative Council to monitor mental health and foster care services, including changes in the role of the State Hospital, psychosocial rehabilitation centers, and clubhouse projects; the effect of welfare reform on the delivery of mental health and foster care services;

methods used to place children in the custody of the Division of Juvenile Services; methods used to place children in residential child care facilities and residential treatment centers; methods of setting and levels of reimbursements for residential child care facilities and residential treatment centers; and items of legislative intent regarding mental health and foster care services.

Foster Care Services

Background

The committee reviewed the types of foster care placements as follows:

1. Foster care family - A family providing for the child's care. Children placed with a foster care family are generally younger and have been deprived, neglected, or abused.
2. Therapeutic foster care family - A family providing for the child's care. Children placed with a therapeutic foster care family generally have been diagnosed with a psychiatric disorder and are often in transition from a residential treatment center placement.
3. Residential child care facilities and group homes - Children placed in these types of facilities are generally adolescents who have been deprived or abused, involved in a parent/child conflict, or have character disorders.
4. Residential treatment centers - Children placed in these types of facilities are generally adolescents who have been diagnosed with psychiatric disorders.

The licensed group homes, residential child care facilities, and residential treatment centers in North Dakota and the number of licensed beds for each as of September 30, 1998, include:

	Location	Number of Beds
Group/Residential Child Care Facilities		
Charles Hall Youth Services	Bismarck	24
Dakota Boys Ranch	Minot	39
Dakota Boys Ranch	Fargo	10
Dakota Boys Ranch - Transitional Living	Minot	10
Eckert Youth Homes	Williston	16
Harmony House	Devils Lake	7
Home on the Range	Sentinel Butte	79
Lake Oahe Group Home	Fort Yates	8
Prairie Learning Center	Raleigh	50
New Outlooks	Devils Lake	10
Red River Victory Ranch	Fargo	12
Southwest Key	Mandan	24
Residential Treatment Centers		
Dakota Boys Ranch	Minot	16
Luther Hall	Fargo	16
Manchester House	Bismarck	10
Ruth Meiers Adolescent Center	Grand Forks	12
Southwest Key	Mandan	16

Foster care reimbursement rates for foster care families and facilities are listed below:

Reimbursement Rates Per Child (September 1998)		
	Maintenance Rate	Service Rates
Family foster care		
• Up to 4 years old	\$317/month	N/A
• 5-12 years old	\$359/month	
• 13 years old and over	\$469/month	
Therapeutic foster care	\$591/month	Actual costs - Billed to Medicaid program
Group and residential child care facilities	\$2,548/month average rate	\$300/month maximum - Billed to Medicaid program
Residential treatment centers	\$1,694/month average rate ¹	Actual costs - Billed to Medicaid program

NOTE: For children placed in out-of-state facilities, the department pays the out-of-state rate that has been approved for that facility by that state's Department of Human Services.

¹ This is only the foster care portion of the payment. Certain staff and other costs of residential treatment centers are eligible for Medicaid reimbursement. These amounts are not shown here.

The committee reviewed funding for foster care services for the 1997-99 biennium. The schedule below presents the Department of Human Services estimate of foster care costs for the 1997-99 biennium.

1997-99 Estimated Costs				
	General Fund	Federal Funds	Other Funds	Total
Room and Board - In State				
Family foster care homes	\$3,123,026	\$3,626,639	\$854,414	\$7,604,079
Therapeutic foster care homes - Room and board amounts reflected under family foster care homes				
Residential child care facilities - In state	3,971,657	9,181,460	3,039,844	16,192,961
Residential treatment centers - Room and board amounts reflected under residential child care facilities				
Total room and board	\$7,094,683	\$12,808,099	\$3,894,258	\$23,797,040
Treatment and Service Payments - In State				
Family foster care homes - Not applicable				
Therapeutic foster care homes	\$1,364,961	\$3,669,466	\$205,957	\$5,240,384
Residential child care facilities	401,360	1,079,161	60,561	1,541,082
Residential treatment centers	1,082,384	2,618,000	38,363	3,738,747
Total treatment services	\$2,848,705	\$7,366,627	\$304,881	\$10,520,213
Combined Room and Board and Treatment and Service Payments - Out-of-State Facilities	\$1,268,212	\$2,937,878	\$929,086	\$5,135,176
Other Services				
Shelter care	\$125,000			\$125,000
Independent living	114,515	\$163,432		277,947
Total other services	\$239,515	\$163,432	\$0	\$402,947
Total Department of Human Services foster care related expenses	\$11,451,115	\$23,276,036	\$5,128,225	\$39,855,376

Statistics regarding foster care in North Dakota as listed on the following schedules:
The committee reviewed statistics and trends

Year	Number of Children in Foster Care (Unduplicated)	Monthly Average Number of Children	Average Number of Months in Care	Recidivism Percentage
1991	1,271	648	14.0	22.3%
1992	1,331	705	15.0	22.5%
1993	1,513	756	14.1	23.3%
1994	1,556	810	13.7	22.8%
1995	1,654	861	13.9	23.8%
1996	1,663	879	14.9	24.2%
1997	1,721	922	13.9	25.0%
1998	1,728	945	15.5	25.7%

Year	Number of Children Placed in Family Homes (Unduplicated)	Number of Children Placed in RCCF/GH (Unduplicated) ¹	Total	Number of Children Placed Out of State (Unduplicated) ²	Percentage of Children in Foster Care Placed Out of State
1991	883	388	1,271	32	2.5%
1992	946	385	1,331	33	2.5%
1993	1,065	448	1,513	48	3.2%
1994	1,064	492	1,556	61	3.9%
1995	1,125	529	1,654	70	4.2%
1996	1,128	535	1,663	67	4.0%
1997	1,162	559	1,721	85	4.9%
1998	1,121	607	1,728	61	3.5%

¹ RCCF/GH means residential child care facility and group homes.

² Because children placed out of state may be placed in either a family home or a facility, these numbers are also reflected in the columns titled "Number of Children Placed in Family Homes" and "Number of Children Placed in RCCF/GH" on this schedule.

Children in North Dakota Ages 0-18 ¹			Children in Foster Care 1991-96 ²		
Region	Number	Percentage of Total	Number	Percentage of Total	Percentage of Children in Region
1	9,490	5.1%	99	6.6%	1.04%
2	26,436	14.3%	167	11.1%	.63%
3	14,718	8.0%	237	15.8%	1.61%
4	27,414	14.9%	177	11.8%	.65%
5	38,332	20.8%	299	20.0%	.78%
6	17,727	9.6%	97	6.5%	0.55%
7	37,887	20.5%	342	22.8%	0.90%
8	12,550	6.8%	81	5.4%	0.65%
Total	184,554	100.0%	1,499	100%	0.81%

¹ Based on 1990 census.

² The average number of children in foster care during fiscal years 1991-96.

Placements

The committee reviewed procedures involved in child placements. The committee learned that child custody transfers are the decision of North Dakota courts. Custody is transferred from a child's parents to either county or tribal social services, the Department of Human Services, or the Division of Juvenile Services. County social services can place a child directly in a family foster care home; however, a more restrictive placement of a child under the custody of county social services must be reviewed and approved by the regional permanency planning team. The Division of Juvenile Services may directly place a child at the Youth Correctional Center; however, any other placement of the Division of Juvenile Services must be reviewed and approved by the regional permanency planning team.

Members on regional permanency planning teams vary depending on each child's history and circumstances but may include a county social services worker, Division of Juvenile Services caseworker, regional supervisor of county social services, juvenile court representative, school district representative, special education district representative, treatment services personnel, parents, foster family, and representatives of facilities the child may have been placed in.

The committee learned that approximately 25 percent of children in foster care are under the legal custody of the Division of Juvenile Services, 25 percent are under the legal custody of tribal social services, and 50 percent are under the custody of county social services or the Department of Human Services. The initial court order transferring custody of a child can be for no longer than

18 months and any subsequent order can be for no longer than 12 months.

North Dakota law requires a permanency planning committee meeting within 30 days of a child's initial placement and every three months thereafter unless a child has been in care for longer than two years, and then the meeting can be every six months. In determining the level of care in which a child will be placed, the permanency planning committee considers the needs of the child as well as negative behaviors being exhibited and may also depend on the resources available at the time the placement is made. Consideration is given to the most appropriate and least restrictive environment to place the child and to keeping the child as close to the child's home community as possible. Out-of-state placement decisions are made for a number of reasons, including that in-state facilities may not believe the child is appropriate for their programs, no beds may be available for an extended period of time, or the programs cannot provide the needed treatment.

Once a child is released from a foster care home or facility, the child is generally monitored for a few months by the Division of Juvenile Services or a county social service agency as the child transitions back to the child's family.

Of the 993 foster care cases closed in fiscal year 1996, the committee learned that 659 children were returned to parents, 94 were placed with relatives, 57 were living independently, 45 were placed in a state institution, 33 were adopted, and 105 were closed for other reasons.

Out-of-State Placements

The committee reviewed information on the following schedule relating to the average number of children

placed in out-of-state facilities for treatment services and the cost of those services:

Fiscal Year	Average Number of Children Per Month	Average Cost Per Month	Unduplicated Number of Children	Annual Cost
1991	12	\$33,523	32	\$402,276
1992	14	\$24,447	33	\$293,359
1993	26	\$47,338	48	\$520,713
1994	29	\$50,241	61	\$602,888
1995	34	\$92,081	70	\$1,104,974
1996	37	\$147,319	67	\$1,767,828

The following schedule presents the number of children placed out of state during the 1997-98 interim:

Date	Number of Children
July 1997	62
August 1997	65
September 1997	67
October 1997	64
November 1997	65
December 1997	59
January 1998	49
February 1998	50
March 1998	42
April 1998	38
May 1998	35
June 1998	32
July 1998	28
August 1998	26

The committee learned that the reason the number of children placed out of state has declined during the past year results from:

1. The Department of Human Services changing its policy relating to out-of-state placements. The department now requests custodians to review each child's case plan and make appropriate and renewed efforts to serve the child in North Dakota.
2. The Manchester House now reviews cases involving children under 14 years of age who appear to be potentials for out-of-state placements to determine whether the children's needs can be met through their services or elsewhere in North Dakota.
3. The number of residential beds within North Dakota increased during 1998. The number of beds increased from 339 in December 1997 to 359 in September 1998.

fiscal year, each facility prepares a cost report based on its costs for the previous fiscal year and cost projections for the subsequent fiscal year which are submitted to the Department of Human Services. The cost reports are used to develop each facility's foster care reimbursement rate for maintenance (room and board) and service functions. Subsequent to the submission of the cost reports, the Department of Human Services' provider audit section audits the cost report information to adjust or confirm the new rates that become effective when the audit is complete. Costs of the facilities are categorized into administration, maintenance (room and board), service, nonallowable costs, and nonfoster care program costs. North Dakota Administrative Code provisions detail the type of cost allocations that may be included in the various categories. Major components of the cost report include:

1. Annual costs are categorized as administration, maintenance, service, nonallowable, and nonfoster care costs.
2. Allowable costs for maintenance and service functions of a facility are increased by the consumer price index for salary and other costs.
3. The administrative cost allocation is added to the maintenance cost but limited to 20 percent of the adjusted total maintenance and service costs for the year.
4. Based on the total allocated costs for maintenance and service and the annual census of the facility, the daily maintenance rate and service rate are developed for the facility. The service rate is the lesser of the actual calculated monthly rate or \$300 per month.

The committee learned that based on fiscal year 1996 financial information provided by five of the group homes and residential child care facilities in North Dakota, income from foster care payments for maintenance and service provided the following percentages of costs during this year:

1. 46.5 percent of the facilities' total costs. This percentage is based on the total cost of these facilities which may include costs relating to educational programs, out-of-state facilities, religious programs, work programs, and other unallowable programs or services.

Reimbursement System for Residential Child Care Facilities and Group Homes

The committee reviewed Department of Human Services procedures that are involved in developing reimbursement rates for residential child care facilities and group homes. The committee learned that the Department of Human Services, through its administrative rule-making authority, develops procedures for reimbursing providers of services to children in group homes and residential child care facilities. After the close of each

2. 69.9 percent of costs allocated to administration, maintenance (room and board), and service.
3. 85.1 percent of costs allocated to maintenance (room and board) and service.

The committee learned that the Department of Human Services is in the process of changing the administrative rule provisions relating to the residential child care facility and group home reimbursement system. The committee learned that the majority of the current administrative rules were developed in 1987 and the department began revising the rules in 1994. The department has held public hearings and met with providers regarding the proposed rule changes.

Major rule changes being considered include:

1. Changing salary projections from using the facility's budget with a consumer price index limit to using the consumer price index as an inflator.
2. Providing that the new rate for maintenance and service would be effective the first day of the seventh month after the close of the fiscal year rather than when the rate is finalized after the audit or rate resolution process.
3. Changing administrative cost allocations from being limited to 20 percent of allowable maintenance and service costs to a level consistent with the budget approved by the Legislative Assembly.
4. Providing for a two-year rather than a one-year licensing cycle.
5. Establishing certain criminal convictions that have a direct bearing on an individual's ability to serve the public or a resident of a facility.
6. Establishing staffing requirements for daytime "core programming time" and staffing requirements for sleeping hours.
7. Allowing the use and setting conditions for the use of mechanical restraints when transporting a child from a facility.
8. Making changes regarding confidentiality and setting specific timeframes during which written consents are valid.
9. Requiring income from grants or donations to be offset against appropriate costs paid for with the grant or donation income.
10. Allowing for startup costs of a new facility. The proposed rule provides that costs incurred prior to the admission of the first client would be capitalized and recovered over the next 60 months.
11. Changing the depreciation policy to provide that equipment may be depreciated over 10 years, vehicles over four years, and buildings over the greater of 25 years or the life of the mortgage.
12. Allowing for reconsideration of rate adjustments before an actual appeal is filed.
13. Capitalizing repair expenditures at \$5,000 rather than \$1,000.

The committee reviewed income of residential child care facilities and the estimated effect on the facilities' income as a result of the proposed administrative rule changes. The following schedule presents the combined sources of income for three of the residential child care facilities in fiscal year 1997:

Revenue Source	Combined Fiscal Year 1997 Income	Percentage
Department of Human Services	\$5,938,602	57.3%
Fundraising/donations	1,690,601	16.3%
Department of Public Instruction/schools (education or school lunch)	1,485,062	14.3%
Private/third-party payers	545,537	5.3%
Other states	479,754	4.6%
Other sources	219,709	2.2%
Total	\$10,359,265	100.0%

The committee heard testimony from representatives of the residential child care facilities. The following are the major concerns expressed regarding the current reimbursement system and the proposed administrative rule changes:

1. Rate adjustments are often delayed due to the provider audit section of the Department of Human Services being unable to complete the cost report audit timely.
2. The reimbursement formula limits payroll projections that are eligible for reimbursement by the consumer price index. This limiting factor results in facilities needing to rely on fundraising to support staff salaries and benefits.
3. The limit on administrative costs eligible for reimbursement to the lesser of actual costs or 20 percent of allowable maintenance and service costs results in facilities needing to raise funds for a portion of their administrative costs.
4. The reimbursement formula provides for a maximum monthly reimbursement rate for social service costs of \$300 per child per month. Because most facilities' costs for social service related activities exceed the \$300 maximum, facilities must rely on fundraising to support these activities at an appropriate level.
5. Current administrative rule provisions include due process and an appeal process for facilities that question departmental decisions. These provisions have been excluded from the proposed rules.
6. The proposed rule requiring that income received from organizations or foundations and income received from individuals which is designated for a specific purpose be offset to the appropriate costs in the year received would

jeopardize facilities' ability to raise funds. If this proposed change is approved, expenses associated with these types of grants may not be included in the facility's reimbursement formula for the year the grant is received. Subsequently, in the year following receipt of the grant, funding would not be provided by the state to pay for the expenses that were previously paid for by the grant income; therefore, the facility would need to rely on additional fundraising or other income to pay for these expenses.

7. The proposed rule using the consumer price index as an inflator rather than as a limit on salary projections would positively affect a facility that has a decrease or a very small increase in projected salaries; however, this rarely occurs and therefore, would have a minimal effect on a facility's income.
8. The proposed rule imposing a financial penalty on a facility that does not file its cost report within a certain time could result in a substantial cost for a facility.
9. The proposed rule changing confidentiality regulations and limiting the use of consent forms signed by parents and residents will make it difficult to use children's photos in facility publications. Pictures of residents are also an important part of fundraising activities for these facilities.

The committee received periodic updates from the department on the status of the proposed administrative rule changes. At the committee's final meeting, it learned that the department does not anticipate finalizing the revised administrative rules prior to the 1999 legislative session.

Partnership Project

The committee received information on the partnership project. The committee learned that North Dakota received a federal grant in 1994 to develop community-based services for children with serious emotional and behavioral disorders and their families in three human service regions—North Central, Southeast, and West Central. The mission of the project is to support children with emotional and behavioral disorders in their home or community by using a family-based, collaborative, cost-effective community-based system of individualized care that is unconditional, ongoing, and culturally relevant. Approximately 300 children and their families have received services through the partnership project in the Minot, Fargo, and Bismarck regions.

For the 1997-99 biennium, the project budget totals \$12.1 million, \$1 million of which is from the general fund, \$5.8 million of federal funds, \$400,000 of local funds, and \$4.9 million of in-kind match being provided by the regional children's services coordinating committees.

The committee received information on the accomplishments of the partnership project including:

1. For 129 youth served by the partnership project, 60 had been hospitalized in a psychiatric hospital at least once during the year prior to enrollment. During the year after enrollment, only 30 were hospitalized at least once in a psychiatric hospital. As a result, the total number of psychiatric inpatient days decreased by 62 percent, which at a rate of \$800 per day amounts to reduced hospital costs of \$732,000 for these 129 youth in one year.
2. The percentage of children who attended school regularly after involvement in the partnership project increased by 18.3 percent.
3. The number of children who had no encounters with the law increased from 59.2 percent during the year prior to intake to 72.8 percent during the year after intake.
4. Children having two or more encounters with law enforcement decreased from 22.3 percent during the year prior to intake to 12.6 percent during the year after intake.

The committee learned that the department's 1999-2001 budget request does not include a general fund increase for the project and that the three human service centers involved have included the following anticipated unspent federal funds from the fifth year of the project in their 1999-2001 budget requests:

North Central Human Service Center	\$943,960
Southeast Human Service Center	943,960
West Central Human Service Center	1,678,114
Total	\$3,566,034

Adoption and Safe Families Act

The committee received information on the effect the federal Adoption and Safe Families Act of 1997 will have on foster care services provided in North Dakota. The committee learned that the law became effective in November 1997; however, the Act provides that if state legislation is necessary to implement the Act, it may be implemented during the first federal quarter following the close of the next state legislative session, which for North Dakota is August 1999.

The emphasis of the Act is on the safety, permanence, and well-being of children. The Act views foster care as a short-term solution for the safety of children. It stresses that foster care is not the place for a child to grow up. To achieve this, the law requires child welfare staff to concurrently consider options for the child's future permanence from the first day the child enters the foster care system. Plans may include returning home to parents, residing with extended family, being cared for in a guardian arrangement, or being placed for adoption. Timeframes will be closely monitored and parents will be informed that a limited time is available for the child to return home making goal planning and decisionmaking

keys to outcome. Emphasis will be placed on involving parents, extended family, and significant other persons in an immediate planning and decisionmaking process.

The committee learned that the Children and Family Services Division of the Department of Human Services has begun planning for implementation of the Act by convening a work group that includes child welfare professionals, legal advisory staff, and the court system. Based on work group discussions, the department is drafting legislation to be considered by the 1999 Legislative Assembly.

The committee also learned that the Department of Human Services and the Supreme Court may request funding to jointly hire a staff position for the court improvement project and to assist in the implementation of the Adoption and Safe Families Act.

Welfare Reform

The committee received information from the Department of Human Services on the impact of welfare reform on foster care services in the state. The committee learned that:

1. Because of the lifetime limit for receiving temporary assistance for needy families (TANF) grants, there is a concern that when individuals meet their lifetime limit the families may not have adequate resources to provide for their children which will result in more children being placed in foster care.
2. Children receiving TANF grants and not living with their parents may have multiple placements with relatives or other caretakers and lack a permanency plan needed to provide stability for the child.

Other Information and Committee Activities

Other foster care information received by the committee and activities of the committee include:

1. Information was received from representatives of foster care facilities regarding the application process for being licensed as a residential child care facility or residential treatment center and perceived limits on the number of licensed beds allowed. Subsequently, the committee reviewed whether any limits exist on the number of beds that a residential child care facility or residential treatment center for children may have. The committee learned that no limits exist, either by federal or state statute, or rule, on the number of beds that residential child care facilities may have. The committee learned that no limits exist in the North Dakota Century Code or North Dakota Administrative Code regarding the number of beds that a residential treatment center may have; however, a Medicaid provision limits the number of residential treatment center beds to 16 for institutions that are eligible

for Medicaid funding. An institution with more than 16 beds is considered an institution for mental diseases and must be accredited as a medical facility to be eligible for Medicaid funding. Although there are several residential treatment centers in the state, only the Rivers Edge Treatment Center in Fargo and the James River Adolescent Center in Jamestown are licensed and accredited as institutions for mental diseases and therefore are allowed more than 16 beds.

2. Information was received on the application of Southwest Key, a corporation based in Texas, to begin operating a residential child care facility and residential treatment center in Mandan. After committee discussion on department licensing procedures and the impact that increasing the number of beds may have on existing foster care facilities, the committee in September 1997, took the position that the Southwest Key application process be delayed until these items are addressed. The Department of Human Services approved the Southwest Key application in January 1998 for the Southwest Key program to operate a 24-bed residential child care facility in Mandan. Southwest Key also operates a 16-bed residential treatment center in the same facility.
3. Information was received from the Department of Human Services and representatives of Little Flower Freedom Center in Minnewaukan regarding the license revocation process as it relates to the revocation of Little Flower Freedom Center's license. The department initiated the revocation process in 1997, the facility appealed, and the hearings officer upheld the department's decision to revoke the license in the summer of 1998.
4. The committee conducted tours and received information on the programs and services of the Dakota Boys Ranch in Minot and the Prairie Learning Center in Raleigh.
5. Information was received on the status of foster care services in the south central region, the north central region, and the Badlands region.

Recommendations

The committee recommends that the Legislative Assembly, through its Appropriations Committees, review the status of administrative rule changes affecting residential child care facility cost reimbursements and evaluate the following components of the reimbursement system:

1. The limit on social service rate reimbursement.
2. The limit on salaries eligible for reimbursement.
3. The limit on administrative costs eligible for reimbursement.

- The ineligibility for reimbursement of expenditures made with donated or grant income.

Mental Health Services

Funding and Clients

The 1997 Legislative Assembly provided funding to the human service centers and the State Hospital in the form of block grants. A section included in the Department of Human Services appropriation bill provides that while the Legislative Assembly is allowing the human service centers and the State Hospital more flexibility by providing funds in the form of a block grant, the human service centers and the State Hospital are expected to:

- Continue to use standards, guidelines, practices, and core services in effect on March 1, 1997, for providing human services pursuant to NDCC Section 50-06-05.3(2).
- Continue to strive toward improving the quality of services and monitor and strive to achieve successful client outcomes.

- Maximize available federal or other funds to provide services and service enhancements in consultation with the central office.
- Utilize innovative and effective methods of service delivery in order to achieve cost savings or to enhance the level of service provided to clients.

In addition, the human service centers are to provide appropriate community services to continue the trend of fewer State Hospital and Developmental Center admissions in order to serve clients, to the extent possible, in a least restrictive environment.

The following schedule presents a historical comparison of funding provided for mental health services of the Department of Human Services, including the Mental Health Division, the State Hospital, and human service centers:

	Biennium			
	1991-93	1993-95	1995-97	1997-99
Mental Health Services Programs				
Mental Health Division	\$3,760,322	\$2,437,473	\$7,251,006	\$7,314,091
Human service centers	17,068,938	23,427,699	28,240,602	32,121,374 ¹
Total all funds	\$20,829,260	\$25,865,172	\$35,491,608	\$39,435,465
Less estimated income	9,011,476	12,308,132	22,873,316	25,292,646
Total general fund	\$11,817,784	\$13,557,040	\$12,618,292	\$14,142,819
State Hospital²				
Total all funds	\$53,976,393	\$50,838,353 ³	\$52,697,738	\$56,520,007
Less estimated income	14,377,516	15,795,954	16,280,379	18,626,024
Total general fund	\$39,598,877	\$35,042,399 ³	\$36,417,359	\$37,893,983
State Hospital staff	717.2	659.2	628.6	622.6
State Hospital residents	272	224	224	225
Total State Hospital and Mental Health Services Programs				
Total all funds	\$74,805,653	\$76,703,525	\$88,189,346	\$95,955,472
Less estimated income	23,388,992	28,104,086	39,153,695	43,918,670
Total general fund	\$51,416,661	\$48,599,439	\$49,035,651	\$52,036,802

¹ The 1997 Legislative Assembly appropriated funding to the human service centers using a block grant concept. As a result, the department allocated the funding to the various human service center programs, including mental health services. The amount shown is the funding allocated by the department for mental health services for the 1997-99 biennium.

² Legislative appropriations.

³ Includes \$1,880,000 of the \$2 million appropriated from the general fund in a State Hospital downsizing funding pool for the 1993-95 biennium. The remaining \$120,000 was retained as part of the Department of Human Services targeted savings.

The following schedule presents a historical comparison as of October 1998 of the number of persons served with serious mental illness or serious

emotional disorders at the regional human service centers:

Regional Human Service Center	1991-93	1993-95	1995-97	Estimated 1997-99
Adults				
Northwest	317	324	323	302
North Central	400	441	574	677
Lake Region	184	210	238	266
Northeast	529	702	1,103	1,334
Southeast	800	913	1,069	1,323
South Central	488	518	503	531
West Central	459	520	721	963
Badlands	246	311	406	433
Total	3,423	3,939	4,937	5,829

Regional Human Service Center	1991-93	1993-95	1995-97	Estimated 1997-99
Children				
Northwest		376	396	398
North Central		369	597	535
Lake Region		399	417	446
Northeast		260	354	469
Southeast		239	405	412
South Central		460	531	564
West Central		415	588	672
Badlands		332	382	528
Total		2,850	3,670	4,024

State Hospital Review

The 1997 Legislative Assembly appropriated \$56.5 million to the State Hospital for the 1997-99 biennium, \$37.9 million of which is from the general fund. The State Hospital is authorized 622.6 FTE positions, six fewer FTE positions than the 628.6 FTE positions authorized for the 1995-97 biennium. The State Hospital anticipates serving an average of 225 patients throughout the biennium.

The following schedule presents a historical comparison of State Hospital admissions:

State Hospital Admissions	
Fiscal Year	Admissions
1990	2,304
1991	1,791
1992	1,677
1993	1,614
1994	1,610
1995	1,620
1996	1,679
1997	1,671

The following schedule presents 1997-98 State Hospital admissions by program:

Chemical dependency services	46%
Adult psychiatric services	41%
Adolescent services	8%
Forensic services	5%
Total	100%

The committee received information from representatives of the State Hospital on the various types of mental illness and on State Hospital populations, programs, concerns, and needs. Major items include:

1. Within the child and adolescent service unit, the State Hospital has begun operating an eight-bed long-term residential center for the state's most difficult to treat children.
2. Of the persons served in the chemical dependency unit, 40 percent suffer from both a psychiatric and a chemical dependency disorder.
3. Approximately 85 percent of the inmates in the State Penitentiary have substance abuse problems.
4. Individuals suffering from dementia and Alzheimer's who are too difficult to care for in the community receive services in the geriatric psychiatric program at the State Hospital.

5. The State Hospital plans to focus on the development and implementation of specialty services for populations needing longer term treatment, including adolescents, chronic chemically dependent individuals, adults needing specialized outpatient transitional living services, geriatric and psychiatric patients, trauma patients, and sexual offenders. Representatives of the State Hospital believe these types of services are most effectively and economically provided in one setting such as the State Hospital rather than at multiple sites throughout the state.
6. In an effort to reduce admissions, the State Hospital:
 - a. Has developed criteria for admission, continued stay, and discharge at the State Hospital. These criteria will be used by hospital staff to determine appropriateness of admission for patients, what constitutes a proper length of stay, and procedures for prompt discharge of patients once they have completed their treatment.
 - b. Is developing an admission process to review and approve admissions to the State Hospital 24 hours per day.
 - c. Is evaluating patients within statutory time limits and, whenever possible, referring the patient to community programs.
 - d. Is renting crisis beds from the South Central Human Service Center for the observation of patients not appropriate for hospital admission but requiring short-term observation prior to returning to the community.
 - e. Is requiring all services of the hospital to uniformly follow the hospital's admission, continued stay, and discharge criteria.
7. The State Hospital sold the ET (extended treatment) Building, amusement hall, and forensic building to the Department of Corrections and Rehabilitation for \$1,295,000 to be used as a medium security prison. As a result of the prison moving to the State Hospital grounds, renovations are being made to three existing buildings to house patients and services that were moved from the buildings sold. State Hospital programs will be concentrated in four buildings on the grounds, the LaHaug Building,

the child and adolescent services unit building, the chemical dependency unit building, and the learning resource center. The estimated cost of the remodeling project totals approximately \$2.4 million.

Community Services

The committee reviewed the mental health services funding allocated to each human service center from the human service center block grants provided by the 1997 Legislative Assembly as follows:

Regional Human Service Center	1997-99 Biennium			
	General Fund	Federal Funds	Other Funds	Total
Northwest	\$901,785	\$1,467,568	\$109,394	\$2,478,747
North Central ¹	1,535,940	3,180,740	204,078	4,920,758
Lake Region	752,148	416,301	119,426	1,287,875
Northeast	2,633,129	2,580,584	156,008	5,369,721
Southeast	1,555,784	4,042,527	142,492	5,740,803
South Central	1,593,780	1,418,769	111,826	3,124,375
West Central ¹	2,153,886	4,631,921	118,680	6,904,487
Badlands	1,615,997	678,611	0	2,294,608
Total	\$12,742,449	\$18,417,021	\$961,904	\$32,121,374

¹ The Emergency Commission, at its October 1997 meeting, approved additional federal authority for the mental health partnership programs at the North Central Human Service Center - \$339,000 and the West Central Human Service Center - \$1,879,130.

The committee learned that the key components of community mental health services include:

1. Crisis stabilization and resolution.
2. Inpatient services.
3. Medication and other health service management.
4. Partial care/day treatment.
5. Social, residential, and support services.
6. Vocational, educational, and supported employment services.
7. Opportunity for social and leisure activities.
8. Case management.
9. Regional intervention services.
10. Extended care services.
11. Outreach.

The committee learned that State Hospital admissions are continuing to decline primarily as the result of:

1. Regional human service centers screening individuals in their respective regions to assure that appropriate treatment is provided locally and inappropriate use of the State Hospital is reduced.
2. All voluntary admissions to the State Hospital require screening and approval for admission from a regional human service center.
3. All regions operate regional intervention service teams to divert patients from inappropriate use of the State Hospital.
4. A cooperative partnership between the Division of Mental Health, State Hospital, and the human service centers has been established in the areas of admission planning, discharge planning, and aftercare coordination.

The committee reviewed the following community initiatives that are currently in place or being developed:

1. The North Central Human Service Center is beginning a one-year pilot program to treat involuntary admissions from its region in the Minot community rather than the State Hospital.

2. The West Central Human Service Center is beginning a community program to divert admissions from the State Hospital to community short-term inpatient hospitalization and to regional intervention services.
3. The State Hospital began a pilot program in the adult psychiatric service unit utilizing the hospital's admissions, continued stay, and discharge criteria to determine appropriateness of admission.
4. The State Hospital has provided funding for a full-time case manager at the Northeast Human Service Center to work exclusively with individuals with serious mental illness.
5. The Sheyenne Care Center, a skilled nursing facility in Valley City, has presented a proposal to the State Hospital and the Department of Human Services for a geropsychiatric unit for 15 State Hospital patients.
6. The Southeast Human Service Center and State Hospital may implement a cooperative program with MeritCare Health Systems in Fargo to treat more individuals in the community rather than the State Hospital.
7. The Badlands Human Service Center, the State Hospital, and St. Joseph's Hospital and Health Center in Dickinson have entered into a contract to provide local services as an alternative to State Hospital admissions.

The committee reviewed the average caseloads of case managers at human service centers whose major responsibility is to provide case management services for individuals with serious mental illness. The following schedule presents the information based on October 1997 caseload information:

Human Service Center	Number of Case Managers	Average Caseload
Northwest	4	25
North Central	8	24
Lake Region	3	30
Northeast	6	27
Southeast	10	20
South Central	10	20
West Central	10	30
Badlands	4	24

Welfare Reform

The committee received information from the Department of Human Services on the impact of welfare reform on mental health services. The committee learned that case managers, when working with individuals receiving TANF grants who are suffering from a mental health disorder or who are experiencing substance abuse problems, will need to quickly refer the individuals to the mental health or substance abuse service system. Once in the system, the individuals will need to be treated quickly in order to allow the individuals to gain employment before becoming ineligible for TANF grant limits.

Tour Groups

During the interim, the Budget Committee on Government Services functioned as a budget tour group of the Budget Section and visited or received reports on the South Central Human Service Center, State Hospital, James River Correctional Center, International Peace Garden, Minot State University - Bottineau, Forest Service, Minot State University, North Central Research Extension Center, State Fair, North Central Human Service Center, Dakota Boys Ranch, Prairie Learning Center, Badlands Human Service Center, Dickinson State University, and the Dickinson Research Extension Center. The committee heard about facility programs, institutional needs for major improvements, and 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 submitted in report form to the Appropriations Committees during the 1999 legislative session.

Other Mental Health Information

The committee received other information and testimony regarding mental health services and issues including:

1. Mental Health Association recommendations providing that:
 - a. The Department of Human Services provide a forum for consultation with the Mental Health Association and other advocacy organizations when major policy changes are being considered which affect individuals with mental illness and their families.
 - b. The clubhouse model of prevocational training and transitional employment, now

existing in Region IV - Grand Forks, and Region II - Minot, be extended to other regions of the state.

- c. The partnership projects now operating in the north central, southeast, and south central regions be expanded statewide.
 - d. A plan for continued downsizing of the number of patients at the State Hospital, with timelines, be created to return the hospital's patients to their respective communities, and a plan be implemented to redirect the resources presently spent on hospital care into the development of a full continuum of community-based services required to adequately treat persons with mental illnesses.
2. Program areas identified by the Department of Human Services needing to be addressed include:
 - a. The State Hospital, regional human service centers, and the Division of Mental Health and Substance Abuse Services must continue to collaborate to improve the system of mental health care and to provide the best possible client services and outcomes.
 - b. Consumers and family members should be included in all levels of planning, discussion, and policy development.
 - c. Appropriate children's mental health services at the community level should continue to be enhanced.
 3. The committee heard testimony from representatives of the North Dakota Public Employees Association stressing the need to continue to provide adequate staffing and training for state agencies providing mental health services.

Conclusion

The committee chose not to make any recommendations as a result of its monitoring of mental health services during the 1997-98 interim.

DEPARTMENT OF HUMAN SERVICES FTE REPORT

Section 7 of House Bill No. 1012 provided that the human service centers, State Hospital, and the Developmental Center report to the Budget Section and a committee of the Legislative Council on the hiring of any full-time equivalent (FTE) positions in addition to those authorized by the Legislative Assembly for the 1997-99 biennium. The committee was assigned this responsibility and received reports from the Department of Human Services indicating that the department hired 26.25 FTE positions in addition to those authorized by the Legislative Assembly. The estimated biennial cost of these positions totals \$1.9 million. The funding for these

positions during the 1997-99 biennium was made available from a variety of sources, including additional federal or other funds, budget reallocations, or transfers of appropriation authority from the State Hospital to the human service centers. The positions added include:

- 1 FTE computer technology services specialist at the Northwest Human Service Center.
- .5 FTE administrative support position at the Northwest Human Service Center.
- 1 FTE vocational counselor position at the North Central Human Service Center.
- 1 FTE vocational rehabilitation counselor position at the North Central Human Service Center.
- 1 FTE psychiatrist position at the North Central Human Service Center.
- 1 FTE human service program administrator IV at the North Central Human Service Center.
- .25 FTE administrative support position at the Lake Region Human Service Center.
- 1 FTE SMI case management position at the Northeast Human Service Center.
- .5 FTE human service program specialist at the Northeast Human Service Center.
- 1 FTE psychiatrist position at the Northeast Human Service Center.
- .5 FTE child care licensing and quality improvement position at the Northeast Human Service Center.
- 1 FTE flood disaster program position at the Northeast Human Service Center.
- 1 FTE administrative secretary position at the Northeast Human Service Center.
- 2 FTE family preservation unit case managers at the Northeast Human Service Center.
- 1 FTE DD behavior analyst at the Southeast Human Service Center.
- 2 FTE child care licensing and quality improvement positions at the Southeast Human Service Center.
- 3 FTE partnership project administrative positions at the Southeast Human Service Center.
- 1 FTE activity assistant position at the Southeast Human Service Center.
- 1 FTE activity therapist at the Southeast Human Service Center.
- 1 FTE registered nurse at the West Central Human Service Center.
- 1 FTE child care licensing and quality improvement position at the West Central Human Service Center.
- 1 FTE human relations counselor at the Badlands Human Service Center.
- 1 FTE vocational rehabilitation counselor position at the Badlands Human Service Center.

- 1.5 FTE child care licensing and quality improvement positions at the Badlands Human Service Center.

STATE EMPLOYEE COMPENSATION REPORT

Section 17 of House Bill No. 1015 provided that the Office of Management and Budget report to an interim Legislative Council committee on state employee compensation issues. The report was to focus on compression problems, market comparisons, and other compensation issues and include the effects of all benefits, including health insurance, on the employment relationship. The report was to include detailed information on the impact of salary compression and estimates of the dollar amount to correct salary compression problems. In addition, the Office of Management and Budget was to develop and present a plan to compensate state employees in a fair and adequate manner. The Budget Committee on Government Services was assigned this responsibility.

State Employee Salaries and Benefits

The committee reviewed state employee salary increases since 1991 as follows:

Year	Salary Increase Approved by the Legislative Assembly
1991	4%, with a minimum of \$50 per month
1992	\$40 per month
1993	\$60 per month
1994	3% (to the extent available from agency savings)
1995	2%
1996	3% (includes 1% for salary and equity adjustment and merit increase)
1997	3% (minimum of \$30 per month, any additional increases based on merit and equity)
1998	3% (minimum of \$30 per month, any additional increases based on merit and equity)

The committee reviewed fringe benefits provided to state employees which include:

1. Single or family health insurance policy paid for by the state.
2. Social Security benefits - 7.65 percent provided by the employee and 7.65 percent provided by the state.
3. Retirement - 9.12 percent (5.12 percent contributed by the state, four percent employee contribution paid by the state in lieu of salary increases in 1983 and 1984).
4. \$1,300 life insurance policy.
5. Annual leave, sick leave, family leave, funeral leave, and holiday leave.
6. Workers' compensation.
7. Unemployment insurance.

The committee reviewed state employee pay schedules, average salary information, and fringe benefits provided to state employees in North Dakota, Minnesota, Montana, South Dakota, and Wyoming. The committee learned that North Dakota and Wyoming utilize one pay schedule for classified employees, Montana utilizes two

range structures, South Dakota uses five range structures, and Minnesota utilizes 24 range structures.

The committee reviewed the following schedule comparing sample job titles and the average salary for each title among the various states.

Position Title	North Dakota	Minnesota	Montana	South Dakota	Wyoming	4-State Average ¹	10-State Average ²
Programmer II	\$1,883	\$3,155	\$2,258	\$2,483	\$2,439	\$2,584	\$2,582
Data processing coordinator II	\$2,305	\$2,613	\$2,255	\$2,014	\$2,439	\$2,330	\$3,101
Auditor I	\$1,855	\$2,690	\$1,987	\$2,179	\$1,534	\$2,303	\$2,138
Attorney II	\$2,962	\$4,261	\$3,196	\$3,165	\$3,626	\$3,562	\$3,625
Librarian I	\$1,770	\$3,431	\$2,081	\$2,194	\$2,373	\$2,520	\$2,636
Transportation engineer III	\$3,163	\$4,091	\$2,879	\$3,034	\$2,664	\$3,167	\$3,565
Registered nurse I	\$2,391	\$3,459	\$2,091	\$2,523	\$2,104	\$2,544	\$2,643
Addiction counselor II	\$2,324	\$2,382	\$1,929	\$1,998	N/A	\$2,103	\$2,285
Social worker II	\$2,164	\$3,101	\$2,196	\$2,100	\$2,118	\$2,379	\$2,545
Highway patrol officer	\$2,612	\$3,179	\$2,445	\$2,368	\$2,250	\$2,560	\$2,703
Park ranger	\$1,879	N/A	\$1,597	\$2,027	N/A	\$1,812	\$2,476
Physical plant director III	\$3,346	\$4,536	\$2,819	\$2,954	\$2,837	\$3,287	\$3,290
Plumber II	\$2,220	\$2,968	\$2,464	\$2,018	\$1,770	\$2,305	\$2,275
Electrician II	\$2,312	\$2,961	\$2,421	\$1,874	\$1,950	\$2,302	\$2,281

¹ The 4-state average includes Minnesota, Montana, South Dakota, and Wyoming.

² The 10-state average includes Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming.

The committee reviewed the following schedule among various states: comparing fringe benefits provided to state employees

Fringe Benefit	North Dakota	Minnesota	Montana	South Dakota	Wyoming
Annual leave - Days per year					
3 years of service	12	13	15	15	12
8 years of service	15	16.3	15	15	15
12 years of service	18	22.8	18	15	18
24 years of service	24	26	21	20	24
Sick leave - Days per year	12	13	12	14	12
Holidays per year	10.5	11	10.5	10	9
Life insurance - death benefit	\$1,250	1 x salary	\$10,000	1 x salary	\$46,000
Health insurance - Family coverage					
Employer cost	\$309	\$324	\$209	\$152	\$175
Employee cost	\$0	\$85	\$75	\$158	\$200
Dental insurance - Family coverage					
Employer cost	No coverage	\$35	\$14	\$0	\$6
Employee cost	No coverage	\$17	\$18	\$39	\$17
Retirement					
Employer contribution	4.12%	4.20%	6.70%	5.00%	11.25%
Employee contribution	4.00% ¹	4.07%	6.70%	5.00%	0.00%

¹ Paid by the state on behalf of the employee, in lieu of salary increases in 1983 and 1984.

Compensation Report

The committee received the state employee compensation report of the Central Personnel Division. The committee learned that "compression" occurs when long-term employees and new employees in the same salary range are both paid salaries in the low end of the range. It results from agencies being unable to provide salary increases to their long-term employees in excess of the across-the-board increases provided by the Legislative Assembly. As a result, the salary range increases at the same rate as the employee's salary so the employee never moves up in the salary range. As new employees

are hired and paid in the same salary range, their pay begins at a similar level to the employee with a number of years of service. The report identified "compression" among state employees as a continuing problem: however, the situation is improving. In 1994, 38.1 percent of employees were paid within the first quartile of their salary range, while in 1998, 26 percent of employees are paid within the first quartile of their range.

The report included a comparison of state employee salaries to market salaries. North Dakota state employees in grades 5 through 20 are paid from seven to 13 percent less than market pay in North Dakota. In

grades 21 through 42, North Dakota state employees salaries range from 19 percent behind the market to two percent ahead of market compared to the average salaries in 10 midwestern state governments. Currently, North Dakota's salary range midpoints are as much as 12.5 percent behind market pay.

The report included a comparison of the cost of fringe benefits provided to state employees to other markets. North Dakota state employee fringe benefits were calculated at 42.2 percent of payroll compared to fringe benefits costing 39.9 percent of payroll for other North Dakota employers with more than 15 employees and costing 42.9 percent of payroll for fringe benefits provided to employees within the 10 midwestern state governments.

The report included a proposed compensation system to correct "compression" problems. The proposal provided that employees would be paid at the midpoint of their assigned salary range after 10 years of service. The proposal would result in over 46 percent of state classified employees requiring a salary increase to reach their respective target position in the salary range and the cost of the proposal would be approximately \$400,000 per month. Due to its high cost, the Central Personnel Division did not recommend this proposal.

The report indicated that the current pay system does not require major changes in order to provide fair and adequate compensation. The Central Personnel Division is proposing that the state continue and enhance a number of practices currently in place. The division's recommendation includes:

1. Recalculating all salary ranges to place the midpoint at 95 percent of the market rate.
2. Expanding the ranges from the current level of 53 to 63 percent to 66 percent.
3. Reducing the number of ranges from 39 to 20 but increase the space between each range to improve the differentiation between grade levels.
4. Continuing to split appropriations by directing some general salary increases across the board with additional appropriations focusing on equity and performance.

The estimated cost of implementing the recommendation would be approximately \$25,000 per month based on current salaries.

Other Testimony

Other testimony received from representatives of employee organizations expressed concern regarding the lack of employee input into salary policy and that some state employees in lower paying jobs are eligible for and receiving food stamps and fuel assistance.

Recommendations

The committee recognizes that "compression" within pay grades is a problem, believes that salary increases based upon performance will help to address the

"compression" problem, and recommends that the Legislative Assembly provide, to the extent possible, that a portion of salary increase funding approved by the Legislative Assembly be distributed to employees based on performance.

The committee recognizes that some employees in lower pay grades are not receiving adequate salaries and that although the state health insurance plan is an important benefit for state employees, the levels of deductibles and coinsurance can be a burden for these lower paid employees. The committee recommends that the Legislative Assembly, through its standing committees during the legislative session, consider options for increasing the salary levels for lower-paid employees and lowering health insurance deductibles and coinsurance percentages in the state health insurance contract.

AGREEMENTS BETWEEN NORTH DAKOTA AND SOUTH DAKOTA

North Dakota Century Code Section 54-40-01, provides that an agency, department, or institution may enter into an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized to perform by law. Any proposed agreement must be submitted to the Legislative Assembly or, if the Legislative Assembly is not in session, to the Legislative Council or a committee designated by the Legislative Council, for approval or rejection. The agreement may not become effective until approved by the Legislative Assembly or the Legislative Council. The Budget Committee on Government Services was assigned this responsibility for the 1997-98 interim.

The committee reviewed legislative action in North Dakota and South Dakota regarding bistate agreements. The committee learned that the authority to form a bistate agreement in North Dakota resulted from recommendations of the 1995-96 North Dakota/South Dakota Commission interim study.

In South Dakota, three bills were introduced but none were approved. The bills would have provided:

1. That a state agency may enter into an agreement with another state to form a multistate authority.
2. That the Department of Transportation may enter into agreements with North Dakota for highway construction and maintenance activities and services in counties in either state that are adjacent to the boundary.
3. That the South Dakota Board of Regents may enter into cooperative purchasing agreements with the North Dakota State Board of Higher Education.

Although the agreements between the states to form bistate authorities must be approved before becoming effective, agencies of North Dakota and South Dakota

may cooperate and share information, services, and activities without forming a bistate authority.

During the interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned three study responsibilities.

House Concurrent Resolution No. 3042 directed a study of the Department of Human Services, including the appropriateness of a consolidated Department of Human Services in light of significant federal funding, society, and technology changes and of the changes necessary to enhance program effectiveness, legislative understanding, appropriation analysis and development, and oversight of the Department of Human Services.

Section 34 of 1997 House Bill No. 1012 provided that if the Legislative Council studied the Department of Human Services, the study should also review the block grant method of appropriating funds to regional human service centers, including incentives, accountability, and budgeting processes.

House Concurrent Resolution No. 3032 directed a study of the responsibilities of county social service agencies as they are distinguished from the responsibilities of regional human service centers and the Department of Human Services when providing services to children and their families and persons with disabilities, including the elderly.

Committee members were Senators Tim Mathern (Chairman), Bill L. Bowman, Tom Fischer, Jerome Kelsh, Judy Lee, Rod St. Aubyn, and Russell T. Thane and Representatives Leonard J. Jacobs, Roxanne Jensen, Connie Johnsen, James A. Kerzman, Clara Sue Price, Wanda Rose, Ken Svedjan, Gerald O. Sveen, and Janet Wentz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

DEPARTMENT OF HUMAN SERVICES STUDY

House Concurrent Resolution No. 3042 and Section 34 of 1997 House Bill No. 1012 directed a study of:

- The appropriateness of a consolidated Department of Human Services in light of significant federal funding, society, and technology changes.
- The changes necessary to enhance program effectiveness, legislative understanding, appropriation analysis and development, and oversight of the department.
- The block grant method of appropriating funds to regional human service centers, including the incentives, accountability, and budgeting processes.

The committee, in addition to meetings in Bismarck, held meetings in Fargo, Grand Forks, and Minot to receive testimony from county officials, human service center personnel, and other interested persons regarding

the study of the Department of Human Services and of the block grant method of appropriating funds to regional human service centers.

Status Report - Dawes Recommendations

The committee received a status report from representatives of the Department of Human Services on the department's implementation of the 1987 and 1991 recommendations of Dr. Kenneth Dawes and learned:

- In most areas the department has made an effort to implement the recommendations, although more could be done in several areas. As examples, the department had no formalized agency-wide strategic planning, agencywide caseload standards have not been developed, and a formal needs assessment process has not been developed on a systemwide basis.
- The essential services document, which is being reviewed by the department, provides for the identification of services to be available at the human service centers, and the centers are provided broad parameters for service delivery with the flexibility to implement services to the extent considered necessary in the region.
- Many of the recommendations were to have been addressed by a previous administration's emphasis on total quality management training. Total quality management is a process-oriented effort and many department staff now believe that too much time was spent on the process. Some parts of total quality management are valuable and have been retained, including getting input, identifying problems, and providing followup on decisions that are made.

Public Administration Services Study

At the committee's September 1997 meeting, Public Administration Service (PAS), McLean, Virginia, was selected to conduct a study of the organizational structure of the Department of Human Services.

The committee held several meetings during the early portion of the consultant's study to provide committee input for the study and to solicit input from the Department of Human Services, county social service agencies, and social service providers.

The committee provided direction to the consultant by expressing by motion that it anticipated that major human service program changes may take place in the future. Consequently, the Public Administration Service, in its study of the Department of Human Services, was asked to include in its report any recommendations necessary for the state to have a Department of Human Services that is best poised for the future to be effective, responsive, and efficient and that the recommendations, unless meeting these goals, not be to "polish" the

existing structure of the state's human services delivery system on the state, regional, and local levels.

The study methodology of PAS included completing basic document collection, interviewing key personnel in the Department of Human Services, conducting field interviews or surveys with human service center employees and county social service directors, developing a management questionnaire, reviewing research and statistical data bases, reviewing the department information technology planning process and the new organizational design, and reviewing programs in human service departments in adjoining states. The consultant presented the final report to the committee in June 1998.

Department of Human Services Strengths

The consultant's report identified the following Department of Human Services strengths:

- Programs are delivered and administered by caring professionals.
- The Developmental Center ranks within the top five percent of similar facilities throughout the country.
- The State Hospital provides quality, integrated psychiatric and chemical dependency treatment services.
- The tiered structure of the department has the potential to be effective.
- Human service centers provide a wide variety of services that are highly rated by clients.
- The department has been effective in obtaining federal grants.
- County social service agencies administer programs effectively and efficiently.
- The department has recently initiated an information systems strategic planning process.
- The department effectively plans for and provides children and family services.
- The July 1997 reorganization of the Department of Human Services has resulted in an opportunity for improved communications.

Department of Human Services Opportunities for Improvement

The consultant's report identified the following Department of Human Services opportunities for improvement:

- The July 1997 organizational structure makes it necessary to reduce the span of control of the executive director and provide for an intermediate level of supervision.
- There needs to be agreement on what core or essential services are being provided and should be provided.
- Service integration needs to be improved so the department can provide a continuum of integrated services.

- The department needs to develop an overall strategic plan.
- A systematic approach to program evaluation is necessary.
- The budgeting process should be changed to connect the department's goals and objectives with the funds necessary to support them.
- The role of the department's central staff needs to be more clearly defined.
- The department needs to implement a system of program review.
- The department needs to develop a business plan.
- The department needs to develop an information system strategic plan.
- The department needs to define the roles of each level of the service delivery system.

Other PAS Observations

The consultant reviewed the opportunity for managed care in the delivery of services by the department and informed the committee the only area within the Department of Human Services in which a managed care aspect could possibly be used is the mental health area. For a managed care concept to be implemented, unit costs need to be established through an effort such as the diagnostic-related groups used in hospital health care.

The consultant indicated that overall it appears the Department of Human Services has met the tests of a successful combined human service agency as identified by Dr. Dawes in the 1987 study, which included increasing the availability of services, providing services on a cost-effective basis, eliminating gaps in services, providing for continuity of services in an effective manner, and providing for the coordination of service delivery.

Department of Human Services Comments Regarding the PAS Study

Comments by representatives of the Department of Human Services on the PAS study included:

- Regarding the recommended departmental "business plan," the department is in the early stages of developing a strategic plan.
- Regarding the department's human resource function and its slowness in filling departmental positions, the concern is noted and the department probably proceeds cautiously because of the many rules affecting hiring.
- Regarding a needs assessment, a departmental committee has been formed and is working to develop "core services" and identify duplication and unmet service needs.
- Regarding the department/county relationship, the department is working to improve the relationship. Currently, the county social service

directors meet two days each month in Bismarck and the agenda often includes departmental personnel discussing specific issues.

- Regarding the budgeting process, the department is seeking input from legislators as to how the department's communication and budgeting process can be improved.
- Regarding a departmental newsletter, a formal newsletter will be distributed in the near future.
- Regarding the department's biennial report, the department's report is being printed and reflects format changes.

- Regarding the future direction of the Department of Human Services, the department's focus is not on the status quo, and the department must change because of federal changes and changes resulting from the "swap" of county and state economic assistance responsibilities.

PAS Recommendations

The following is a summary of the recommendations contained in the PAS report regarding the study of the Department of Human Services:

Recommendation	Cost or Other Impact
Chapter II - Study Environment	
Strategic business plan - The department develop a plan for a three-year period considering the environment in which the department is operating.	Doing in-house
Information technology master plan - The department develop an information technology master plan that supports its strategic plan and goals and objectives.	Doing in-house
Social service districts - The Legislative Assembly consider social service districts to bring counties together to share resources.	Future cost avoidance
Departmental information distribution - The department develop and utilize an executive decision system to provide summary information to management and policymakers (preferably allow access to the information from a web site or through data warehousing).	Improve efficiency web site cost - \$5,000; data warehousing - \$250,000
Chapter III - Survey Results	
Client satisfaction surveys - The department change survey methodology to improve the rate of return of human service center client surveys.	Provide a more representative sample
Other client satisfaction surveys - The department encourage counties and private providers to conduct client satisfaction surveys, consider making the survey a requirement for grant funding and a part of other county and private provider reporting.	Improve service
Strategic planning, evaluation, and review - The department implement a strategic planning, evaluation, and review capability.	Improve efficiency, no additional cost
Private provider relations - The department inform private providers that the provider audit and others in the department will explain in detail rate calculations and audit findings, and basic information and new rules or regulations be summarized on a departmental web site.	Improve relationships
Core and essential services - The department identify core and essential services, inform legislative committees, and disseminate and use the criteria.	Future cost avoidance, improve client service
Human services legislation web site - The Legislative Assembly provide comprehensive web site information on human services legislation, and the department place information on a web site that includes a description of department functions, directory of services, basic eligibility information, and allows citizen access to service.	Improve relationships
Public/private legislative committee - The Legislative Assembly appoint a public/private committee of citizens, academics, private providers, and departmental management to consider approaches to improving the sharing of information and collaboration.	Improve relationships
Inspecting and licensing requirements - The department review inspection and licensing requirements for programs and facilities to provide for the consistent administration of programs, the decentralizing of inspections, and retaining centralized standard setting and quality control authority.	Improve efficiency
County and private sector collaboration - The department emphasize and search for ways to foster collaboration with the counties and private sector in planning and implementing programs.	Improve relationships and future cost avoidance

Recommendation	Cost or Other Impact
<p>Chapter IV - Departmental Organization</p> <p>Organizational structure changes - The department, as a high priority, adopt the recommended organizational structure which reduces the executive director span of control; improves coordination, communications, and control of staff and field services; and provides a budgeting, planning, evaluation, and research unit, an ombudsman/troubleshooter, an enhanced public information function, and an information resource management unit to improve quality of public and internal information.</p> <p>Financial and Medical Assistance Division - The department consolidate the Medical Services and Public Assistance Divisions into a Financial and Medical Assistance Division.</p> <p>Centralized collections and finance consolidation - Consolidation of Finance and Office Services and of centralized collections into the Management Support Division.</p> <p>Key person succession planning - The department address the large number of retirement-eligible people in key positions by having the human resources management team review and make recommendations on coping with the problem, including career ladders, training incentives, performance bonuses, and obtaining executives "on detail."</p>	<p>Do with existing FTE positions</p> <p>Savings up to \$125,000; funds to be reinvested in the department</p> <p>Possible reduction of one FTE; savings of \$15,000 to \$18,000 per year to be reinvested in department</p> <p>Conduct in-house</p>
<p>Chapter V - Relationships, Communications, Budget, and Executive Director Qualifications</p> <p>"Budget in Brief" technology-assisted presentations - The department improve budget presentation to the Legislative Assembly by using "Budget in Brief" technology-assisted presentations, including a review of the Governor's budget guidelines, identification of departmental goals and significant changes from the previous biennium, trend and projection analysis, high level summary of expenditures and revenue, identification of specific initiatives, identification of new programs/major modifications to existing programs, identification of programs and services recommended for elimination, and rhetorical questions and answers and methods for legislators to obtain additional information. Maximum use of available software should be used in the presentations, also available on a web site, with followup detail provided in electronic format also on the web site. The verbal presentation should not be testimony format bound but should allow an open discussion or sharing of information with the Appropriations Committees.</p> <p>Executive director qualification standards - The Legislative Assembly by statute should identify qualification standards that the Governor "may" consider in selecting future executive directors.</p>	<p>Complete in-house</p> <p>No cost impact</p>
<p>Chapter VI - Performance Management</p> <p>Performance management system - The Legislative Assembly should emphasize the importance of and implement a performance management system.</p>	<p>Federal bonuses for effective systems and improvement of public and legislative oversight</p>
<p>Chapter VII - Innovative Practices</p> <p>Social service districts - Financial incentives - Similar to the recommendation in Chapter II, the Legislative Assembly should consider social service districts, including providing financial incentives for counties to voluntarily come together within the next two years with mandatory social service districts for the subsequent biennium.</p> <p>Other states' innovations - The department should comment to and make recommendations for implementation of innovations in other states, including North Carolina's decentralization of eligibility and benefit criteria, New York's decentralization of child welfare programs, Ohio's requirement that counties share in risk taking and program design, Iowa's innovation zones, and Texas' privatization efforts.</p> <p>Medicaid spending reduction techniques - The department should comment to and make recommendations regarding the Medicaid spending reduction techniques identified in the report and their applicability in North Dakota.</p> <p>Child protection funding shifts - The department should consider child</p>	<p>Cost avoidance</p> <p>Cost impact cannot be predicted</p> <p>Establish a goal to reduce Medicaid spending using selected techniques</p> <p>Establish a goal of saving 10 percent</p>

Recommendation	Cost or Other Impact
<p>protection fund shifting initiatives based upon shifting eligible "kinship" foster care from temporary assistance for needy families (TANF) child-only grants to foster care payment.</p> <p>Public/private collaboration efforts - The state, as part of social service districts, should consider providing incentives for public/private collaboration operation of integrated service centers at the district level incorporating managed care techniques and including a pilot project with performance goals.</p>	<p>Bolster public/private relationships</p>

**Department of Human Services
Strategic Planning Process**

The committee learned the department began a strategic planning process in July 1998 that includes the identification of the following "taxonomies" or core areas selected for review:

- Political.
- Demographics.
- Technology.
- Service delivery.
- Business/economic/labor.
- Education/work force.
- Culture/social values.
- Revenue.
- Relationships.

The strategic planning "scanning and forecasting" effort, which involves interviews and information gathering, was planned to be completed by October 15, 1998, and will allow for the development of a departmental mission statement based on "core trends." This mission statement will include new goals that support and give action to the mission statement and will allow each unit within the department to develop the unit's mission and goals.

The external environmental scanning and forecasting will allow the Department of Human Services to determine where the department is now; where it is going; where it should go to serve its clients, communities, and the state; and what the department needs to change to get where it needs and wants to go.

The planning is being done primarily "in-house," and the department has a contract with Bismarck State College for limited assistance at an estimated cost of \$20,000.

**Committee Consideration and
Recommendations - Department of Human
Services Study**

The committee considered but does not recommend a bill draft that would have provided that the Governor may consider certain professional qualifications in the appointment of the executive director of the Department of Human Services.

The committee recommends Senate Concurrent Resolution No. 4002 to urge the continued cooperation and coordination among county social service agencies to provide for the delivery and administration of social services in a cost-effective and efficient manner. The

resolution also encourages the Department of Human Services to assist county social service agency efforts in voluntary consolidation and in developing efficiencies in the delivery of county social services and provides for reports to the Legislative Council.

The committee considered a resolution to implement the recommendations of the PAS regarding changes to the organizational structure of the Department of Human Services. The committee recommends Senate Concurrent Resolution No. 4003 to urge the Department of Human Services to develop a strategic business plan that includes the identification of departmental goals and objectives, client service needs, and strategies for service delivery, monitors performance, adjusts service delivery to provide priority client services in a cost-effective and efficient manner, and includes the consideration of the following recommendations:

1. Adopt an organizational structure that reduces the executive director's span of control and improves coordination, communications, and control of staff and field services;
2. Improve the budget presentation to the Legislative Assembly by using "Budget in Brief" technology-assisted presentations, maximum use of available software, and information on an Internet web site which includes a review of the Governor's budget guidelines, identification of departmental goals and significant changes from the previous biennium, trend and projection analysis, executive summary of expenditures and revenues, and identification of specific initiatives, new programs and major modifications to existing programs, and programs and services recommended for elimination;
3. Develop and use an executive decision system that provides summary information to management and policymakers, allowing access to the information from an Internet web site or data warehousing;
4. Identify core and essential services, inform legislative committees, and disseminate this information to the public;
5. Improve county and private sector collaboration by emphasizing and searching for ways to involve the counties and the private sector in planning and implementing programs;
6. Improve private provider relations by requiring department staff to explain payment rate calculations and audit findings to providers and by

- providing basic information and new rules on the department's Internet web site;
7. Review inspection and licensing requirements for programs and facilities to provide for consistent administration of programs, decentralizing of inspections, and retaining centralized standard setting and quality control authority;
 8. Implement a strategic planning, evaluation, and review capability that may include:
 - a. A budgeting, planning, and evaluation division, under the control of a newly created assistant director position, which includes quality control and research and statistics functions and provides through a new position that could be filled on a temporary basis from university personnel long-range vision and strategic planning;
 - b. An ombudsman/troubleshooter position and an enhanced public information function to provide information regarding department programs and serve as an informal appeals and complaint resolution function; and
 - c. An information resource management unit, which includes the technical eligibility computer system, to improve the quality of public and internal information;
 9. Develop an information technology master plan that supports department goals and objectives and the systematic planning process and prioritizes technology needs;
 10. Improve client satisfaction survey methodology and encourage counties and private providers to conduct client satisfaction surveys;
 11. Consider the consolidation of the Medical Services and Public Assistance Divisions, including the training, education, employment, and management function, into a Financial and Medical Assistance Division and the consolidation of Finance and Office Services and centralized collections in a Management Support Division;
 12. Consider merging children's special health services into the Children and Family Services Division;
 13. Address key person succession planning by developing department staff through the possible use of "career ladders," training incentives, and performance bonuses or obtaining executives "on detail" from the private sector and universities;
 14. Review and make recommendations for implementation of other states' innovative methods of service provision;
 15. Review and make recommendations regarding the Medicaid spending reduction techniques identified by the consultant and their applicability to North Dakota;

16. Consider child protection fund shift initiatives that are based upon shifting eligible "kinship" foster care from TANF child-only grants to foster care payments;
17. Consider providing incentives for public/private collaborative operation of integrated service centers at the district level, incorporating managed care techniques, and including a pilot project with performance goals; and
18. Consider supporting and assisting in the implementation of a performance management system that includes measurement criteria that assist in setting departmental goals, allocate and prioritize resources, and provide for reporting on the success in meeting goals.

The resolution also provides that the Department of Human Services be requested to report to the Legislative Council during the 1999-2000 interim on the department's progress in implementing the recommendations, that an interim legislative committee monitor the progress of the department in this regard, and the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the 57th Legislative Assembly.

STUDY OF SOCIAL SERVICE AGENCY RESPONSIBILITIES

House Concurrent Resolution No. 3032 directed a study of the responsibilities of county social service agencies as they are distinguished from the responsibilities of regional human service centers and the Department of Human Services when providing services to children and their families and persons with disabilities, including the elderly.

North Dakota Association of County Social Service Board Directors and Department of Human Services Study

Representatives of the county social service boards and the Children and Family Services Division of the Department of Human Services formed a committee and conducted meetings to develop recommendations on a children and family services "swap" proposal, relating to the administrative and grant responsibilities of county social services and the Department of Human Services.

The committee learned the county social service agencies began a time study on July 1, 1997, to help the counties identify what services are primarily provided by county agencies and the related cost. The time study will enable each county to determine what services are the most widely used and at what cost to the agency. All personnel within a social service agency will complete the time study, with the information compiled by the Department of Human Services.

The joint committee reviewing the "swap" proposal for children and family services developed a preliminary consensus regarding mandated or core services to be

available in each county. Core services would be funded at a cost of 25 percent of the total to the county and include child protection assessments, foster care recruitment and licensing, foster care case management, early childhood licensing, and family social work. The department, under the concept, would contract with counties for delivery of these services, and counties would meet policy and staffing requirements.

Voluntary services, such as parent aide and intensive in-home services, would be available on a contract basis between the department and the counties with the primary purposes to prevent out-of-home care and to reunite children with their parents.

At the last committee meeting the committee was informed the Children and Family Services Division will continue to research and look at alternatives for reimbursement to counties for children and family services programs that would include a simplification of the state/county funding responsibilities to assist both the state and the counties in budget planning and administration.

The joint committee recommended that subsidized adoption programs be totally administered by the state with no county involvement or participation.

North Dakota

Association of Counties Testimony

The 1997 Legislative Assembly passed House Bill No. 1041, the "swap" legislation, that exchanged state and county administrative and funding responsibilities for economic assistance programs effective January 1, 1998.

The committee received testimony from the North Dakota Association of Counties regarding the impact of the legislation including:

- At the conclusion of the 1997 Legislative Assembly an analysis suggested a statewide net savings for counties of \$2.5 million as a result of "swap." A recent analysis indicates the savings has eroded to less than \$1.5 million, with a number of counties reporting significant property tax increases for fiscal year 1998 to cover increased costs.
- Counties as well as the Department of Human Services are extremely concerned with the impact of "swap" and at least two factors are responsible for the cost shift—the counties' handling of November and December 1997 costs as calendar year 1998 budget items that were not anticipated in the earlier analysis and the counties' administrative costs of child support.
- Welfare reform changes require counties to hire, by July 1, 1999, an additional 24.75 FTE positions relating to the child support program—an increase of 25 percent.
- The impact of welfare reform on counties with Indian reservations is more costly than

anticipated, with Benson, Sioux, and Rolette Counties anticipating property tax increases in the 15- to 20-mill range. The increased state funds dedicated to these counties appears to be insufficient to meet the increased administrative burden.

Joint Meeting - Department of Human Services-Related Issues

The committee met in October 1997 with the Budget Committee on Long-Term Care and the Welfare Reform Committee to receive input from tribal members and to discuss tribal human service issues.

The committees received testimony from representatives of the Department of Human Services regarding:

- The relationship of the state office and the human service centers with tribal governments and observations to improve that relationship.
- The services provided in the Lake Region, West Central, and North Central Human Service Centers, the Division of Mental Health and Substance Abuse, and the Aging Services Division for tribal members.
- Continued efforts to improve the relationship between the department and tribal governments.
- The disproportionate number of American Indians receiving services offered through the department.
- Past efforts that have demonstrated success in providing services on the reservations hinges upon focusing on assisting tribal members to develop and operate their own programs.
- The need for the department and tribal governments to work together to identify the various unmet needs and remove barriers to effective services.
- The number of American Indian children in foster care during fiscal year 1997 totals approximately 33 percent, compared to seven percent of the state's population under age 18.
- The belief that the most effective child welfare programs on the reservations are those that the tribes run themselves. The department several years ago began providing technical assistance to tribes in the development of their infrastructure for the delivery of child welfare services on reservations.
- The tribal children's services coordinating committees development of five-year plans for the provision of child welfare services to children at risk, and tribes are eligible to receive their own child care development block grant moneys.
- The tribes' process of developing, with the assistance of the Children and Family Services Division, other unique child welfare services, including a special needs adoption program for American Indian children, specialized tribal

therapeutic foster care, and independent living programs for American Indians.

Adoption and Safe Families Act of 1997

The committee, although it did not have any specific responsibility to monitor the Act, learned that the federal Adoption and Safe Families Act of 1997 will have an impact on foster care, adoption services, family preservation, and independent living. States are encouraged to "fast track" the placement of children from foster care into adoption situations. The state's responsibility regarding custody and care of children placed in foster care will change as a result of the federal legislation. Regarding the plans for implementation of the Adoption and Safe Families Act of 1997, the department has formed a task force to develop the necessary legislation to be presented to the 1999 Legislative Assembly for the state's implementation of the Act, to provide information to the public regarding the Act's requirements, and to develop the necessary training efforts.

Committee Recommendation - Social Service Agency Responsibilities

As a result of its review of county and state responsibilities relating to services for children and their families and the elderly, the committee does not make any recommendations in areas other than subsidized adoption.

In the area of subsidized adoption, the committee recommends Senate Bill No. 2032 to require the

Department of Human Services to pay the cost, in excess of the federal share, of assistance provided adopted children with special needs and related administrative costs.

The Department of Human Services estimates the fiscal impact of the bill draft to be \$588,306 to the state general fund for the 1999-2001 biennium. Funding is not included in the department's budget request. Counties are concerned with the increasing cost of adoption subsidy grants. County social service directors suggested, as an alternative, that the state take responsibility for the administrative functions of the program, including eligibility determination, annual reviews, and payment processing. The Department of Human Services is concerned with the related fiscal impact and informed the committee the discussions with the county representatives will continue and the department will attempt to reduce the budgetary impact of the bill draft.

BUDGET TOURS

While conducting meetings in Fargo and Grand Forks, the committee conducted a budget tour of the Southeast Human Service Center and the Northeast Human Service Center. On the tours, the committee heard of institutional needs for capital improvements and programs and of any problems the entities 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 1999 Legislative Assembly.

BUDGET COMMITTEE ON LONG-TERM CARE

The Budget Committee on Long-Term Care was assigned five studies. Section 32 of House Bill No. 1012 directed a study of basic care rate equalization, including the cost impacts to the state and private pay residents. House Concurrent Resolution No. 3003 provided for the monitoring of the implementation of the projects developed by the Department of Human Services related to the conversion of existing nursing facility or basic care capacity for use by the Alzheimer's and related dementia population and the implementation of an expanded case management system for elderly persons and disabled persons. House Concurrent Resolution No. 3004 directed a study of the means of expanding home and community-based services availability, options for training additional qualified service providers, the adequacy of geropsychiatric services, and the feasibility of combining service reimbursement payment sources to allow payments to flow to a broadened array of elderly and disabled service options. House Concurrent Resolution No. 3005 directed a study of American Indian long-term care needs and access to appropriate services and the functional relationship between state service units and the American Indian reservation service systems. House Concurrent Resolution No. 3006 directed a study of long-term care financing issues to determine the changes necessary to develop alternative services and the feasibility of a managed care system for long-term care services.

Committee members were Senators Aaron Krauter (Chairman), Bill L. Bowman, Evan E. Lips, Harvey Sand, and Russell T. Thane and Representatives Grant C. Brown, Mike Callahan, Ron Carlisle, James O. Coats, Jeff W. Delzer, Gereld F. Gerntholz, Shirley Meyer, and Lynn J. Thompson. Representative Bill Oban was chairman of the committee until his death in July 1998.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

STUDY OF BASIC CARE RATE EQUALIZATION

Section 32 of 1997 House Bill No. 1012 directed a study of basic care rate equalization, including the cost impacts to the state and private pay residents.

Background

Rate equalization is seen as a means of preventing cost-shifting from public assistance residents to private pay residents. House Bill No. 1002 (1993) provided for a basic care assistance program. Included in the bill was a provision that the Department of Human Services develop a basic care facility ratesetting methodology for all residents of basic care facilities. The ratesetting methodology was to be effective July 1, 1995, and not

allow different rates for similarly situated residents because of the source of payment for the resident's care. In addition, the ratesetting methodology was not to allow the state or any political subdivision to make payments to basic care facilities that did not set rates at the levels established by the department.

The basic care rate equalization ratesetting methodology developed by the department included:

1. Paying direct care costs up to a limit established at the 90th percentile;
2. Paying indirect care costs up to a limit established at the 75th percentile;
3. Including property costs as a passthrough with no limitations;
4. Allowing a three percent operating margin;
5. Allowing an efficiency incentive for facilities with indirect care rates below the limit; and
6. Allowing for annual inflation adjustments.

The ratesetting methodology has never been implemented because the 1995 and 1997 Legislative Assemblies delayed the implementation of basic care rate equalization. The current statutory provisions call for rate equalization to be implemented July 1, 1999.

Funding

The committee learned that the funding for the basic care program has changed from 50/50 state/county to 70/30 state/county effective January 1, 1995, and then to 100/0 state/county on January 1, 1998. The following table shows the basic care program funding, by funding source, for the 1995-97 and 1997-99 bienniums:

Source of Funds	1995-97 Biennium	1997-99 Biennium
State general fund	\$3,457,249	\$5,681,435
Other	112,509	52,716
County	1,449,972	429,905
Total	\$5,019,730	\$6,164,056

The committee was informed that approximately \$100,000 was included in the 1997-99 biennium budget for the provision of a two percent operating margin for basic care facilities. The provision for the two percent operating margin expires June 30, 1999, and is not a permanent part of the ratesetting methodology.

North Dakota Long Term Care Association Testimony

The committee was informed of the Long Term Care Association - Basic Care Committee's opposition to basic care rate equalization. The association's opposition was based on the following seven reasons:

1. Equalization of rates will not cost less.

2. The state will need to increase its appropriation for basic care assistance if rate equalization is implemented.
3. Private pay residents will pay more under an equalized rate system.
4. Past experience with the equalization of rates for skilled nursing homes proves that it will cost the state and private pay residents more under an equalized rate system.
5. The Legislative Assembly has deferred the implementation of rate equalization the last two sessions due to a lack of funding.
6. One hundred percent of the industry supports not having the state totally control ratesetting, even though the majority of basic care facilities would profit from the equalization of rates.
7. The majority of basic care facilities do not cost shift.

The committee learned of the association's recommendation that the current basic care ratesetting methodology be changed to include a three percent operating margin and the passthrough of property costs.

The committee found that nine facilities charge less than the approved rate, 41 percent charge the approved rate, and 50 percent charge more than the approved rate. The committee learned that if the two lowest extra rates and the two highest extra rates were discarded, the average extra per day cost for a basic care resident is \$2.88 or \$86.40 per month.

Cost of Implementing Basic Care Rate Equalization

The committee found that only three facilities shift costs to private pay residents. All three of the facilities are combination facilities, which means each of the facilities is operated in conjunction with a nursing facility, hospital, or assisted living facility. These three facilities have a total of 38 of the state's total of 1,180 licensed beds or 3.2 percent of the total beds. The committee learned that if rate equalization were implemented as proposed, 417 private pay residents could experience an increase in their rates while 150 could experience a rate decrease.

The committee learned that if basic care rate equalization and the other proposed ratesetting changes were implemented the annual net cost increase to the state basic care assistance program would be \$377,259. The total annual net cost increase to private pay residents was estimated to be \$203,709.

Task Force on Long-Term Care Planning Testimony

The Governor reappointed the Task Force on Long-Term Care Planning to assist the executive and legislative branches of government in the design of a long-term care system responsive to the needs of North Dakota's elderly in a cost-effective manner and to assist in the

development of incentives to change the long-term care system into a responsive cost-effective system. The task force was cochaired by the State Health Officer and the executive director of the Department of Human Services. Membership included representatives of provider and senior-related organizations, Department of Health, Department of Human Services, North Dakota Association of Counties, and the North Dakota Long Term Care Association. The task force recommendations were the starting point for development of bill drafts by the committee. The recommendations of the task force will be addressed within each study's section of this report.

The task force concluded that rate equalization as proposed would increase, rather than decrease, private pay rates in the majority of basic care facilities. In addition, the task force concluded that current payment data demonstrates that cost-shifting is not occurring in the majority of basic care facilities.

The task force indicated that rate equalization could be detrimental to the goal of providing alternatives to nursing facility care because access may be limited if facilities currently participating in the basic care assistance program choose not to participate because of rate equalization. In addition, the expansion or conversion of services to other alternatives may be hindered because of a facility's inability to meet cash flow needs.

The task force concluded that the inclusion of the property rate in the overall limit rate is disadvantageous to newer facilities with significant debt or costs related to buildings and equipment. The committee learned that facilities that use revenues relating to operating expenses for the payment of fixed property costs may find it difficult to maintain long-term viability and will likely not be able to modify the existing facilities to provide alternative services.

The task force recommended that rate equalization for basic care facilities be repealed, that a three percent operating margin on direct care costs be implemented, and that allowable property costs be included as passthrough costs not subject to the 80th percentile limitations. The committee learned that the annual cost of the three percent operating margin is \$150,000. This is \$50,000 more than the \$100,000 in the department's current budget for the two percent operating margin, which sunsets at the end of the 1997-99 biennium. The committee learned that the annual general fund cost of including property costs as passthrough costs is estimated to be \$97,459.

Committee Recommendations

The committee determined that the previously proposed rate equalization included more than rate equalization, as it also included additional payments to basic care facilities. Rate equalization would only provide that private pay residents pay the same rate as state assistance residents. The proposed rate equalization plan included increased payment levels by providing

for an operating margin and the passthrough of property costs. Rate equalization itself would not mandate higher rates for private pay individuals, but when combined with the other proposed changes, both private pay rates and public assistance rates would increase.

The committee recognized that cost shifting is not a major problem in basic care facilities. The committee also determined that if rate equalization for basic care facilities was implemented as proposed, 417 private pay residents could experience a net annual increase in their rates of \$203,709. The committee also determined that if basic care rate equalization and the other proposed ratesetting changes were to be implemented the annual net cost increase to the state basic care assistance program would be \$377,259.

The committee recommends Senate Bill No. 2033 to repeal basic care rate equalization. In addition, the committee accepted the task force's recommendations to:

1. Include an operating margin of three percent of direct care costs, subject to an 80th percentile limitation, in the rates established for basic care assistance recipients; and
2. Include property costs as passthrough costs, not subject to limitations, in the rates established for basic care assistance recipients.

MONITORING THE IMPLEMENTATION OF ALZHEIMER'S AND RELATED DEMENTIA POPULATION PROJECTS AND AN EXPANDED CASE MANAGEMENT SYSTEM

House Concurrent Resolution No. 3003 provided for the monitoring of the implementation of the projects developed by the Department of Human Services related to the conversion of existing nursing facility or basic care capacity for use by the Alzheimer's and related dementia population and the implementation of an expanded case management system for elderly persons and disabled persons.

Alzheimer's and Related Dementia Projects Background

The 1997 Legislative Assembly (Section 12 of House Bill No. 1012) directed the Department of Human Services to establish pilot projects for Alzheimer's and related dementia populations in order to explore the financial and service viability of converting existing long-term care facility bed capacity to a specific service environment targeting the Alzheimer's and related dementia populations. The pilot projects were to be part of an effort to examine how long-term care services are delivered in North Dakota and to make recommendations that will result in the elderly and disabled of the state receiving the most appropriate and cost-effective services necessary to meet their long-term care needs.

It was determined that the funding for the pilot projects could come from funds already contained in the Department of Human Services long-term care budget. The existing funding was determined to be sufficient to pay for the pilot projects because the pilot projects were to use converted nursing facility or basic care beds. In addition, the individuals entering the pilot projects would be individuals who would have otherwise entered a nursing or basic care facility. Three possible payment sources were identified as funding sources for the pilot projects. The payment sources included the expanded service payments for elderly and disabled (SPED) program, Medicaid waiver program, and private pay.

Pilot Projects

The Department of Human Services was able to establish a 14-bed pilot project at the Baptist Home of Kenmare. The committee learned that the proposed budget of the pilot project provided for \$12.11 per day for room and board and \$67.26 per day for residential care services. The committee found this to be cost-effective when compared to average nursing facility costs of \$85.41 per day for 1998, a difference of approximately \$6.04 per day. This provides a savings of approximately \$2,200 per resident per year when compared to nursing facility care. While meeting in Kenmare the committee toured the Alzheimer's pilot project unit at the Baptist Home of Kenmare.

The committee learned that the Good Samaritan Society is also planning to develop two pilot projects by converting nursing facility beds into Alzheimer's and related dementia population units at Lisbon and Arthur. It is anticipated that these projects will not be operational until sometime in 1999.

Task Force on Long-Term Care Planning Testimony

The Task Force on Long-Term Care Planning concluded that due to delays in the startup of the pilot projects it was not possible to fully evaluate the effectiveness of the pilot projects during the current biennium. Because of the delayed implementation of the pilot projects, the task force recommended that the three projects be extended beyond the current biennium in order to determine if this concept is financially viable and is an appropriate setting for the delivery of services. The task force also recommended that the department monitor the progress of the pilot projects and report to the Legislative Council, on the progress of the pilot projects, by June 30, 2000.

The task force also recommended that the Department of Human Services allow other entities the opportunity to develop alternative services for Alzheimer's and related dementia populations and that funding for these projects come from existing appropriations for the Medicaid home and community-based waiver or the expanded SPED program.

Committee Recommendations Regarding the Alzheimer's and Related Dementia Projects

The committee recognizes that due to the delay in the implementation of the pilot projects it would be beneficial for the projects to be continued into the next biennium.

The committee recommends Senate Bill No. 2034 to authorize the Department of Human Services to continue the approved Alzheimer's and related dementia population pilot projects into the 1999-2001 biennium. The bill also requires the department to monitor and report on the progress of the pilot projects. The report is to be submitted to the Legislative Council by June 30, 2000, and contain conclusions and recommendations regarding the future of the pilot projects. In addition, the committee accepted the task force's recommendations that:

1. The Department of Human Services allow other entities the opportunity to develop alternative residential services for Alzheimer's and related dementia populations or other populations that meet quality and financial standards established by the department.
2. The funding for these projects comes from existing appropriations for the Medicaid home and community-based services waiver or the expanded SPED program. The number of projects will be limited by the number of available home and community-based services waiver slots approved by the federal government, the cost neutrality requirement contained in the home and community-based services waiver, and the total appropriation for the expanded SPED program.

Expanded Case Management System Background

The 1997 Legislative Assembly (Section 21 of House Bill No. 1012) provided legislative intent that the Department of Human Services may establish pilot projects for expanded long-term care case management. Expanded case management is to assist functionally impaired adults in accessing the necessary services needed to maintain the appropriate level of independence in the least restrictive setting at the lowest possible cost. The pilot projects were to be financed within available department resources. The resolution providing for the implementation of an expanded case management system stated that:

1. An expanded case management system allows individuals in need of long-term care to access services through a single point of entry providing "one-stop" accessibility for those individuals and their families.
2. It is in the people's best interest to develop an expanded case management system because case management for older adults and persons with disabilities in this state is currently provided

to a limited number of individuals through a variety of private and public agencies resulting in confusion for many individuals and their families.

National studies have concluded that case management is a key component in the assessment of client needs, assisting clients in accessing needed services provided by a multitude of agencies and providers, and ensuring that services and funding are targeted to individuals most in need of assistance.

Pilot Projects

Two expanded case management pilot projects were established by the Department of Human Services, one in an urban county (Burleigh) and the other in a rural county area (Benson, Eddy, Ramsey, and Towner Counties).

The operative start date for the Burleigh County expanded case management pilot project was December 1, 1997. The committee learned that the urban pilot project wanted to demonstrate the value of electronic exchange of information. The committee found that a significant portion of the pilot project will be to coordinate the efforts of the several entities providing services or information to senior citizens and their families. The committee learned that the overall goal of the Burleigh County pilot project is to delay or prevent nursing facility placement. An additional goal of the pilot project is the implementation of a comprehensive computerized data base assessment tool. The committee learned that through the first three months of the pilot project, 24 referrals had been received.

The operative start date for the Benson, Eddy, Ramsey, and Towner Counties expanded case management pilot project was January 6, 1998. The committee learned that the rural pilot project had received 20 referrals and that five of the 20 referrals were currently receiving expanded case management services.

Task Force on Long-Term Care Planning Testimony

The task force concluded that the pilot projects needed to be continued into the 1999-2001 biennium in order to evaluate the effectiveness of the expanded case management systems. The task force recommended that the Department of Human Services continue to monitor the progress of the pilot projects and prepare a report on the results of the projects no later than June 30, 2000. The task force recommendation included that the continued funding of the projects come from within the department's budget.

Committee Recommendations Regarding the Expanded Case Management Pilot Projects

The committee recognized that due to the delay in the implementation of the pilot projects it would be beneficial for the projects to be continued into the next biennium so the results can be properly documented. The committee expressed its support for the continuation of

the expanded case management system pilot projects into the 1999-2001 biennium. The committee also accepted the task force's recommendation to have the Department of Human Services continue monitoring the progress of the pilot projects and prepare a report on the results no later than June 30, 2000, and that the continued funding of these projects come from within the Department of Human Services budget.

STUDY OF HOME AND COMMUNITY-BASED SERVICES AVAILABILITY, PROVIDER TRAINING, GEROPSYCHIATRIC SERVICES, AND COMBINING PAYMENT SOURCES

House Concurrent Resolution No. 3004 directed a study of the means of expanding home and community-based services availability, options for training additional qualified service providers, the adequacy of geropsychiatric services, and the feasibility of combining service reimbursement payment sources to allow payments to flow to a broadened array of elderly and disabled service options.

Background

The limited availability of qualified service providers in rural areas requires the rural elderly and disabled to choose between relocating to access services or going without necessary services. In addition, training opportunities are limited and potential providers may lack the skills necessary to meet required competency standards. Expanding the training of qualified service providers could enhance the availability and improve the quality of home and community-based services. In addition, the combining of service reimbursement payment sources could provide increased flexibility and portability of service payments to allow payments to flow to a broadened array of service options for the elderly and disabled.

Findings

The committee learned that due to the changing demographics of the state, meeting the future service needs of older North Dakotans will provide a significant challenge. The task force's report indicated that the number of individuals age 65 and older is projected to increase from 93,000 to 166,000 by the year 2025. The committee was informed that higher service expectations, the growth of alternative living arrangements, and the shift from institutional settings of health

and long-term care to less restrictive community-based settings is driving the need to have qualified individuals available to provide adequate care. The committee learned that under the qualified service provider system individuals are independent contractors, and in order to maintain this independent contractor status, the Department of Human Services cannot train the individuals. Instead the department has established standards requiring competency in specific areas of service delivery.

The committee learned that North Dakota's rural counties have generally maintained federal health professional shortage area designation for psychiatric services. According to national studies, it has been estimated that up to 60 percent of mental health care for residents of rural areas is rendered by a primary care provider. The committee found that based on information contained in the nursing facility minimum data set the 1997 incidence rate of bipolar or manic depressive disorder in North Dakota nursing facilities was about 1.1 percent, compared to the National Institute of Mental Health's observed rate of one percent in the United States adult population.

Funding and Utilization

The committee received information on the funding and utilization of the Medicaid waiver, SPED program, expanded SPED program, and the traumatic brain-injured (TBI) waiver. Medicaid waiver services are provided in lieu of nursing home placement for eligible elderly and disabled. Recipients must be Medicaid-eligible and in need of the level of care provided in a nursing home. Service payments for elderly and disabled and expanded SPED services are provided in home and community-based settings to functionally impaired elderly persons and disabled persons to avoid institutionalization. Services provided include family home care, homemaker service, home health aid, respite care, case management, nonmedical transportation, chore service, adult foster care, adult day care, and personal care. Traumatic brain-injured waiver services are provided in lieu of nursing home placement to Medicaid-eligible recipients in need of the level of care provided in a nursing home.

The following tables show the funding for each program for the 1995-97 and 1997-99 bienniums and the number of unduplicated recipients for fiscal years 1993 through 1996:

	Medicaid Waiver	SPED	Expanded SPED	TBI Waiver
1995-97 biennium appropriation	\$4,243,740	\$7,370,437	\$1,423,266	\$1,745,826
Actual 1995-97 expenditures	\$4,296,156	\$6,576,195	\$1,249,041	\$532,658
1997-99 biennium appropriation	\$5,671,608	\$8,886,923	\$1,522,417	\$1,778,356
1997-99 biennium increase from 1995-97 actual expenditures	\$1,375,452	\$2,310,728	\$273,376	\$1,245,698

	1993	1994	1995	1996
Medicaid waiver	429	366	313	298
SPED program	1,691	1,758	1,482	1,449
Expanded SPED program*			269	396
TBI waiver			9	11

*Expanded SPED payments began in November 1994.

The committee learned that approximately 8.6 percent of the SPED and expanded SPED services are provided to American Indian clients, while American Indians account for approximately 4.3 percent of the state's population. The committee also learned that there are an estimated 6,357 individuals needing assistance with two or more activities of daily living who are not currently being served by a program or funding source provided through the Aging Services Division of the Department of Human Services.

Home and Community-Based Services Costs

The committee reviewed information on the average cost of home and community-based services. The committee learned that effective May 1, 1997, the department established maximum rate for agency qualified service providers was increased from \$12.84 to \$14 per hour and the maximum rate for self-employed qualified service providers was increased from \$9.72 to \$10.52 per hour. The following table shows the average cost for the delivery of home and community-based services, based on the prior maximum hourly rates of \$12.84 for agencies and \$9.72 for self-employed providers:

Homemaker service	\$10.35 per hour
Home health aide	\$11.20 per hour
Personal/attendant care	\$43.05 per day/\$8.43 per hour
Respite care	\$8.48 per hour
Adult day care	\$30.21 per day
Emergency response	\$18.53 per month
Adult family foster care	\$32.54 per day

The committee found that the 1995-97 biennium average monthly cost per client was \$846 for services funded through the Medicaid waiver for the aged and disabled, \$288 for services funded through the SPED program, and \$268 for services funded through the expanded SPED program.

Adult Family Foster Care

Because the committee had been assigned a study relating to home and community-based services, the issue of adult family foster care came within its assigned study area. Therefore, the committee received information relating to locating adult family foster care facilities in something other than a private residence and providing services to more than four adults.

Adult Protective Services

As a result of the committee's study relating to home and community-based services the committee reviewed the current statutory provisions relating to the provision

of adult protective services. The committee received a staff report on the background and history of 1989 House Bill No. 1058, which established the vulnerable adult protective services program. In addition, the staff provided the committee with statistics and funding information on the adult protective services programs in Minnesota, South Dakota, and Montana. The committee also received a staff report indicating that an agency may not be relieved from potential liability because a specific appropriation was not provided for a statutorily mandated program

The committee learned that due to the 1989 referrals the adult protective services program funding was eliminated. Because the funding was eliminated and has never been restored, the program has never been implemented. The committee learned that North Dakota is the only state without a funded adult protective services program.

The Task Force on Long-Term Care Planning concluded that as the state expands service availability through home and community-based services, a system needs to be developed to respond to the concerns of inadequate care, abuse, and exploitation. The task force concluded that early intervention provides the best opportunity for long-term cost savings. The task force recommended the removal of all language from North Dakota Century Code (NDCC) Chapter 50-25.2 providing that the vulnerable adult protective services program only be implemented if a legislative appropriation is provided.

Geropsychiatric Services

The task force concluded that a small population of elderly and disabled and severely mentally ill reside at the State Hospital. This population has consistently failed to thrive in community placements. The task force concluded that the creation of a geropsychiatric nursing unit within an existing nursing facility will provide a more appropriate and cost-effective service setting for these individuals. However, the establishment of such a unit would require professional support from the State Hospital and a waiver from the reimbursement limits under the case mix system.

The committee received a report on the cost of establishing a separate geropsychiatric unit outside the State Hospital. The committee learned that the cost to treat these individuals at the State Hospital is approximately \$275 per day. The report indicated that closing the unit at the State Hospital would allow the hospital to reduce approximately 26 full-time equivalent positions. The general fund appropriation currently needed to provide

geropsychiatric services at the hospital is \$1,146,685 per biennium.

The committee found that if a geropsychiatric unit were to be established outside the State Hospital and if a nursing home were to be subsidized to cover the additional cost of the geropsychiatric unit, the additional cost would be approximately \$602,020 per biennium. This would leave a general fund savings of \$544,665 per biennium when compared to the State Hospital's costs of \$1,146,685. The committee found that through the use of Medicaid funds the state could save an additional \$422,000, for a total savings of \$966,665.

The task force recommended a study of the expansion of psychiatric and geropsychiatric training for general practice and family practice physicians at the University of North Dakota School of Medicine and Health Sciences. In addition, the task force recommended that an exception to the case mix system of nursing home reimbursement be provided to allow for the establishment of a 14-bed geropsychiatric nursing unit within an existing nursing facility. Additional task force recommendations relating to geropsychiatric services included expanding continuing education opportunities in psychiatric and geropsychiatric care for rural primary care providers, expanding networking models for the provision of services to the elderly, integrating the human service centers and the State Hospital into telemedicine networks to provide enhanced access to psychiatric and geropsychiatric services in rural areas, and contracting with an existing nursing facility for the establishment of a 14-bed geropsychiatric nursing unit.

Task Force on Long-Term Care Planning Testimony

The task force addressed each of the components of the study separately. In addition, the task force provided the committee with conclusions and recommendations regarding the adult protective services program. The task force provided the committee with the following conclusions and recommendations.

Home and Community-Based Services Availability

The task force concluded that the elderly and disabled receive services through a variety of public, private, formal (human service centers, county social services, SPED, expanded SPED, etc.), and informal (hospitals, nursing homes, neighbors, churches, relatives, service organizations, etc.) service networks in the state. In addition, it was determined that in order to plan for future service needs, a solid understanding of the state's current service delivery system must be developed. The task force concluded that the formal service network should supplement, not replace, the informal network and that future service development should be based on changing demographics and service needs. The task force recommended that the Department of Human Services contract with a public or private

entity to conduct the necessary assessment to determine the extent of the future service delivery needs.

Training of In-Home Care Providers

The task force concluded that the service delivery of certified nurse assistants and qualified service providers is similar. However, the formal training available for certified nurse assistants is not suited for qualified service providers because the training is focused on an institutional setting. It was determined that because many qualified service providers provide care only to a specific individual, qualified service providers need training that focuses on care provided in the home setting. In addition, the cost of such training must be taken into consideration as most potential qualified service providers have limited resources available to invest in training.

The task force recommended that the Department of Human Services coordinate with the State Board for Vocational and Technical Education for the establishment of a statewide model curriculum for in-home care certification and competency and that the task force investigate the impact of a formalized in-home care training program on service availability and quality service delivery. The task force also recommended that competitive reimbursement rates be established.

Funding Sources

Currently the fiscal and administrative responsibility for long-term care services is split within the Department of Human Services among the Medicaid program, Aging Services Division, and Economic Assistance. The committee was informed that in a survey of other states conducted by the task force, of which 29 states responded, 17 states split responsibilities for long-term care services between the Medicaid program and other agencies. The other 12 states have either consolidated all long-term care activities with the Medicaid program (five states), aging services agency (six states), or are in the process of consolidating all long-term care activities in one division (one state). The survey also disclosed that states with consolidated operations listed more advantages, such as better control over budgeting and management of issues, better service delivery coordination, eliminating duplicative administrative structures, information sharing, and streamlining decisionmaking, than the states with split responsibilities.

The task force concluded that some advantages were possible by combining all long-term care activities in one division. However, the task force did not make any recommendations regarding the restructuring of the department's programs due to the Budget Committee on Human Services study of the Department of Human Services.

Committee Recommendations

Home and Community-Based Services Availability

The committee recognized the need for a thorough understanding of the current service delivery system in order to develop the proper service delivery system to meet the future needs of the state. The committee accepted the task force's recommendation that the Aging Services Division of the Department of Human Services, through a request for proposal, contract with a public or private agency or organization for an assessment to determine the extent of the current and future service delivery systems for North Dakotans age 60 and older and for persons with physical disabilities age 18 through 59 in North Dakota. A request for proposal has been drafted by the department. This will require a budgetary commitment from the department either in part, or as a whole, if outside financial participation is not secured.

Training of In-Home Care Providers

The committee recognized that expanded training for qualified service providers could enhance the availability of and improve the quality of home and community-based services in rural areas. The committee accepted the task force's recommendations that:

1. The Department of Human Services coordinate with the State Board for Vocational and Technical Education for the establishment of a state-wide model curriculum for in-home care certification and competency, including:
 - a. The exploration of statewide funding options through welfare-to-work program and Work Force 2000.
 - b. Expanding the availability of the customized training network within the State Board for Vocational and Technical Education to make programs available regionally throughout the state.
 - c. Monitoring the development of the pilot project for training of in-home care providers in Benson County.
2. The Task Force on Long-Term Care Planning investigate the impact of a formalized in-home care training program on service availability and quality service delivery.
3. In order to attract and retain in-home care providers, competitive reimbursement rates must be established, and in order to establish these rates, a market analysis should be commissioned to determine the financial resources needed to support an in-home care provider system.

Geropsychiatric Services

The committee recognized the need for geropsychiatric services and training in rural areas. The committee also recognized the need for a study of the possibility of expanding the psychiatric and geropsychiatric training

provided to general practice and family practice physicians at the University of North Dakota School of Medicine and Health Sciences. The committee determined that it would be beneficial to establish a geropsychiatric nursing unit at an existing nursing facility and close the geropsychiatric unit at the State Hospital.

The committee recommends House Concurrent Resolution No. 3001 to provide for a Legislative Council study of the expansion of psychiatric and geropsychiatric training for general practice and family practice physicians at the University of North Dakota School of Medicine and Health Sciences. In addition, the committee recommends Senate Bill No. 2035 to provide for an exception to the case mix system of nursing home reimbursement to allow for the establishment of one 14-bed geropsychiatric nursing unit within an existing nursing facility. In addition, the committee accepted the task force's recommendations providing:

1. That the State Department of Health and the Department of Human Services work to expand continuing education opportunities in psychiatric and geropsychiatric care for rural North Dakota primary care providers in cooperation with the state's medical, psychiatric, and nursing associations.
2. For the expansion of networking models for the provision of services to the elderly, including geropsychiatric services to all human service centers. A formally organized, collaborative approach to elder services, including a psychiatric component, should be present in each human service center. Services should include consultation and care planning in nursing facilities and the home and community-based services system.
3. That the human service centers and the State Hospital be integrated into telemedicine networks to provide enhanced access in rural North Dakota to psychiatric and geropsychiatric services from tertiary medical centers and the State Hospital.
4. That the Department of Human Services contract with an existing nursing facility for the establishment of a 14-bed geropsychiatric nursing unit. This unit should be created within existing licensed capacity and would continue to be licensed as nursing facility beds.

Funding Sources

The committee accepted the task force's recommendation to not consider any restructuring of the Department of Human Services due to the Budget Committee on Human Services study of the Department of Human Services.

Protection of Vulnerable Adults

The committee recognized that although a need may exist for an adult protective services program the

solution is not to mandate the statutorily created program without also providing the necessary funding. The committee considered, but did not recommend, a bill that would have removed any language from NDCC Chapter 50-25.2 that provided that the vulnerable adult protective services program was only to be implemented if a legislative appropriation was provided. The bill was not recommended because the committee thought it forced future Legislative Assemblies into funding the program or removing it from the statutes. The committee thought the best alternative was to leave the statutes as currently written because if funding is provided the current statute does not hinder the implementation of the program, and if funding is not provided, it does not put the department or county social service agencies at jeopardy of lawsuits.

Adult Family Foster Care

The committee considered, but did not recommend, a bill that would have changed the definition of adult family foster care. The bill would have allowed an individual to provide care to more than four persons and would have removed the requirement that the services be provided in an occupied private residence. The committee did not recommend the bill because it would have made adult family foster care very similar to basic care.

STUDY OF AMERICAN INDIAN LONG-TERM CARE NEEDS AND ACCESS TO APPROPRIATE SERVICES

House Concurrent Resolution No. 3005 directed a study of American Indian long-term care needs and access to appropriate services and the functional relationship between state service units and the American Indian reservation service systems.

Background

The 1995-96 interim Budget Committee on Home and Community Care identified the following reasons for a study of American Indian long-term care needs and access to appropriate services:

1. Because of the wide variances in the long-term care service inventory, distribution, and alternatives within the North Dakota American Indian service areas and reservations, ranging from a nontribe owned and operated nursing facility to unlicensed facilities and home-based care.
2. Because the coordination and application of various American Indian long-term care programs and service components are directed by tribal policy and organizational structure.
3. Because of the possibility of developing specifically targeted service programs for residents of reservations and case management to coordinate the care arrangement and delivery.
4. Because the noninstitutional care components appear to be available on reservations, but service arrangement and delivery may not be

adequately coordinated and case management services for elderly reservation residents, if available, could result in a significant increase in the effectiveness of service delivery for that population.

State/Tribal Summit

The committee met in October 1997 with members of the Budget Committee on Human Services and the Welfare Reform Committee to receive input from tribal members and to discuss tribal long-term care issues.

Findings

The committee learned that there are four nursing facilities located on or near Indian reservations. The following table shows the name and location of each facility, the capacity, the percentage of staff that is American Indian, and the percentage of residents that is American Indian:

Facility - Location	Capacity	Percentage American Indian	
		Staff	Residents
Dunseith Community Nursing Home, Dunseith	54	75	60
Presentation Care Center, Rolette	48	45	46
New Town Good Samaritan Center, New Town	59	50	25
Rockview Good Samaritan Center, Parshall	56	31	6

Program Funding

The committee learned that there are no American Indian specific long-term care programs. The committee reviewed the funding of the various long-term care programs for the 1995-97 and 1997-99 bienniums:

Service	1995-97 Biennium		
	General Fund	Other Funds	Total
Nursing home care	\$59,684,221	\$158,129,801	\$217,814,022
Basic care	\$3,457,249	\$1,562,481	\$5,019,730
Medicaid waiver	\$1,318,818	\$2,924,922	\$4,243,740
SPED	\$7,131,840	\$375,360	\$7,507,200
Expanded SPED	\$1,423,266		\$1,423,266
TBI waiver	\$542,828	\$1,202,998	\$1,745,826
Service	1997-99 Biennium		
	General Fund	Other Funds	Total
Nursing home care	\$62,801,890	\$181,777,775	\$244,579,665
Basic care	\$5,681,435	\$482,621	\$6,164,056
Medicaid waiver	\$1,375,652	\$3,213,880	\$4,589,532
SPED	\$8,442,577	\$444,346	\$8,886,923
Expanded SPED	\$1,522,417		\$1,522,417
TBI waiver	\$456,004	\$1,322,352	\$1,778,356

Program Utilization

The committee learned that during federal fiscal year 1996, a total of 175 American Indians received nursing facility services through the Medicaid program, totaling \$2.8 million. The 175 recipients represented three

percent of the total number of individuals receiving services during that period and the \$2.8 million represented two percent of the nursing facility expenditures during the same time period. The following table shows the number of American Indians in nursing facilities during federal fiscal years 1993 through 1996:

Federal Fiscal Year	Number of American Indians in Nursing Facilities
1993	148
1994	167
1995	147
1996	175

Task Force on Long-Term Care Planning Testimony

The task force indicated that it was unable to establish a committee comprised of representatives of each reservation and non-American Indians to study the American Indian long-term care needs. The task force recommended that the study of American Indian long-term care needs be continued during the next interim.

Committee Recommendations

The committee recognized the need for the continuance of the study of American Indian long-term care needs. In addition, the committee recognized that the opportunity exists for significant improvements relating to the possibilities of coordination of state, county, and local service units and tribal or reservation service delivery and case management. Because of these observations the committee recommends House Concurrent Resolution No. 3002 to provide for a Legislative Council study of American Indian long-term care and case management needs, access to appropriate services, and the functional relationship between state service units and the North Dakota American Indian reservation service systems. The resolution calls for the creation of a separate working group on each reservation to carry out the provisions of the study.

STUDY OF LONG-TERM CARE FINANCING ISSUES TO DEVELOP ALTERNATIVE SERVICES AND THE FEASIBILITY OF A MANAGED CARE SYSTEM

House Concurrent Resolution No. 3006 directed a study of long-term care financing issues to determine the changes necessary to develop alternative services and the feasibility of a managed care system for long-term care services.

Background

Approximately 25 percent of all individuals in nursing facilities are categorized in the two lowest case mix classifications, which indicates that many of these individuals could likely receive the needed level of care in a home or community-based setting at an average cost that is lower

than nursing facility costs. The current long-term care payment system is in need of a review to determine if some categories of nursing home residents could receive services in alternative, less costly settings. A managed care program for long-term care services may result in the development of alternative care in a cost-efficient manner. In addition, a review is needed of any financial, regulatory, or other impediments that may exist and prevent the development of alternative services to long-term care.

The funding trends of nursing facility services from fiscal years 1959 through 1996 show that the Department of Human Services nursing facilities funding has increased from \$703,872 in fiscal year 1959 to \$106,991,191 in fiscal year 1996. The 1997-99 biennium budget for nursing facility services is \$244.6 million, a \$28 million increase from the 1995-97 funding level of \$216.6 million. Based on this rate of growth, assuming no other program changes, the nursing facility services budget will exceed \$350 million by the 2003-05 biennium.

North Dakota Long Term Care Association Testimony

The Long Term Care Association expressed its support for the recommendations of the task force, with the exception of the recommendation relating to the incentive for high case mix facilities and the disincentive for low case mix facilities. The association also informed the committee of the need to rebase the long-term care payment reimbursement system. The current system is based on 1992 costs. The committee found that the annual inflation adjustments have not kept up with actual cost increases. The committee learned that the estimated cost to rebase the system is \$7 million, of which \$4.9 million would be federal funds and \$2.1 million would be state funds. The \$7 million is based on the 56 percent Medicaid occupancy, and when taking private pay residents into account, the total impact to long-term care facilities is approximately \$12 to \$13 million.

Traumatic Brain-Injured Facility

The committee learned that there is a two- to four-year wait for admission to the state's only traumatic brain-injured facility. Traumatic brain-injured individuals currently receiving services in long-term care facilities are unable to move to a less restrictive setting because of the lack of alternative residential services. The committee found that a traumatic brain-injured facility in western North Dakota would fill the gap between a nursing facility and total independence. The committee found that the average traumatic brain-injured waiver services cost about \$2,200 per month as compared to the cost of traumatic brain-injured services being provided in long-term care facilities which is approximately \$7,300 per month.

Other Testimony

The committee received a report from the Department of Human Services on the status of long-term care services in North Dakota. The report indicated that the appropriation for nursing facility services for the 1997-99 biennium is \$244.6 million, or 50 percent of the \$486.6 million budgeted for traditional medical services, excluding institutional and home and community-based services for the developmentally disabled. The report also indicated that the total appropriation for alternative services is \$24 million or 8.9 percent of the appropriation for long-term care services.

The committee received a staff report on the various levels of long-term care. The report provided definitions, a comparison of services, a comparison of funding sources, and the licensure requirements for acute care, swing beds, subacute care, congregate housing, assisted living, basic care, and nursing homes. The committee also received a staff report on senior mill levy match funding. The report provided information on the 1996, 1997, and 1998 disbursements to counties and cities for the senior citizens' mill levy match program.

The committee also received reports on subacute care, Medcenter One's proposal for a long-term care hospital in Mandan, the possibility of the federal government changing the Medicaid program to a block grant, and the Medicaid eligibility determination process.

Task Force on Long-Term Care Planning Testimony

The Task Force on Long-Term Care Planning addressed each of the components of the study separately. The task force provided the committee with the following conclusions and recommendations.

Long-Term Care Financing and Incentives

The task force concluded that the current payment system lacks the incentives needed to encourage providers to deliver alternative services or to reduce licensed capacity. The task force also concluded that changes are needed to the current ratesetting structure. The changes should provide additional revenues to some facilities, which would enable those facilities to offer additional services and develop alternative services. The task force recommended the creation of an incentive and disincentive for facilities with high or low case mixes. Facilities with a high case mix average (1.6199) would have their rates calculated using direct care and other direct care limits increased by 2.5 percent. Facilities with a low case mix average (1.4244) would have their rates calculated using direct care and other direct care limits decreased by 2.5 percent. The impact of this recommendation would be an estimated cost savings of \$50,000 per biennium, \$35,000 of which would be federal funds and \$15,000 of which would be state funds.

The task force concluded that providing an exception to the 90 percent occupancy limit would encourage facilities to delicense beds when a decreased occupancy is sustained. As compared to the current system that promotes admitting residents so that rates will not be adversely impacted by the 90 percent occupancy limitation. The task force recommended waiving the 90 percent occupancy limitation for facilities delicensing beds before the beginning of, or during, a rate year in which the limitation would apply.

The task force concluded that short-term stays generate higher per day costs than long-term stays. Because of this the task force recommended an incentive for facilities with low annual average lengths of stay. The incentive would provide facilities with an increase in their daily rate for direct care, other direct care, and indirect care, subject to limitations. The incentive would be one percent for facilities with an average length of stay under 201 days, two percent for facilities with an average length of stay under 181 days, and three percent for facilities with an average length of stay under 161 days. It is anticipated that this incentive will encourage facilities to consider alternatives to nursing facility care upon initial admission, as well as encourage facilities to provide necessary short-term care and then discharge individuals to appropriate alternative settings.

The task force concluded that because the current statute precludes any third-party payer from negotiating or establishing higher rates for higher cost services, the definition of private pay resident needs to be changed. By changing the definition of private pay resident to include managed care entities as payers exempt from rate equalization, it will allow facilities to negotiate for the higher costs associated with short stays and encourage facilities to accept this type of resident and become a part of a managed care provider network. The task force recommended that the definition of private pay resident be amended to include managed care entities as payers exempt from rate equalization.

The task force concluded that incentives and other forms of assistance should be available to enable facilities to make the transition toward closing or to providing institutional services to fewer residents. Because facilities in rural communities are experiencing decreased occupancy and staffing problems, they usually lack the needed resources to develop alternative types of care. Because of this situation the task force recommended a study of the possibility of the state providing an incentive package to assist rural communities and nursing facilities close or significantly reduce bed capacity and provide alternative long-term care services within the community.

The task force concluded that senior mill levy funding is used for a variety of services designed to assist senior citizens maintain independence, including home-delivered meals, transportation, outreach assistance, congregate dining, and health-related services. Because these funds are used to serve an at-risk population in the

least restrictive setting and were considered by the task force to be an integral part of the continuum of care, the task force recommended a Legislative Council study and continued funding for the program. The study would consider the possibility of expanding the program as a means of enhancing home and community-based services availability.

The task force concluded that managed care for long-term care is very limited nationwide and that North Dakota is relatively inexperienced with managed care. The task force recommended that feasibility studies of managed care for long-term care be discontinued until North Dakota has gained experience with managed care in medical and hospital environments. In addition, an effective case management system needs to be developed and alternatives to nursing facility care should be developed or expanded prior to further consideration of managed care for long-term care.

Alternative Services

The task force concluded that the current delivery system for alternative long-term care services does not address the ongoing needs of the elderly and disabled in a coordinated, consumer-friendly manner and that current regulatory and payment policies limit the options available to individuals in need of long-term care services. The task force concluded that housing options should be considered separately from the service needs of an individual. The system should first determine the type of services that will be necessary to maintain each elderly or disabled person and at the same time a determination would be made as to what funding source could be used to provide the service. The client would choose the living arrangement based on cost and care consideration factors and the services would then be provided and paid for based on the needs of each client and the funding source for which the client is eligible. The task force recommended that legislation be passed directing the Department of Human Services and the State Department of Health to develop the rules, policies, and procedures necessary to implement the proposed changes in the current delivery system for alternative long-term care services with an effective date of July 1, 2001. Some of the changes contained in the recommendation are as follows:

1. Repeal existing laws regarding the definition of assisted living facilities and the definition, regulatory oversight, and payment requirements for basic care facilities.
2. Define a new category of residential facility that will include facilities formerly classified as basic care facilities or assisted living facilities to include facilities that provide 24-hour health, social, or personal care services to five or more individuals who are not related by blood or marriage to the owners or operators.

Targeted Case Management

The task force concluded that states that have successfully increased the use of home and community-based services and reduced the number of high-functioning individuals entering nursing facilities have all established a strong case management system, including a mandatory assessment to establish the services necessary to maintain each individual and identify potential alternatives to entering a nursing facility. In order to establish the importance of case management and to complement the two current enhanced case management projects, the task force concluded that action should be taken to ensure that Medicaid-eligible individuals at risk of entering nursing facilities be required to obtain case management services, including a preadmission assessment of needs, before individuals and families decide how to access long-term care services. The task force concluded that the funding for this could come from the Medicaid program targeted case management optional service. The task force estimated the cost to be approximately \$980,000 per biennium, based on 1,400 individuals receiving services. Of the \$980,000 total, \$294,000 would be state general fund money. It was estimated that about 40 percent of the individuals would ordinarily receive case management under SPED or expanded SPED. Based on this assumption, the general fund impact would be reduced by \$274,000, to \$20,000. The task force recommended the implementation of a targeted case management program, that any Medicaid-eligible individual obtain a preadmission assessment prior to entering a nursing facility, and that the results of the targeted case management program be monitored to determine if the program should be extended to all individuals.

Moratorium on Nursing Facility and Basic Care Beds

The task force goal is to reduce the number of beds per thousand population age 65 and older from approximately 75 beds to 60 beds by the year 2002. The national average is 50 nursing facility beds per thousand population age 65 and older. The task force concluded that many high-functioning residents are admitted to nursing facilities in the metropolitan areas of the state. These individuals could be served in alternative settings thereby freeing up needed beds for those with greater care needs. Because of this, the task force concluded that there were enough long-term care beds and recommended that the moratorium be continued for another biennium. The task force also recommended that until the proposed changes to the basic care system are implemented in 2001, the basic care bed moratorium be continued, with one exception. The one exception is for a traumatic brain-injured facility in western North Dakota. The task force recommended that an exception to the basic care bed moratorium be granted for the creation of one traumatic brain-injured facility in western North Dakota. The facility would help ensure that this special

group of individuals receives necessary and appropriate care near their home and families.

The task force concluded that although the current funding sources and administrative policies prevent nursing facilities from providing services at a level of care below that of their license as a nursing facility, it would be desirable in certain instances to allow an individual that does not meet the level of care criteria required for placement in a nursing facility to be allowed to stay in a nursing facility. The task force recommends giving nursing facilities the option to continue to provide services to residents no longer meeting the level of care criteria required for placement in a nursing facility.

Swing-Bed Facilities

The task force concluded that there is very little data and no standard measurement process available to determine the quality of care and services provided by swing-bed hospitals. In addition, most of the swing-bed residents have similar conditions to those individuals residing in nursing facilities. Because of the number of individuals occupying swing beds for more than six months, the task force concluded that some hospitals have gone beyond the original intent of the swing-bed program. The task force recommended a study of the swing-bed facilities' role in the future of long-term care services.

Committee Recommendations

Long-Term Care Financing and Incentives

The committee recognized the need for changes in the current payment system in order to encourage the development of alternative services. The committee determined that in order for a rural community to reduce bed capacity and develop alternative services, an incentive package is needed to provide assistance to the community. The committee also recognized the need for the senior mill levy match funding as a part of the long-term care continuum. The committee recommends Senate Bill No. 2033 to change the definition of a private pay resident to include managed care entities as payers exempt from rate equalization, Senate Concurrent Resolution No. 4004 to provide for a Legislative Council study of an incentives package to assist rural communities and nursing facilities to close or significantly reduce bed capacity and provide alternative long-term care services, and House Concurrent Resolution No. 3003 to provide for a Legislative Council study to determine if the mill levy match program could be expanded to enhance home and community-based services availability.

In addition, the committee accepted the task force recommendations to:

1. Waive the 90 percent occupancy limitation for facilities delicensing beds before the beginning of, or during, a rate year in which the limitation would apply.

2. Provide an increase up to three percent of direct care, other direct care, and indirect care rates (subject to limits) for facilities with an annual average length of stay of 200 or fewer days per occupied bed.
3. Continue to provide funding for the senior mill levy match.
4. Discontinue feasibility studies of managed care of long-term care clients until North Dakota has gained experience in managed care for the population at large, alternatives to institutional long-term care have been more fully developed, and the pilot projects for expanded case management of long-term care clients have been concluded.

The committee did not accept the task force recommendation to increase limit rates by 2.5 percent for nursing facilities with high case mix averages and decrease limit rates by 2.5 percent for facilities with low case mix averages.

The committee also recommends that the Department of Human Services be encouraged to rebase the long-term care payment reimbursement system and to develop a regular rebasing schedule for the long-term care payment reimbursement system.

Alternative Services

The committee recognized that the current delivery system for alternative long-term care services is not meeting the needs of the elderly and disabled. The committee determined that there was very little difference between the definition of a basic care facility and an assisted living facility. The committee determined that separate definitions were not needed for basic care and assisted living and therefore, recommends Senate Bill No. 2036 to repeal basic care and assisted living and create an adult residential care facility classification. The bill directs the Department of Human Services and the State Department of Health to develop a recommendation for consideration by the 57th Legislative Assembly describing appropriate methods and means for the inspection and regulation of adult residential care facilities that respect the residents' choices of care providers. The recommendation is to include a proposed budget and any necessary implementing legislation and necessary appropriation. The bill contains an effective date of July 1, 2001, in order to allow for the development of the new rules, policies, and procedures.

The bill provides for:

1. A repeal of existing law regarding the definition of assisted living facilities and the definition, regulatory oversight, and payment requirements for basic care facilities.
2. A new category of residential facility that will include facilities formerly classified as basic care facilities or assisted living facilities to include facilities that provide 24-hour health,

social, or personal care services to five or more individuals who are not related by blood or marriage to the owners or operators.

3. The development of rules, policies, and procedures that will establish minimum standards for the delivery of personal care services to individuals residing in residential facilities.
4. The development of payment rules, policies, and procedures that will allow program payments to follow eligible clients irrespective of the housing option chosen. The payment process should vary based on the needs of each individual and may be developed on a regional or statewide basis and need not be tied directly to costs incurred by individual providers of service. It should also include subsidized housing as necessary for recipients of basic care assistance not to exceed defined limits and individuals receiving home and community-based services if cost-effective.

Case Management

The committee recognized that in order to increase the use of home and community-based services and reduce the number of high-functioning individuals entering nursing facilities a strong case management system is needed. In addition, the committee recognized the importance of a mandatory assessment to establish the services necessary to maintain each individual and identify potential alternatives to entering a nursing facility. The committee recommends Senate Bill No. 2037 to provide for the implementation of a targeted case management program. The bill also provides that any Medicaid-eligible individual obtain a preadmission assessment to determine the type of services necessary to maintain that individual. The bill provides that the assessment may not be used as a condition of admission to the facility. The bill provides an appropriation of \$980,000, of which \$294,000 is from the general fund and \$686,000 is from federal and other funds to the Department of Human Services for the provision of targeted case management services. The bill also provides that the department is to monitor the results of the targeted case management program to determine if the program should be extended to all individuals.

Moratorium on Nursing Facility and Basic Care Beds

The committee recognized the need to continue the moratorium on nursing facility and basic care beds. The committee also recognized the need for a traumatic brain-injured facility in the western part of the state. The committee recommends Senate Bill No. 2038 to continue the current moratorium on nursing facility and basic care beds through the 1999-2001 biennium. The bill also provides an exception to the basic care bed moratorium for the establishment of a traumatic brain-injured facility

in western North Dakota. In addition, the committee accepted the task force recommendation that the Department of Human Services change current funding and administrative policies to allow nursing facilities to provide and receive payment from the department for other services up to the level of the license of a skilled nursing facility.

The committee was informed by the Department of Human Services that it was able to implement procedures for the payment of basic care services in a nursing facility. The department issued guidelines and procedures to nursing facilities on August 20, 1998. The policies are intended to assist residents who have been residing in a nursing facility and no longer meet the level of care criteria necessary to have Medicaid pay for the nursing facility services. Because the policy is not intended to allow nursing facilities to admit basic care individuals, it includes a requirement that the individual must have been in the facility for at least six months before payment can be made under the basic care assistance program.

Swing-Bed Facilities

The committee recognized the importance of determining the role of swing beds in the future of long-term care services in the state. The committee recommends House Concurrent Resolution No. 3004 to provide for a Legislative Council study of the swing-bed process to determine if changes are necessary in the current requirements for providing services to swing-bed residents, including the need for a standard assessment process and whether any limits, such as length of stay or number of available swing beds, should be implemented.

LONG-TERM CARE FACILITY TOURS

While meeting in Devils Lake the committee toured the Academy Village complex, the Senior Citizen Center, Heartland Care Center, and the Odd Fellows Basic Care Home. At one of the meetings held in Bismarck the committee met at and toured The Terrace and St. Vincent's Care Center. While meeting in Kenmare the committee toured the Kenmare Community Hospital swing-bed and skilled care units and the Baptist Home of Kenmare assisted living units, basic care facility, and Alzheimer's pilot project unit.

BUDGET TOURS

While meeting in Devils Lake, the committee conducted a budget tour of the School for the Deaf, Lake Region Human Service Center, and UND-Lake Region. On the tours, the committee heard of needs for capital improvements and any problems the agencies 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 1999 Legislative Assembly.

CHILD SUPPORT COMMITTEE

The Child Support Committee was assigned two studies. Section 14 of House Bill No. 1041 directed a study of the provision of child support services and child care licensing in this state. Section 14 further provided that in conducting the study, the Legislative Council consider whether child support services and child care licensing can be more efficiently and effectively provided and, if so, by which agency or unit of government.

House Concurrent Resolution No. 3031 directed a study of the issues of fairness and equity as they relate to the child support guidelines and the issuance and enforcement of child custody and visitation orders.

Committee members were Representatives Eliot Glasheim (Chairman), Wesley R. Belter, Linda Christenson, William R. Devlin, April Fairfield, Dale L. Hene-gar, George Keiser, Amy N. Kliniske, Sally Sandvig, and Jim Torgerson and Senators Dwight C. Cook, Joel C. Heitkamp, Donna L. Nalewaja, and John T. Traynor.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

PROVISION OF CHILD CARE LICENSING

In conducting the study of child care licensing in this state, the committee was directed to consider whether child care licensing can be more efficiently and effectively provided and, if so, by which agency or unit of government.

Legislative Background

House Bill No. 1041 (1997) related to the administration and financing of human services programs by the state and counties. Counties are to assume fiscal responsibility for certain programs, including the child care block grant program. In return, the state takes responsibility for the complete grant cost of Medicaid and basic care. In light of the "swap" in responsibilities between the state and counties, the study was proposed to determine which entity should be responsible for child support services and child care licensing.

1997 Legislation

House Bill No. 1226, which provided for implementation of federal welfare reform, also addressed how the county administration of early childhood services is funded. The bill provides that effective July 1, 1997, the Department of Human Services no longer reimburses counties for 50 percent of the amount expended by the counties for the administration of the early childhood services program and counties are no longer required to reimburse the Department of Human Services for one-fourth of the amount expended in the counties for the program costs of the early childhood services program in excess of the amount provided by the federal

government for the program costs. Senate Bill No. 2055 provided for a penalty for providing certain early childhood services without a license.

House Bill No. 1331, which failed to pass the House, would have required licensure for all early childhood service providers except when the services were provided by a relative. House Bill No. 1352, which failed to pass the House, would have created an early childhood services board. House Bill No. 1465, which failed to pass the House, would have created a child care trust fund. Senate Bill No. 2345, which failed to pass the Senate, would have provided public access to certain information regarding early childhood service providers.

Recent Studies

During the 1995-96 interim, the Joint Social Service System Committee, composed of representatives of the North Dakota Association of County Social Service Board Directors, the Department of Human Services, the North Dakota Association of Counties, and the 1995-96 interim Budget Committee on Human Services, was formed. Subcommittees studied statutes relative to county-based social services; options for the provision of child support enforcement services; the current and ideal structure for early childhood licensing; and the overall structure and funding of children and family services. The joint committee's Subcommittee on Early Childhood Services agreed with many of the recommendations made by the Child Welfare League of America, Inc., a consulting firm employed by the Budget Committee on Youth Services during the 1993-94 interim, and determined the quality and consistency of early childhood services could be improved if the services were provided through a regionalized and specialized system. The subcommittee determined early childhood services licensing should be a regionalized service provided by specialists in early childhood education and should be funded with increased fees and at least partially funded with broad-based federal or state taxes. Because there was no increased funding available at the time, the subcommittee did not propose a specific plan. Possible alternative early childhood service licensing agencies were described as including child care providers, the Department of Human Services, the Department of Health, the Attorney General's office, county social service boards, and regional human service centers. The study proposed in Section 14 of 1997 House Bill No. 1041 in large part arose from the research conducted by this subcommittee.

During the 1993-94 interim, the Budget Committee on Youth Services studied the provision of services for children, including services related to child care, education, health, corrections, and foster care. The committee contracted with the Child Welfare League of America, Inc., to assist in the study of children's services in this state. Recommendations by the consultant regarding

early childhood development and education addressed the need to ensure quality, licensed child care providers. The consultant made the following recommendations:

- Enact a state licensing authority for children's programs administered by the Department of Human Services and located in each regional human service center which would be responsible for licensing child care, foster homes, and children's group care and institutional facilities. The licensing authority would serve as a liaison for fire inspections, health and safety, and law enforcement clearances and would balance parental decisionmaking with ensuring accurate and timely payments to caregivers. The licensing authority should be staffed with professionals with field experience in children's programs and training in child development.
- Clarify regulations to ensure that local officials have the authority to close child care facilities in emergency situations.
- Eliminate the category of "registered" day care homes and use one set of standards for child care licensing. The Department of Human Services should develop a phased plan over a two-year period to move appropriate "registered" homes into the "licensed" category.
- The Department of Human Services should develop a single eligibility determination process to simplify ease of access to child care resources regardless of the public funding source.
- Priorities should be given to licensing school-based child care programs and adding slots for protective child care, prime-time day care, infant care, and nontraditional hours of care.

In response to the consultant's recommendations, the committee recommended Senate Bill No. 2043 to establish a child care licensing authority in each regional human service center for licensing child care facilities. The bill would have transferred child care licensing responsibility from the counties to the state. The bill also would have expanded the number of child care providers needed to be licensed beginning July 1, 1997, from the current requirement of a provider who cares for six or more children at any one time to all child care providers unless the provider was a relative or a person caring for children from no more than one family other than their own. The fiscal note indicated the state fiscal effect would be approximately \$1.7 million per biennium and the county fiscal effect would be approximately \$900,000 per biennium. Senate Bill No. 2043 failed to pass the Senate.

During the 1989-90 interim, the Budget Committee on Human Services studied child care issues and needs, including the feasibility and costs of providing child care support to low-income working families. The committee did not make any recommendation as a result of that study.

Statutory Background

The Department of Human Services licenses family child care homes, group child care facilities, preschool educational facilities, and child care centers. Additionally, the Department of Human Services provides voluntary registration and voluntary carecheck registration for certain early childhood service facilities.

Licenses

North Dakota Century Code (NDCC) Section 50-11.1-04 provides an applicant for early childhood licensure must pass a mandatory investigation of the applicant's activities, proposed standards of care, and facilities; pass a possible investigation of an applicant, the applicant's employees, and any person living or working in an occupied private residence to determine whether any worker or occupant has a criminal record or had a finding of probable cause for child abuse or neglect filed against them; comply with standards of sanitation, health, and safety; use qualified staff; maintain facility conduct in accordance with prescribed rules; have no license revocation within 180 days of the current application; pay all license fees and penalties; and maintain cardiopulmonary resuscitation standards. Section 50-11.1-07 requires that a provider maintain and make available required records and information, and Section 50-11.1-08 requires a provider meet minimum standards set by the Department of Human Services.

Registration

North Dakota Century Code Section 50-11.1-07 requires an applicant for in-home provider registration to pass possible investigations to determine the qualification of the provider and to maintain and make available required records and information. Section 50-11.1-08 requires the provider to meet minimum standards set by the Department of Human Services.

Carecheck Registration

Carecheck registration requires fingerprinting of an applicant and completion of a fingerprint card. If the Department of Human Services has no record of a determination of probable cause for child abuse or neglect, the department submits a set of fingerprints to the Federal Bureau of Investigation and a set of fingerprints to the Bureau of Criminal Investigation to determine whether there is any criminal history record information regarding the applicant for carecheck registration. The applicant is placed in the carecheck registry after satisfaction of requirements adopted by the department and if no relevant criminal history record information is found and no report of a determination of probable cause for child abuse or neglect is found which disqualifies the applicant.

Miscellaneous Requirements

Under NDCC Section 50-06-05.1(11), the

Department of Human Services is responsible for formulating standards and making appropriate inspections and investigations in accordance with these standards in connection with all licensing activities delegated by law to the department, including child care facilities. North Dakota Administrative Code (NDAC) Title 75, the administrative rules adopted by the Department of Human Services, provides that each regional human service center must have a regional representative of county social service programs who is responsible for approving, denying, and revoking early childhood service licenses; providing technical assistance relevant to early childhood services; and providing or arranging inservice training for early childhood licensing staff within the region. Delivery of the actual early childhood services, such as the processing of early childhood services license applications, is provided by county social service boards under the supervision of the designated regional representatives.

Testimony and Committee Consideration

The committee received testimony that county social service agency concerns and recommendations regarding early childhood services licensing include inadequate availability of early childhood services facilities in light of welfare reform; proposed training hours for early childhood providers will make it more difficult to keep early childhood providers and recruit new early childhood providers; individuals issuing the licenses at the regional level often have less training than the individuals making evaluations at the county level; and a separate licensing division should be created which addresses early childhood services and foster care for children and adults.

A representative of the Department of Human Services testified that although funding for child care licensing is always a struggle and there is a concern that funding from the federal child care assistance grant will be shifted away from quality assurance programs, provision of child care licensing is working well under current law and new child care licensing legislation is not needed.

Funding

Until 1998 counties traditionally paid for 100 percent of the administrative costs of early childhood services even though state law provided for state reimbursement of counties for child care licensing services. Effective January 1998, there is now up to 50 percent reimbursement by the state to the counties for child care licensing expenses.

The committee received information regarding how other states fund child care licensing services. The license fee that is charged by North Dakota counties results in little revenue, but is used by counties for training of early childhood specialists.

Licensing System

The committee received testimony that at different times, the Department of Human Services has considered creating a specific licensing unit within the department, but there is concern that social workers are not fully qualified to evaluate fire safety, health safety, and food preparation. This is a concern shared by counties because the county employees inspecting child care facilities do not receive fire inspection, electrician, or health care worker training.

The committee received information that the Department of Human Services is implementing a plan to coordinate child care licensing across the state and replace the current system that requires eight regional decision-makers. As initially conceived, the plan would have partnered each of the eight regional human service centers, and each quadrant would have one full-time early childhood services supervisor. In response to local comment, the plan was changed so each regional human services center has the option of either working with a neighboring region and hiring one full-time early childhood services supervisor, or hiring a part-time early childhood services supervisor.

The committee received testimony indicating that county social service boards are concerned the new plan requires counties to upgrade county employees who perform licensing inspections to early childhood specialists; however, this upgrade requirement is not taking place at the regional level. Under the new plan, the regional supervisor, who makes the final licensing determination, might have less training in child care licensing than the county employee who performs the investigation. Counties expressed concern that under the old system and the new plan, the county has all the liability and the region is given all the authority, and this liability is a good reason to require that a supervisor be at least as qualified as the county early childhood specialist.

Conclusion

The committee makes no recommendation regarding the provision of child care licensing. Given the recent funding "swap," it might be premature to make changes regarding the provision of child care licensing services before the impact of the "swap" is fully understood.

PROVISION OF CHILD SUPPORT ENFORCEMENT SERVICES

The committee was charged with studying the provision of child support services in this state, and to consider whether child support services could be more efficiently and effectively provided and, if so, by which agency or unit of government.

Legislative Background

1997 Legislation

Section 83 of House Bill No. 1226 established a task force to accomplish several of the goals and programs

provided for under the bill. The bill included numerous child support enforcement provisions, including centralization of child support collection and disbursement with the Department of Human Services and a requirement that all employers report to the Department of Human Services all new employees within 20 days of hire.

Senate Bill No. 2280 required the Department of Human Services to request a child support withholding order within 20 days of the date income withholding is determined to be appropriate or the date of receipt of information necessary to carry out the withholding.

House Bill No. 1244, which failed to pass the House, would have required courts to order the obligor in child support cases to submit nonreimbursable medical expenses to the clerk of court as disbursements taxed in judgment. Senate Bill No. 2390, which failed to pass the House, would have required the inclusion of a spouse's income in child support calculations.

Recent Studies

During the 1995-96 interim, the Budget Committee on Human Services studied the responsibilities of county social service agencies, regional human service centers, and the Department of Human Services. Testimony was received from the Joint Social Service System Committee. The interim committee recommended House Bill No. 1041, which required counties to assume the financial responsibility for the costs of administering several economic assistance programs. In return for taking on this financial responsibility, the bill provided that the state assumes complete financial responsibility for the grant costs of medical assistance and basic care and contributes additional support of administrative costs for counties with Indian land.

In 1995 the State Auditor conducted an audit reviewing the efficiency and effectiveness of the state's system of establishing and enforcing child support orders, the potential for reducing costs through program fees and interest on arrears, and the adequacy of policies and procedures surrounding the collection of overpayments to custodial parents. This audit was conducted as part of a joint performance audit initiated by the National State Auditors Association.

Statutory Background

Federal Requirements

Part D of Subchapter IV of the Social Security Act (IV-D) addresses child support and establishment of paternity as it relates to federal grants to states for aid and services to needy families with children and for child welfare services. The IV-D program is administered by the United States Department of Health and Human Services through the Office of Child Support Enforcement. IV-D services are provided to anyone who makes application for IV-D services. Additionally, referrals are made to IV-D on foster care cases to permit the recovery

of foster care expenses from parents. Approximately one-half of the total child support cases in the state are IV-D cases and the remaining cases are typically handled by private attorneys.

State IV-D System

Significant change in federal law resulting from 1996 federal welfare reform is changing the state's provision of child support services. IV-D services are provided by a variety of governmental agencies in North Dakota. North Dakota's IV-D program is state-supervised and county-administered. The counties discharge county administrative duties primarily through the regional child support enforcement units. The eight regional units provide the front-line enforcement services. The national trend is to move from county-administered programs to state-administered programs.

Until January 1, 1998, the nonfederal share of the cost for the regional units was 34 percent and was divided equally between the state and the counties. As a result of the funding swap under 1997 House Bill No. 1041, the counties' share is 100 percent of the costs of the regional child support enforcement unit.

State IV-D Services

The Department of Human Services Child Support Enforcement Division is the state IV-D agency and is responsible for the overall operation of the state's IV-D program.

The division's functions include:

- Ensuring compliance with federal and state laws and regulations governing the IV-D program.
- Making and interpreting all matters of policy.
- Administering a "new hire" data base.
- Performing intake and recordkeeping on all IV-D child support collections.
- Collecting and distributing all child support collections (effective July 1, 1999).
- Preparing affidavits of public assistance and child support collections.
- Providing statewide, national, and international location services.
- Obtaining federal funds and state appropriations for operations of the statewide IV-D program.
- Assisting in regional unit budget preparations by providing the county social service boards with updates on state and federal projects.
- Processing and approving regional unit expenditures and ensuring payment of these expenditures.
- Providing statewide training to regional unit personnel.
- Acting as liaison between other state IV-D agencies and international, federal, state, and county entities.

- Completing reports as required by federal, state, and county officials.
- Providing statewide public relations for the program.
- Providing legal advice on IV-D matters.
- Paying incentives and reimbursements to political subdivisions.
- Preparing contracts and agreements with political subdivisions and other governmental agencies and divisions.
- Handling special requests from the Department of Human Services and other states, counties, regional units, recipients, applicants, legislators, and related agencies.
- Serving as the state information agency for the Uniform Reciprocal Enforcement Security Act (URES A) and related IV-D matters.
- Providing program research and analysis.
- Preparing and updating the IV-D procedures manual.
- Issuing policy and procedures.
- Conducting studies and surveys for statistical information and reports.
- Supervising and coordinating the work of all personnel within the unit.
- Coordinating the work of the unit with the state IV-D agency, county social service boards, county clerks of court, and other applicable agencies.
- Promoting public relations between the IV-D unit, other agencies, and the public.
- Interviewing recipients and applicants and working individual cases.
- Assisting in the preparation of legal documents and, if an attorney, performing all legal duties relative to cases.
- Overseeing the maintenance of case records and monitoring of case records.
- Fiscal responsibility of the operation and budget preparation of the unit.
- Ensuring compliance with program policies and procedures.

Duties of a unit investigator or case analyst include:

- Performing case intake, reviewing files, and gathering additional information when required.
- Interviewing a recipient, applicant, or absent parent and other necessary parties.
- Ensuring proper referral from public assistance is made and the case is within IV-D guidelines.
- Developing a plan of action for proceeding in each case.
- Locating absent parents.
- Investigating, gathering, and developing the evidence necessary for establishing paternity or establishing and enforcing support.
- Reviewing the obligor's financial status, ability to pay, and any other factors that might affect payment of child support obligations.
- Occasionally assisting in the preparation of legal documents.
- Occasional service of process.
- Drafting correspondence and assisting in monitoring of cases for collections.

A child support attorney is the legal representative of the unit. The attorney's duties include:

- Monitoring and advising decisionmaking matters regarding all legal procedures and actions.
- Responding and negotiating with opposing counsel and appearing in court as necessary.
- Advising the unit of court rules, practices, and child support law.
- Maintaining a close liaison with the state IV-D agency and county officials.
- Assisting investigators and other IV-D staff in legal matters.

Local IV-D Services

County social service boards are responsible for the administration of IV-D services on the local level. Board duties include the budgeting and funding of the regional IV-D unit; contracting with public or private agents to discharge child support enforcement duties; reporting to the state IV-D agency; providing staff to operate the regional IV-D unit; interfacing with the regional unit on IV-A (public assistance) case matters helpful to successful child support enforcement; and approving past public assistance and arrearage settlements.

The county social service boards discharge the duty to administer IV-D services through eight regional child support enforcement units. The services offered by the regional child support enforcement units include: establishing paternity and support orders; enforcing and collecting child support; performing the initial parent location effort; implementing policy as determined by the state IV-D agency; and cooperating fully with the state IV-D agency. Each regional child support enforcement unit operates somewhat differently; however, each child support enforcement unit is generally comprised of an administrator, investigator, attorney, and support staff. Each of these positions is responsible for providing a variety of functions for the unit.

Each regional child support enforcement unit is headed by a regional IV-D administrator. The administrator is responsible for the administration and management of a regional IV-D unit and the supervision of the operations and personnel within the unit. Duties of the administrator include:

- Hiring and discharging IV-D personnel within the unit.

- Acting as an assistant state's attorney when appointed.

Court Activity

Child support enforcement has a large impact on courts' caseloads. Approximately 70 percent of state courts' caseloads is domestic relations cases. In larger districts, judicial referees typically hear child support matters.

Before July 1, 1997, the clerks of the district court were responsible for receiving and disbursing child support payments for IV-D and non-IV-D child support cases and implementing income withholding. Section 9 of 1997 House Bill No. 1226 provides for the creation of a state disbursement unit that will assume the child support receipt and disbursement duties previously performed by the clerks. Section 84 of House Bill No. 1226 provides the transition from the clerks acting as the agents for receipt and disbursement of child support payments will occur between July 1, 1997, and April 1, 1999. Between July 1, 1997, and the state disbursement unit implementation date, with respect to income withholding and other activities, the clerks and the state will share responsibilities. The transfer of responsibilities will occur on a county-by-county case-by-case basis.

Testimony and Committee Consideration

The committee learned there are approximately 37,000 IV-D cases in North Dakota. The caseloads for regional units vary from 1,784 to 7,733. The current collection rate of current child support owed in IV-D cases is approximately 57 percent. For arrears, the collection rate is approximately 14 percent. Retained collections on public assistance cases typically provide for the recovery of 40 percent of the total grant costs, compared to a national average of 13 percent.

The committee was informed that each regional child support enforcement unit is organized differently, and therefore it is difficult to recommend one system of organization because one system is not necessarily better or worse than another system. Regional unit variations include different customer needs, constituents, and economics. The committee members discovered that as counties become responsible for funding child support enforcement, the counties will likely want more autonomy, and this will likely result in further nonuniformity of the child support enforcement services offered across the state.

Indian Reservations

The regional child support enforcement units do not service North Dakota Indian reservations because federal law requires that tribal codes meet federal IV-D requirements. The current tribal codes do not meet federal IV-D requirements. The Department of Human Services received a federal grant to revise the tribal codes to come into compliance with federal requirements

and the grant project is being administered through the Northern Plains Tribal Judicial Training Institute at the University of North Dakota School of Law. Under the grant project, tribal codes will be drafted for each of the four tribal jurisdictions for presentation to the tribal councils for approval. The department reported that once the Indian reservations join the child support enforcement program, Indian reservation cases will account for approximately 16 percent of the state's IV-D caseload.

State Disbursement Unit

Federal law mandates that states centralize IV-D collection and disbursement of child support payments. In 1997 the Legislative Assembly enacted necessary legislation to meet the federal mandates of welfare reform, including the centralized child support collection and disbursement mandate. The Legislative Assembly created the state disbursement unit and decided to include non-IV-D cases with the IV-D case centralization. Income withholding for child support will also be centralized under the new unit.

The committee received testimony indicating the federally mandated state move toward wholesale child support services accomplishes the federal intent to encourage a mass processing program versus a program that stresses personal contact. The Department of Human Services informed the committee that significant reasons for the federal changes include economies of scale and alleviation of the burden placed upon employers withholding child support payments from a variety of employees. A representative of the department testified the department's move to automation is consistent with the federal intent of wholesale services versus retail services. The representative stated that with caseloads in excess of 1,600, it is not realistic to expect child support enforcement units to provide clients with a large degree of individual attention.

Eighty percent of the conversion to the state disbursement unit will be covered by federal funds and 20 percent will be covered by state and county funds. Additionally, the department contracted with the North Dakota Association of Counties to perform site assessments of the clerks of courts' offices to determine whether any technology or other issues must be addressed before conversion. In preparation for the conversion, the department is reconciling child support cases in an attempt to minimize problems during conversion. The committee received testimony that several child support obligors are experiencing problems with the accuracy of the figures resulting from the state's reconciliation of child support payment records. The committee was informed that in spite of the conversion planning and precautions, upon full conversion, the state disbursement unit will process payments for approximately 75,000 cases, and it is inevitable that during the conversion, some setbacks will occur.

Under the new state disbursement unit, child support obligees and obligors will receive annual reports;

obligees will receive monthly reports any time a child support payment is retained by the state; and obligors who are not under income withholding will receive a monthly billing statement. Under the new system, each case will have one ledger. The committee was informed by a representative of the department that obligee and obligor reports will likely change as the system is implemented and the department receives feedback, and therefore, the department requested the committee not recommend legislation that would mandate particular report data elements until the department has an opportunity to learn from experience.

One element of the 1997 state disbursement unit legislation requires the department to use automated procedures, electronic processes, and computer-driven technology, including a statewide automated data processing system. The fully automated child support enforcement system (FACSES) is under development and being tested. Additional changes being considered as part of the move to automation are assessing interest on unpaid child support and implementing an automated telephone system.

The department did not meet the September 30, 1998, federal deadline for implementation of the automated state disbursement unit. As a result of missing the deadline, the state will incur a penalty of approximately \$150,000. A representative of the department testified that one reason the department missed the deadline is the department is trying to implement the welfare reform provisions and the state disbursement unit system requirement changes in such a way that the system submitted for federal approval will implement these mandates instead of having to modify an approved system. Several states that met the federal deadline are now in the position of incurring substantial costs in an attempt to accommodate the federal changes regarding system requirements.

Child Support Enforcement Provision Options

Federal law allows privatization of child support enforcement services. If child support collection is privatized, federal law allows a private firm to charge a fixed fee or to charge a percentage of the amount collected. A representative of the Department of Human Services testified the department is looking into a privatization pilot project of cases that have arrears and the only money owed is money owed to the state.

The committee was informed that in addition to privatization, other state agencies that could take over all or a portion of the IV-D child support collection services currently provided through the department might include the Attorney General or the Tax Commissioner.

Conclusion

The committee makes no recommendation regarding the provision of child support services. Given the current transition to automation and a state disbursement unit,

no change should be made until the 1997 legislative changes are fully implemented and can be accurately evaluated.

FAIRNESS AND EQUITY OF CHILD SUPPORT GUIDELINES, CHILD CUSTODY ORDERS, AND VISITATION ORDERS STUDY

The committee was charged with studying the issues of fairness and equity as they relate to the child support guidelines and the issuance and enforcement of child custody and visitation orders. This charge focuses on three issues—fairness and equity of child support guidelines, issuance and enforcement of child custody orders, and issuance and enforcement of visitation orders. The legislative history of the study resolution indicates a strong impetus for the study was frustration on the part of noncustodial parents regarding payment of child support accompanied with the inability to exercise visitation. Special interests include custodial parents, noncustodial parents, and the best interests of the children.

Legislative Background

1997 Legislation

House Bill No. 1226 provided for the welfare reform legislation necessary to bring the state into compliance with federal welfare legislation and included numerous child support enforcement provisions.

Senate Bill No. 2167 limited postjudgment custody modifications within two years after entry of a custody order unless modification is necessary to serve the best interest of the child and there is persistent and willful denial or interference with visitation, the child is in danger, or there has been a de facto change in custody.

Senate Bill No. 2280 required the Department of Human Services to request a child support enforcement agency to enter a child support withholding order within 20 days of the date the income withholding is determined appropriate or the date of receipt of information necessary to carry out the withholding.

Senate Bill No. 2357 required a court to award attorney's fees and costs if the court finds that the custodial parent willfully and persistently denied visitation rights to the noncustodial parent.

House Bill No. 1244, which failed to pass the House, would have required a court to order the obligor in a child support case to submit nonreimbursable medical expenses to the clerk of court as disbursements taxed in judgment. House Bill No. 1258, which failed to pass the House, would have imposed a 90-day waiting period from the date of filing a divorce petition before the court could enter a final decree, during which time the parties would have been required to attend parent education courses. House Bill No. 1308, which failed to pass the House, would have required the court to weigh heavily in favor of changing custody the court-ordered placement

in foster care of any child who resides or has resided in the household of the custodial parent. House Bill No. 1317, which failed to pass the House, would have changed the basis for calculation of gross income and expense deduction in determining child support by referencing the Internal Revenue Service Code and would have required the use of a five-year average of net income to determine the net income of a self-employed individual. Senate Bill No. 2390, which failed to pass the House, would have required the inclusion of an obligor's spouse's income in child support calculations.

Recent Studies

During the 1993-94 interim, the Judiciary Committee studied the Uniform Interstate Family Support Act and the Act's relationship to existing North Dakota law and the desirability of adopting the Act. The committee recommended adoption of the Act.

During the 1991-92 interim, the Administrative Rules Committee studied the impact of various child support guideline models on family units, on the quality of the relationships among the persons in the families, and on children who receive child support. The committee recommended guidelines that incorporate a modified income shares model. Also during the 1991-92 interim, the Budget Committee on Human Services studied the distribution of child support enforcement incentive payments made by the federal government. The committee recommended a child support incentives account funded with money from the federal child support incentives, with distributions made to child support education programs.

During the 1987-88 interim, the Budget Committee on Human Services received information on allocation of federal child support enforcement incentives.

Child Support Guidelines Background

Federal Law

One portion of the 1996 federal welfare reform legislation—42 United States Code (U.S.C.) 602(a)(2)—provides that a state's eligibility to receive a block grant for temporary assistance for needy families (TANF) is in part dependent on "certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the state plan approved under" the Child Support Enforcement Act. The Child Support Enforcement Act, 42 U.S.C. 651 through 669, requires states to enact certain remedies and procedures to improve child support collections.

The federal Personal Responsibility and Work Opportunities Reconciliation Act of 1996 amended 42 U.S.C. 666 to address the federal requirements for state statutorily prescribed procedures to improve the effectiveness of child support. The prescribed state statutory procedures addressed in the Act include income withholding, expedited procedures, state income

tax returns, liens, determination of paternity, guarantees, arrearages, support order review and adjustment, parent location networks, Social Security numbers, interstate child support orders, license suspension, financial institution data matching, children with minor parents, and health care coverage. In 1997 the Legislative Assembly enacted House Bill No. 1226 to implement the federal requirements.

North Dakota Law

North Dakota's child support guidelines law is found in NDCC Section 14-09-09.7. A portion of this section, as created in 1983, required the Department of Human Services to assemble information and create a scale of suggested minimum contributions to be used in determining the amount a parent might be expected to contribute in child support. The scale was not obligatory and the department testified that the department anticipated the vast majority of administrative child support orders would be entered as a consequence of the agreement of the parties involved. Section 14-09-09.7 was amended in 1987, but in 1990, the North Dakota Supreme Court determined the guidelines created by the Department of Human Services were invalid because the guidelines had not been adopted in accordance with NDCC Chapter 28-32. The 1989 Legislative Assembly enacted Senate Bill No. 2245 to implement 1988 amendments to federal law. The bill was drafted by the Department of Human Services with substantial advice from the Juvenile Procedures Committee of the Judicial Conference.

North Dakota Century Code Section 14-09-09.7 provides:

1. The department of human services shall establish child support guidelines to assist courts in determining the amount that a parent should be expected to contribute toward the support of the child under this section. The guidelines must:
 - a. Include consideration of gross income.
 - b. Authorize an expense deduction for determining net income.
 - c. Designate other available resources to be considered.
 - d. Specify the circumstances which should be considered in reducing support contributions on the basis of hardship.
2. The department shall accept and compile pertinent and reliable information from any available source in order to establish the child support guidelines. Copies of the guidelines must be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.
3. There is a rebuttable presumption that the amount of child support that would result

from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes, applying criteria established by the public authority which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:

- a. State the child support amount determined through application of the guidelines;
 - b. Identify the criteria that rebut the presumption of correctness of that amount; and
 - c. State the child support amount determined after application of the criteria that rebut the presumption.
4. The department shall institute a new rule-making proceeding under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial rulemaking proceeding must be commenced with a notice of proposed adoption, amendment, or repeal by August 1, 1998, and subsequent rule-making proceedings must be so commenced at least once every four years thereafter. Before commencing any rule-making proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council.

North Dakota Century Code Section 14-09-08.4 provides:

1. Each child support order must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:
 - a. In the case of an order with respect to which there is in effect an assignment under chapter 50-09 or 50-24.1, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or

- b. In the case of any other order neither the obligor nor the obligee has requested review.
2. Each child support order, in which there is in effect an assignment under chapter 50-09 or with respect to which either the obligor or the obligee has requested review, must be reviewed by the child support agency if:
 - a. More than twelve months have passed since the establishment of the order or the most recent amendment or review of that order by the court or child support agency, whichever is later; and
 - b. The order provides for no child support and was based on a finding that the obligor has no ability to pay child support.
 3. If, upon review, the child support agency determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by those guidelines, the child support agency shall seek an amendment of the order.
 4. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support order, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.
 5. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change

of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances.

North Dakota Administrative Rules

North Dakota Century Code Section 14-09-09.7 requires the Department of Human Services to adopt child support guidelines and requires that the child support guidelines consider gross income, recognize expenses to determine net income, designate financial resources to consider, and specify the circumstances to consider in reducing support contributions due to hardship. State law does not dictate the model to be used by the department in establishing the guidelines and does not specify whether the income of both parents must be considered in child support order decisions. The department's administrative rules addressing child support guidelines are found in NDAC Chapter 75-02-04.1.

In 1989 the department determined the guidelines should be adopted in the form of administrative rules to assure that the guidelines have the force and effect of law as provided for by NDCC Section 28-32-03. In addition, the department determined the publication of the guidelines in the Administrative Code would make the guidelines readily available to courts and state's attorneys, as required by NDCC Section 14-09-09.7(2).

On January 5, 1990, the department initially proposed to adopt child support guidelines as administrative rules. As required by law, the department requested public comments and announced a public hearing. On February 9, 1990, the department conducted a public hearing concerning the proposed rules. The oral comments received at the hearing and the written comments received before and during the hearing generally opposed the proposed rules. The interim Administrative Rules Committee members also received public comment opposing the proposed rules. Upon review of those comments, the department withdrew the proposed rules.

The department began drafting guidelines based on the "income shares" model. During the development of that model, the department solicited comments from the Juvenile Procedures Committee, a committee established by the North Dakota Supreme Court. Committee members recommended that an income shares model not be adopted. The department then developed guidelines based on the "obligor" model. The obligor model bore some resemblance to the previously existing guidelines but incorporated changes to reflect the suggestions made with respect to the withdrawn rules.

On September 26, 1990, the department proposed rules in the alternative. The two alternatives were the income shares model, developed early in 1990, and the

obligor model, developed after receiving comments from the Juvenile Procedures Committee. The department's proposals were widely disseminated and debated. The department received a combination of written and oral comments from 138 commentators. The department specifically asked commentators to indicate whether they preferred the income shares model or the obligor model. The commentators who expressed a preference were almost equally divided, with most of the attorneys and judges who offered comment preferring the obligor model. The reasons given were varied, but most who preferred the obligor model were concerned about the additional judicial and legal time that would be required to develop and consider financial information about two persons, rather than one person.

The department opted to adopt the rules based on the obligor model. The rules became effective February 1, 1991. The department's stated reasons for adopting the obligor model over the income shares model included the department's opinion that the income shares model was more complex and thus would increase litigation costs, lead to more requests for review, be more difficult to use in emergency cases, and although the income shares model appeared more fair, in most cases there would be little or no difference in award amounts.

Proposed legislation introduced in 1991, 1993, and 1995 would have provided for adoption of an income shares model for the child support guidelines, but in each case the proposed legislation failed to pass. The department adopted many minor and technical changes to the child support guidelines effective January 1, 1995. The changes provided for recognition of all the obligor's child support duties in determining the obligation in each case, imputing income based on earning capacity, determining the cost of supporting a child living with the obligor who is not also a child of the obligee, and for determining support amounts in multiple-family cases. The rule change also changed the criteria for rebuttal of the amount determined by application of the child support guidelines.

Child Support Guideline Models

Much of the debate over child support guidelines in recent years has centered on the appropriate model to use in establishing child support orders. The income shares model, the obligor model, and the Melson Delaware model are the three basic approaches used by states to determine child support orders.

The income shares model is based on two assumptions:

1. The support available to the child should be based on the combined income of the two parents.
2. The child should receive the same proportion of parental income that the child would have received if the parents lived together.

These assumptions are predicated on studies finding expenditures on children amount to a consistent proportion of household consumption, and this proportion varies systematically with the level of household income and the number and age of the children.

Application of the model involves:

1. Determining combined adjusted income of parents, with some allowable deductions, and the percentage of income contributed by each parent;
2. Determining the combined obligation of parents toward the support of their children from the available economic evidence, less medical and child care expenses; and
3. Apportioning the obligation to parents in the percentages determined for their incomes.

Additional adjustments are made in some states for split, shared, or joint custody arrangements. The custodial parent is presumed to spend the designated percentage on the child and the noncustodial parent must pay the percentage of the obligation determined for that parent to the custodial parent. Work-related child care expenses and extraordinary medical expenses are allotted between the parents in proportion to their net incomes and ordered as additional child support.

The obligor income model establishes a percentage of the obligor's income, usually net after required tax deductions, to be paid based on the available economic evidence on the cost of rearing children. In some states, a flat percentage is used; in other states, the percentage varies by number of children or economic factors.

The Melson Delaware model formula combines a cost-sharing and income-sharing approach. The model, developed by Judge Elwood Melson, has been used in Delaware since 1979. The model defines the basic amount required to support a child and apportions that amount between parents based on the relative disposable incomes. The formula then adds a standard of living adjustment that each parent may pay. The standard of living adjustment is 15 percent of net income for the first child and 10 percent for each additional child. The standard of living adjustment is not applied to the obligor until the obligor's income is adequate to minimally support the obligor. Once this minimal income level is reached, the next increments of income are used for child support until the children reach the same poverty level of support. Beyond this level, the income-sharing formula is used to determine the portion of the obligor's remaining income that must be contributed for child support. The formula takes into account child care and medical expenses. The formula as developed was the most complicated, but in 1990 Delaware made major changes to simplify the formula.

Child Custody Orders and Visitation Orders Background

Initial Child Custody and Visitation Determination Laws

Child custody determinations are based on North Dakota statutes. North Dakota Century Code Section 14-09-04 provides the mother and father of a legitimate unmarried minor child are entitled equally to custody of the child. Under Section 14-09-05, when maternity and paternity of an illegitimate child are positively established, the custody rights are equal as between the mother and father and must serve the best interests of the child.

Child custody often becomes an issue when a mother and father live separate and apart from each other. Section 14-09-06 provides:

The husband and father and wife and mother have equal rights with regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other, and when they so live in a state of separation without being divorced, the district court or judge thereof, upon application of either, may grant a writ of habeas corpus to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules provided by law for awarding the custody of a minor or the appointment of a general guardian.

Section 14-09-06.1 provides child custody determinations must promote the best interests and welfare of the child. Regardless of whether parents are married, Section 14-09-06.2(1) lists the factors considered in determining the best interests and welfare of a child, providing:

1. For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
 - a. The love, affection, and other emotional ties existing between the parents and child.
 - b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
 - c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.

- d. The length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity.
- e. The permanence, as a family unit, of the existing or proposed custodial home.
- f. The moral fitness of the parents.
- g. The mental and physical health of the parents.
- h. The home, school, and community record of the child.
- i. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- j. Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
- k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or

frequently the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

- l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.
- m. Any other factors considered by the court to be relevant to a particular child custody dispute.

Because of their interrelated nature, visitation is frequently considered at the same time custody is determined. North Dakota case law indicates a trial court may consider the parents' attitudes regarding visitation when the court determines child custody. Although the North Dakota Supreme Court determined visitation with the noncustodial parent is presumed to be in the best interests of a child, the primary purpose of visitation is to promote the best interests of the child and not the wishes or desires of the parents.

North Dakota Century Code Section 14-05-22 addresses visitation issues in divorce proceedings:

- 1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.
- 2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.
- 3. If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.

4. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit all visitation and contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers, and that supervised visitation is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that it serves a therapeutic purpose and is in the best interests of the child.
5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorneys' fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

seeking to modify custody has the burden of showing that a circumstance changed significantly and this change so adversely affected the child that custody should be changed.

The North Dakota Supreme Court has determined frustration of visitation does not in and of itself constitute a sufficient change in circumstances to warrant a change in custody. Before visitation problems justify changing custody, there must be a finding that the visitation problems worked against the child's best interests. Additionally, as amended in 1997, NDCC Section 14-09-06.6 limits postjudgment custody modifications within two years after entry of a custody order unless modification is necessary to serve the best interests of the child and there is persistent and willful denial or interference with visitation, the child is in danger, or there has been a de facto change in custody.

North Dakota Century Code Section 14-09-07 limits when a custodial parent may change the residence of a child to another state. Modification proceedings frequently accompany legal proceedings initiated when a custodial parent seeks to change the residence of a child. Under section 14-09-07, a parent entitled to the custody of a child may not change the residence of the child to another state except upon order of the court or with the consent of the noncustodial parent, if the noncustodial parent has been given visitation rights by the decree. A court order is not required if the noncustodial parent (1) has not exercised visitation rights for a period of one year, or (2) has moved to another state and is more than fifty miles from the residence of the custodial parent.

Child Custody and Visitation Enforcement Laws

Enforcement of a child custody order or visitation order is essentially the same as enforcement of any other court order. The enforcement tool available to a court is contempt proceedings. Additionally, 1997 legislation created NDCC Section 14-09-24, which provides that in a child visitation proceeding, the court is required to award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the minor child.

Child Custody and Visitation Modification Laws

An original award of custody is based on a single issue—what is in the child's best interests. When the trial court considers a request to modify a custody award, however, the court must determine two issues: (1) whether, on the basis of facts that have arisen since the earlier order or on the basis of facts that were unknown to the court at the time of the earlier order, there has been a material change in the circumstances of the child or the parties since the earlier custody award; and, if so, (2) whether the modification is necessary to serve the best interests of the child. The parent

Child Custody and Visitation Mediation Laws

Although typically in litigated child custody cases the determination of the best interests and welfare of a child is made by the court, NDCC Chapter 14-09.1 provides for voluntary mediation in custody determinations. Section 14-09.1-02 provides:

In any proceeding involving an order, modification of an order, or enforcement of an order for the custody, support, or visitation of a child in which the custody or visitation issue is contested, the court may order mediation at the parties' own expense. The court may not order mediation if the custody, support, or visitation issue involves or may involve physical or sexual abuse of any party or the child of any party to the proceeding.

Committee Considerations

After receiving testimony from interested persons regarding the child support guidelines, child custody, and visitation, a 32-topic survey was distributed to members of the committee and other interested persons. The focus of the survey was to clarify the committee's direction regarding the committee's study of the fairness and equity of the child support guidelines, custody orders,

visitation orders, and enforcement of these orders. The survey results were the basis of the committee's deliberations during the study.

The committee decided to drop the following survey topics from further consideration:

- Whether there should be requirements, by legislation or by agency rules, for how custodial parents may or should spend child support payments.
- Whether recurring and unjustified withholding of visitation rights by a custodial parent should result in loss of child support.
- Whether visitation should be withheld if child support is willfully withheld.
- Whether the obligor should get a state income tax dependent deduction for regular payment of court-ordered child support.
- Whether the state should make funds available to colleges or other facilities to train mediators.
- Whether the state should request the Department of Human Services or district courts to do a random satisfaction survey of divorced or separated parents.
- Whether the Legislative Council should contract with a business entity to do a survey of divorced parents to find out levels of satisfaction with child support, best interest of children, visitation, and other issues.
- Whether there should be annual adjustments in child support to take inflation into account.
- Whether child support arrears should accrue interest.

The committee decided to keep the following survey topics for further consideration, reviewing a variety of laws from other states and receiving testimony of interested persons regarding these topics:

- Whether the committee should draft legislation that would set out clearer definitions for joint legal custody, joint physical custody, and extended visitation.
- Whether a custodial parent should be required to account for expenditure of child support.
- Whether the committee should draft legislation creating statutory advisory visitation guidelines.
- Whether the state should allow an obligor who regularly pays court-ordered child support to deduct that amount from the obligor's taxable income.
- Whether the committee should draft legislation that defines "family law mediators" to include attorneys with certain specific additional training and licensed counselors, social workers, and psychologists with specific additional training.
- Whether there should be a presumption that, absent abuse or other strong reason, joint

physical or legal custody is in the best interest of the child.

- Whether the state should require the Department of Human Services (and anyone else in a position of collecting money in child support matters) to give a periodic accounting to the obligor of moneys received and moneys paid to whom and for what.
- Whether there should be minimums and maximums of amounts of income used in calculating child support.
- Whether the committee should recommend creation of a Joint Legislative Committee on Family Law or Senate and House standing committees on family law.
- Whether the committee should recommend the creation of a system of family law courts with practitioners having specific training in family law.
- Whether the committee should draft legislation requiring the Department of Human Services to change from an obligor child support guidelines model to an income shares child support model.
- Whether the child support guidelines should continue to be created by rulemaking.
- Whether overtime or second jobs should be excluded from a noncustodial parent's income for child support determinations.
- Whether the noncustodial obligors should receive credit on child support for extended time the children spend in the noncustodial parent's care.
- Whether both parents should be guaranteed access to children's medical, legal, and educational records unless a court finds otherwise.
- Whether visitation rights should be more stringently enforced.
- Whether there should be an expedited visitation enforcement procedure.
- Whether the noncustodial parent should receive credit on child support for travel expenses made necessary when the custodial parent moves away from the noncustodial parent.
- Whether there should be streamlined or expedited procedures, either by legislation or by agency rules, to take into account changes in an obligor's financial situation.
- Whether judges should be given the authority to phase in large modifications of child support orders.
- Whether both parents should be responsible for medical, dental, and eye care insurance.

Testimony

Study Criteria

A forensic psychologist testified that the committee should view requests by parties for rights in child custody

and visitation with some skepticism. The committee should focus on the theme that parents' priority should be to their children. The psychologist recommended the committee use the following six criteria in evaluating proposed actions:

- Try to minimize parental conflict.
- Try to maximize the child's access to each parent's unique strengths and assets.
- Try to minimize loss.
- Try to make the child's postdivorce adjustment easier.
- Try to facilitate the parents' postdivorce adjustment.
- Try to facilitate the family's postdivorce adjustment.

The forensic psychologist also testified poverty is a major contributor to stress, and because divorce is significantly stressful for parents, it is often difficult for parents to deal with divorce responsibly. The legal system does not encourage parents to decrease conflict, and one way parents could be encouraged to work out divorce issues would be to require a parent to have a "ticket" such as predivorce training or a parenting plan, before entering court. Another way to decrease the conflict that accompanies divorce is to teach conflict resolution skills.

Child Support Guidelines Concerns

The committee received testimony from a broad range of persons interested in the child support guidelines, including representatives of Remembering Kids in Divorce Settlements (R-KIDS) an organization made up of custodial parents and noncustodial parents. The testimony from the interested persons included concerns that:

- Although the child support guidelines laws are pretty good, the guidelines need to be changed to reflect the needs of children, obligors, and obligees.
- Custodial parents are not required to account for how child support is used.
- The obligor model of child support guidelines is perceived as unfair, and therefore, the Department of Human Services should be required to adopt child support guidelines based on an income shares model.
- The current child support and divorce system is not sensitive to the feelings of the parties.
- The child support guidelines allow obligors to be put below poverty level.
- State law does not provide adequate repercussions for obligors who refuse to pay child support and prosecutors need to use existing legal repercussions to be tougher in enforcing child support orders.

- There is an unmet need for an expedited system to modify child support orders.
- The child support guidelines should be based on a strict percentage of an obligor's income.
- Courts should be granted express authority to order a portion of child support be put in trust for the child's future needs.
- The child support guidelines do not adequately address multifamily situations.

A judicial referee testified that because the child support guidelines are based on what a two-parent family typically spends on a child, it is an error for the North Dakota guidelines to add medical insurance and noncovered medical expenses on top of child support and to increase child support for child care and the age of the child. Additionally, the referee testified that referees need more leeway in setting child support amounts because child support guidelines do not allow enough flexibility in addressing exceptional situations such as when an obligor voluntarily changes circumstances in order to pay a lesser amount of child support. Concern was voiced that the child support guidelines do not establish a maximum amount of child support needed to support a child and the child support guidelines discourage visitation because obligors are required to pay the full amount of monthly child support even though the child might be spending the month visiting the obligor parent.

Child Support Guidelines Drafting Advisory Committee

The committee received a report on the work performed by the Child Support Guidelines Drafting Advisory Committee. The advisory committee was formed pursuant to NDCC Section 14-09-09.7(4), which provides the Department of Human Services shall convene a drafting advisory committee every four years. As a result of the advisory committee's activities, the Department of Human Services proposed changes to the child support guidelines. The proposed changes to the child support guidelines address the following areas:

- Clarification of what is considered income.
- Calculation simplification regarding the cost of supporting children living with an obligor.
- Limited imputation of income of an obligor who voluntarily changes employment resulting in reduced income.
- Reduction of child support in cases of extended visitation.
- Clarification of the child support guidelines application to children in foster care.

Child Support Guidelines Model

The child support guidelines created by the Department of Human Services are based on an obligor child support model, a model that does not take into account

the income of the custodial parent. A representative of the Department of Human Services testified that guidelines based on an income shares child support model—a model that takes into account the income of the custodial parent and the noncustodial parent—was rejected for several reasons, including the income shares model is more costly to administer, there is no good way for the income shares model to account for second families, and the amount of child support under either model is essentially the same.

The committee received information regarding comparisons of child support scenarios under the North Dakota obligor model, the Utah income shares model, and the Washington income shares model and information regarding the financial impact of changing from the obligor model to the income shares model. Ultimately, the committee decided that although an income shares child support guidelines model has the appearance of fairness, the testimony indicated that regardless of which model is used, there was little or no difference in the amount of child support ordered. The committee recognized a change to an income shares model may improve the appearance of fairness which may ultimately decrease litigation because of the public's perception of the child support system.

Gender Bias

The committee received a summary of the Domestic Law Committee of the Supreme Court Commission on Gender Fairness of the Courts' findings as they relate to domestic law. The findings indicate North Dakota laws are not gender-biased, although there are risks of bias in the application of the laws. The committee learned this bias in application may be the result of stereotypical thinking.

The commission's findings also indicate there is a common misperception that women are awarded custody of children in 90 percent of custody determinations, when in reality, women are awarded custody of children in approximately 73 percent of the cases, and in over 50 percent of the child custody cases in which a woman is awarded custody, the custody decision was made jointly by the parents. The committee learned it is possible a gender bias factor that may play a role in parents agreeing that the mother get custody is a fear on the part of the father that the judge will award custody to the mother.

A forensic psychologist also testified that a common occurrence in divorce is the differing financial disparity between men and women, men are typically financially better off after divorce and women are typically financially worse off after divorce. The committee also received testimony from an interested person that the financial disparity data may be untrue.

Mediation

Testimony from a representative of the University of North Dakota Conflict Resolution Center defined

mediation as "the process in which trained neutral mediators assist conflicting individuals in making their own decisions about the issues over which there is conflict and in developing a better understanding of those issues and the prospective of other participants." Approximately 40 to 60 percent of mediation cases settle on all issues, and the other 40 to 60 percent of mediation cases go to court to settle all or some of the issues.

Reported benefits of mediation include the amount of time necessary to conclude civil cases is reduced, participants are encouraged to take more responsibility in dealing with conflicts, participants have a greater opportunity to express concerns, attorneys and participants are helped to better understand the strengths and weaknesses of a case, participants save money, participants are more satisfied with the outcome, participants believe the agreements are more fair and sensitive to the participants' needs, agreements are more comprehensive, agreements are more likely to be maintained, and participants often learn new methods of handling conflict and are able to resolve future differences informally rather than relying on the courts. Reported concerns of mediation include problems associated with mandated mediation and the variable quality of available mediators.

The committee received reports relating to mediation from the Joint Dispute Resolution Study Committee, a committee made up of attorneys and trial judges pursuant to Supreme Court Administrative Order dated October 11, 1995, and the State Bar Association of North Dakota's Joint Task Force on Family Law. The task force presented proposed local court rules the joint task force created which, if adopted by a court, would require of family law cases parties to participate in a mediation orientation. The task force chose to approach mediation through local court rules because court rules can be established and modified quicker than statutes.

The committee learned that as Minnesota's mediation programs become better established, mediation is becoming more available in the eastern portion of the state; however, there is a shortage of mediators in the western portion of the state. Because of the shortage of mediators in some areas of the state, the joint task force testified, a videotaped mediation orientation may be created to assist in implementation of the proposed court rules.

Mediators are not licensed in North Dakota. Although North Dakota Rules of Court Rule 28 provides the training requirements for mediators who are on court mediator rosters, the rule does not apply to nonroster mediators, and North Dakota does not monitor or license mediators. The committee discussed whether state professional requirements are needed at this time.

The committee decided that although mediation is a valuable tool in family law matters and the committee supported mediation efforts, nonlegislative actions are being taken at this time to implement mediation, and therefore, legislative action may not be required at this

time. The committee recommended additional study of mediation as it develops across the state.

Grand Forks Pilot Project

The committee received a report relating to the Grand Forks pilot project that established a small-claims-type court for family law matters. Due to the 1997 flood, the pilot project might be extended for an additional year. The committee decided consideration of whether to implement a small-claims-type court for family matters would be best evaluated upon completion of the pilot project.

Pro Se Representation

The committee considered whether courts would be more accessible, specifically for child support purposes, if the state changed the child support court system or initiated a program to encourage pro se (representing oneself) representation. Existing law and the existing system provide pro se litigants are required to follow the same rules and use the same court system as a licensed attorney.

The committee reviewed how other states are implementing programs to assist pro se litigants and received testimony that possible effects of increased pro se litigation in domestic matters might include easier access to the courts; increased demands on the judicial system, including the clerks of court; and an increased use of judicial referees. Testimony was received that states that have special pro se programs for child support matters typically have administrative child support systems, unlike North Dakota's judicial system, and invest resources in educating and assisting parties. A district court judge testified that encouraging pro se representation is inconsistent with decreasing the number of district court judges to 42.

The committee determined the impact of increasing pro se representation and modifying the child support system to better accommodate pro se representation would require more time and resources than the committee was able to invest given the committee's duty to study other charges.

Enforcement

A district court judge testified courts have the necessary tools to enforce child support and visitation. However, few of the obligors in child support enforcement hearings are professionals so it is not appropriate to suspend a professional license and it is counterproductive to revoke a driver's license because it would limit the obligor's ability to drive to work or participate in job-seeking activities. Visitation enforcement proceedings are rare, in part, because most visitation violations are minor, going to court is expensive, and it is difficult for petitioners to prove actual contempt. The district court judge testified in support of mediation and funding of legal services such as Legal Aid of North Dakota.

The committee received testimony that only one prosecutor in North Dakota has been successful in prosecuting for failure to support a child. A state's attorney testified that prosecuting for failure to support is very taxing for the prosecutor and law enforcement is not adequately trained to investigate criminal nonsupport cases.

The committee received testimony that child support enforcement laws enacted in 1997 are new, and it is too early to determine whether the changes will be helpful in enforcing child support. A child support enforcement attorney testified that because of the new enforcement methods created in 1997, additional child support enforcement legislation is not required at this time.

The committee received testimony that Cass County requires parenting education for parents in divorce cases, and this seems to help with custody and visitation determinations. Methods used in Minnesota which might be helpful in North Dakota include an expedited visitation statute, administrative judges for child support enforcement, and encouragement of pro se representation.

Recommendations

The committee recommends House Bill No. 1027 to authorize courts to order a child support obligee to put into trust for the child support obligor's child's support and welfare a portion of the child support contribution. This bill is in response to concerns raised regarding the use of large child support orders and the use of child support when the custodial parent is financially well off.

The committee recommends House Bill No. 1028 to provide, for purposes of the child support guidelines, gross income does not include any employee benefit that the employee may not lawfully liquidate without an income tax penalty and that the employee has no significant influence or control over the nature of amount of the benefit. This bill is in response to a district court decision that broadly interpreted gross income for child support calculations. This bill narrows the definition of gross income.

The committee recommends House Bill No. 1029 to provide, for purposes of the child support guidelines, in certain circumstances, income from a second job and income from overtime may be deducted from gross income.

The committee determined situations occur in which obligor's increase employment in order to support a second family or exercise meaningful visitation, and the courts need flexibility to address these situations.

The committee recommends Senate Bill No. 2039 to require the child support guidelines adopted by the Department of Human Services to include consideration of the length of time a minor child spends with the child's obligor parent. This bill provides that child support guidelines should acknowledge the additional expenses a noncustodial parent incurs during periods of extended visitation.

The committee recommends Senate Bill No. 2040 to require courts to determine whether parents have certain parental rights and duties. The committee agreed with the Joint Task Force on Family Law's suggestion that more uniform parental rights and duties might decrease predivorce and postdivorce litigation. This bill also provides that in child visitation enforcement proceedings, courts may use any remedy that is available to enforce a child support order and which is appropriate to enforce visitation. This bill expands visitation enforcement remedies to include remedies available for child support enforcement and would provide an appearance of equity.

The committee recommends House Concurrent Resolution No. 3005 directing the Legislative Council to study the feasibility and desirability of facilitating pro se representation in domestic relations matters.

The committee recommends House Concurrent Resolution No. 3006 expressing legislative approval of the actions taken by the State Bar Association of North Dakota's Joint Task Force on Family Law to facilitate and promote mediation as a method of addressing family law matters.

COMMERCE AND AGRICULTURE COMMITTEE

The Commerce and Agriculture Committee was assigned two studies. Section 12 of Senate Bill No. 2019 (1997) directed a study of economic development functions in this state, including the Bank of North Dakota programs, Technology Transfer, Inc., the North Dakota Development Fund, the Department of Economic Development and Finance, and other related state agencies. Senate Bill No. 2019 also provided that the study should include a review of the most appropriate, effective, and efficient method for the state to deliver economic development assistance in light of changing economic conditions and considerations. House Concurrent Resolution No. 3046 directed a study of the availability of affordable housing for middle income households, for the elderly, and in rural areas of this state. By directive of the Legislative Council, the study was expanded to include the availability of housing for all income levels.

In addition to its assigned studies, the chairman of the Legislative Council requested the committee to receive reports from Job Service North Dakota relating to any administrative changes, statutory changes, and changes in the unemployment insurance tax structure that may be proposed by Job Service for consideration by the 1999 Legislative Assembly and to review the current laws and rules regarding animal confinement feeding operations in the state. The Legislative Council designated the committee as the interim committee to receive the following reports that are required by law to be submitted to the Legislative Council or a committee designated by the Legislative Council:

1. The annual evaluation of research activities and expenditures by the Agricultural Research Board (North Dakota Century Code (NDCC) Section 4-05.1-19).
2. The annual report of the State Board of Animal Health (NDCC Section 36-01-08.3).
3. The annual report of the Department of Economic Development and Finance regarding loan performance and performance of the department (NDCC Section 54-34.3-04).
4. The report from the Workers Compensation Bureau regarding its safety audit of Roughrider Industries work programs and its performance audit of the modified workers' compensation program (NDCC Section 65-06.2-09).
5. The report from the Workers Compensation Bureau regarding its study of wage-loss benefit structure (1997 S.L., ch. 527, § 7).
6. The reports from the State Board for Vocational and Technical Education regarding its progress in coordinating statewide access to work force training programs (1997 S.L., ch. 32, § 17 and ch. 49, § 7).
7. The report of the Agricultural Experiment Station regarding the study of the feasibility and

desirability of industrial hemp production in the state (1997 S.L., ch. 56, §1).

Committee members were Senators Duane Mutch (Chairman), Meyer Kinnoin, David O'Connell, Harvey Sand, and Herb Urlacher and Representatives Jack Dalrymple, Glen Froseth, Pat Galvin, Lyle L. Hanson, Dennis Johnson, George Keiser, John Mahoney, Eugene Nicholas, Jim Poolman, Earl Rennerfeldt, Arlo E. Schmidt, and Lynn J. Thompson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

ECONOMIC DEVELOPMENT STUDY Background

Although North Dakota's 2.8 percent unemployment rate in 1996 ranked as the lowest among the 50 states, evaluations of the state's economic momentum vary. *Congressional Quarterly's* State Fact Finder Rankings Across America for 1997 ranked the September 1996 index of economic momentum for North Dakota as the 19th best in the nation. On the other hand, a report by the Corporation for Enterprise Development in July 1996 gave the state a "D" in economic performance based on a rating of employment, wage levels, and job quality.

1991 "Growing North Dakota" Legislation

Senate Bill No. 2058 (1991) replaced the Economic Development Commission with the Department of Economic Development and Finance. The bill required the Governor to appoint a director of the Department of Economic Development and Finance and provided for a division of finance, a division of marketing and technical assistance, and a division of science and technology. The bill provided for the following funds:

1. The agriculture partnership in assisting community expansion (Ag PACE) fund for the purpose of buying down the interest rate on loans to on-farm businesses.
2. The partnership in assisting community expansion (PACE) fund for the purpose of buying down the interest rate on loans made by lead financial institutions in participation with the Bank of North Dakota.
3. The primary sector development fund (North Dakota Economic Development Finance Corporation) for the purpose of taking equity positions in, providing loans to, or using other innovative financing mechanisms to provide capital for new or expanding businesses in the state or relocating businesses to the state. Every full-time employee of a business receiving moneys or other assistance from the primary sector development fund was required to be paid an income at least equal to 100 percent of the federal

poverty level for a family of four for the life of the loan, equity position, or other financial relationship. (This requirement was often referred to as the "living wage" requirement.)

4. The regional rural development revolving loan fund for the purpose of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanding primary sector businesses in areas in the state which are not located within five miles of any city with a population of more than 8,000. Funds in the regional rural development revolving loan fund were to be divided equally among the eight planning regions. Repayments from projects funded by the regional rural development revolving loan fund were to be credited to the local region.

The 1991 Legislative Assembly appropriated approximately \$21 million for economic development purposes for the 1991-93 biennium. Funding for the economic development program came from transfers from earnings of the Bank of North Dakota to the general fund.

1993 "Growing North Dakota II" Legislation

The Growing North Dakota program established in 1991 was partially revised in 1993 by Senate Bill No. 2021. That bill changed the name of the Science and Technology Corporation to Technology Transfer, Inc., and changed the name of the North Dakota Economic Development Finance Corporation to the North Dakota Future Fund, Inc.

In 1993, legislation also eliminated the requirement that the Department of Economic Development and Finance include a division of marketing and technical assistance. The legislation authorized the director of the department to establish additional divisions as necessary; however, the legislation required the department to contain an office of North Dakota American Indian Business Development and an office of North Dakota Women's Business Development.

In 1993 the Legislative Assembly appropriated additional funds for the Future Fund and Technology Transfer, Inc., for the remainder of the 1991-93 biennium because all the funds appropriated by the 1991 Legislative Assembly had been expended. In addition, the 1993 Legislative Assembly appropriated approximately \$18.5 million for economic development programs for the 1993-95 biennium.

1995 Economic Development Legislation

In 1995 the Legislative Assembly continued to make significant changes to the state's economic development tools. In House Bill No. 1021 (1995), the regional rural development revolving loan fund and the North Dakota Future Fund, Inc., were replaced with the North Dakota Development Fund. However, the Legislative Assembly

provided that \$6 million of the funds in the North Dakota Development Fund must be dedicated for the purpose of providing financial assistance, research and development assistance, and the loans or equity or debt financing on a matching basis to new or expanding primary sector businesses in areas in the state which are not within five miles of any city with a population of more than 8,000. Those funds were to be allocated for the benefit of each of the eight planning regions. The approximately \$2 million balance in the fund was to be dedicated for projects as follows: 40 percent businesses in rural areas, 40 percent businesses in urban areas, and 20 percent American Indian businesses. However, the director of the Department of Economic Development and Finance was allowed to reallocate up to 20 percent of any region's allocation to another region during the biennium. The director was also permitted to reallocate among the Technology Transfer, Inc., fund and the North Dakota Development Fund for rural and nonrural development projects up to 10 percent of the amounts appropriated.

The Legislative Assembly also repealed the "living wage" requirement and appropriated to the Department of Economic Development and Finance approximately \$2 million for grants, \$1,454,000 for Technology Transfer, Inc., and \$1,968,750 for the Development Fund.

1997 Economic Development Legislation

In 1997 the Legislative Assembly included within the appropriation for the Department of Economic Development and Finance (Senate Bill No. 2019) a provision that repeals Technology Transfer, Inc., as of July 1, 1999. The bill also appropriated to the department \$1,909,875 for the North Dakota Development Fund, \$500,000 for Technology Transfer, Inc., and \$4,097,462 for the Agricultural Products Utilization Commission.

Senate Bill No. 2019 (1997) allows the director of the Department of Economic Development and Finance to reallocate among the Technology Transfer, Inc., fund and the North Dakota Development Fund for rural and nonrural development projects up to 10 percent of the amounts appropriated for the biennium. The bill provided that the money transferred to the North Dakota Development Fund must be dedicated for projects as follows: 40 percent businesses in rural areas, 40 percent businesses in urban areas, and 20 percent American Indian businesses. However, any unused funds in any category may be transferred to another category during the second year of the biennium, and the director of the department is permitted to reallocate up to 20 percent of any region's available remaining balance of regional rural development revolving loan funds to another region or regions. The bill further provides of the amount available in the North Dakota Development Fund, \$4 million or the unobligated balance on July 1, 1997, relating to the transfer of regional rural development loan fund moneys, must continue to be

dedicated for the purposes of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanded primary sector businesses in areas of the state which are not within five miles of any city with a population of more than 8,000.

Senate Bill No. 2019 includes a provision stating that a political subdivision or economic development authority may adopt a minimum wage requirement for any new business or business expansion in which a majority of the capital is provided by the North Dakota Development Fund and its own local development funds. The bill also provides that the Agricultural Products Utilization Commission is now a division of the Department of Economic Development and Finance. The bill includes an agricultural prototype development program within the programs that the Agricultural Products Utilization Commission may administer.

Other 1997 legislation relating to economic issues includes Senate Bill No. 2373, which provides a framework for investment in community development corporations by banks; Senate Bill No. 2398, which provides that the Industrial Commission, acting as the Farm Finance Agency, may establish the first-time farmer finance program to encourage first-time farmers to enter and remain in the livelihood of agriculture and to provide first-time farmers a source of financing at favorable rates and terms generally not available to them; Senate Bill No. 2396, which allows a corporation or a limited liability company to own and operate the low-risk incentive fund, which makes loans to primary sector businesses; and House Bill No. 1401, which amended the seed capital investment credit provisions to eliminate the requirement of gross sales receipts of less than \$2 million in the most recent year and to allow the credit to apply for a business that does not have a principal office in the state but has a significant operation in North Dakota of more than 25 employees or \$250,000 of annual sales in a North Dakota operation.

Although the Department of Economic Development and Finance administers most of the major economic programs such as the North Dakota Development Fund, Technology Transfer, Inc., the American Indian Business Development Program, and the Women's Business Development Program, the Bank of North Dakota also administers economic development programs. The PACE fund is available to buy down the interest rate on loans made by lead financial institutions in participation with the Bank of North Dakota. The 1997 Legislative Assembly appropriated \$4,000,600 for the PACE fund.

The Ag PACE fund is a fund through which the Bank of North Dakota assists in buying down the interest rate on loans to on-farm businesses. The 1997 Legislative Assembly appropriated \$397,100 to the Bank of North Dakota for the Ag PACE fund.

The beginning farmer revolving loan fund provides direct loans through the Bank of North Dakota to

first-time purchasers of agricultural real estate for the purchase of agricultural real estate. The 1997 Legislative Assembly appropriated \$921,500 to the Bank of North Dakota for the beginning farmer revolving loan fund.

Testimony

The committee received reports from representatives of the Department of Economic Development and Finance regarding the restructuring of the department, loan performance, and the programs administered by the department. A representative of the department testified that a reorganization of the department and its focus was necessary because the economic situation in the state differs greatly from 1991 when most of the economic development programs administered by the department were adopted. Therefore, the department is changing its focus from jobs creation to wealth creation and attempting to respond to the needs of existing businesses by assisting in work force training and development programs. Although 90 percent of the state's business assistance programs address financing, the department is attempting to become more of an information agency to help businesses make good business decisions.

The representative of the Department of Economic Development and Finance testified that the department has experienced difficulty in hiring individuals to fill project manager positions because the department is not able to compete with salaries paid in the private sector. The representative of the department indicated that the department's 1999 budget proposal will attempt to address the salary concerns.

The director of the department also testified that although the department shares information and cooperates with the area's economic development programs outside the department, more of those programs should be administered within the department to promote efficiency.

As of June 30, 1997, the North Dakota Development Fund had funded 99 projects in the amount of \$19,475,600. In addition, there was approximately \$3,403,726 committed to 16 pending projects. The Development Fund and the regional rural revolving loan fund charged off approximately \$2,700,000 in investments that were made between 1992 and 1994. The director of the Department of Economic Development and Finance testified that after the Development Fund made managerial changes and policy changes regarding investments in 1994, there have been very few chargeoffs.

The 1997 Legislative Assembly provided for the dissolution of Technology Transfer, Inc., as of July 1, 1999. The Department of Economic Development and Finance has transferred the administration of Technology Transfer, Inc., to employees within the department and is attempting to absorb the functions of

Technology Transfer, Inc., within the department. The director of the department testified that although there will likely be a gap in financing of projects that would have been eligible for funding from Technology Transfer, Inc., the department will continue to nurture the investments made by Technology Transfer, Inc., in an attempt to recover the investments made by Technology Transfer, Inc.

Since Technology Transfer, Inc., began functioning in 1991, it has invested in 296 projects. The director of the department testified that the outstanding projects have the potential in the long term to return approximately \$2.5 million to the Development Fund.

The committee received testimony from representatives of the Bank of North Dakota regarding economic development programs administered by the Bank. From 1993 through 1997, the loan volume tripled from \$211 million to \$624 million. Including the contributions made by local banks toward economic development loans, the Bank of North Dakota loan programs have provided over \$800 million in economic development funds in a five-year period. As of December 31, 1997, the total amount of loans owned and administered by the Bank was approximately \$900 million. The Bank has participated in the financing of over 1,000 projects in the previous six years.

Representatives of the Bank of North Dakota testified that in addition to the loan programs specifically authorized by statute, the Bank attempts to establish other programs to assist in creating jobs in the state and representatives of the Bank regularly meet with other economic development entities to attempt to coordinate funding activities. Representatives of the Bank indicated that because the Bank is a lending institution, the administration of economic development grant programs such as those administered by the Department of Economic Development and Finance may not be appropriate for the Bank of North Dakota.

The committee received testimony from individuals involved in economic development activities at the local level indicating that the Department of Economic Development and Finance and the Bank of North Dakota are cooperating well with local developers and that the state has the tools necessary to promote and sustain development. Although there has been a shortage of skilled employees in some areas, development officials stated that they have been working with institutions of higher education, particularly the two-year schools, to train employees.

Conclusion

The committee makes no recommendation with respect to its study of economic development functions in the state.

AFFORDABLE HOUSING STUDY

Background

According to the United States Bureau of the Census, the home ownership rate in North Dakota in 1996 was 68.2 percent. The national home ownership rate in 1996 was 65.4 percent. North Dakota ranked 25th nationally with its 68.2 percent rating. Between 1986 and 1996, the North Dakota home ownership rate decreased 1.45 percent, which was 43rd in the national rankings with respect to the percentage change.

The United States Bureau of the Census estimates the median home value in North Dakota in 1990 was \$50,800, compared to the national median of \$79,100. Census data figures also indicate that North Dakota ranked 49th nationally in the percentage change in the number of new housing units authorized from 1995 to 1996. The Morgan Quitno Press publication *State Rankings 1997* reports that the percentage change in the number of new housing units authorized from 1995 to 1996 in North Dakota was minus 32.46 percent. However, *State Rankings 1997* also indicates that North Dakota ranked third nationally in the percentage change in the existing home sales from 1995 to 1996 with a 13.21 percent change.

State Rankings 1997 ranked North Dakota 14th for per capita state and local government expenditures for housing and community development for 1993, which was the last year available. According to the ranking, North Dakota state and local government expenditures per capita were \$73.29, which exceeded the national per capita average by about \$1.25.

1992 Housing Needs Assessment

In 1992 the North Dakota Housing Finance Agency and the Office of Intergovernmental Assistance prepared a *North Dakota Housing Needs Assessment*. The purpose of the report was to provide a comprehensive picture of housing needs in the state by gathering information regarding housing market demand and supply, structural conditions of housing, financing and affordability of housing, and the effectiveness of federal, state, and local housing programs. The report concluded that in most areas of the state there was a sufficient supply of owned and rental units that were affordable and in good repair. However, the report also indicated that some aspects of the housing market could be improved, such as housing for young families making the transition from renting to owning and improvement of rental markets in growing cities.

The report identified 13 specific action areas.

1. **Increase the affordability of home ownership.** Approximately seven percent of the state's homeowners are considered cost-burdened because the homeowners pay more than 28 percent of their monthly income in mortgage payments. If new construction does not become more affordable, new homeowners will

become cost-burdened and many persons will remain "involuntary renters."

2. **Increase the quality and condition of the housing stock.** Over 16 percent of all homeowners in the state believe that their homes have a need for repairs that the homeowners cannot afford. In addition, almost 15 percent of the renters in the state claim that rental units have a need for repairs that the landlords are not undertaking.
3. **Make home construction, rehabilitation, buying, selling, and renting cost-effective and accessible.** Private sector financing is difficult to obtain in some parts of the state and developers and financiers often do not have the information needed to recognize changes in housing demand. The state is not taking full advantage of its potential share of housing assistance moneys.
4. **Address the need for multifamily housing in selected communities.** Several larger cities in the state are experiencing an increase in the number of low-income households, and private sector developers are sometimes slow to respond to the need for more affordable rentals because of perceived thin profit margins. In addition, it was often difficult acquiring multifamily construction loans in communities in the state that had uncertain economic futures.
5. **Provide assistance in housing in economically developing areas.** Rural economic development in some areas resulted in an overwhelming burden on the local housing markets.
6. **Expand transitional housing for homeless and special needs groups.** Some individuals leaving institutional settings or the homes of family or friends are not ready to live independently, and there is a need for transitional housing for those individuals. Many of those individuals remain institutionalized, continue to live with family or friends, or become homeless as a result of the lack of transitional housing.
7. **Increase homeless shelter operating funds.** Although data on the number of homeless persons is not readily available, the budgets of homeless shelters are strained. The lack of stable, long-term funding sources threatens to close some shelters.
8. **Move toward independent living for special needs groups.** The goal of maximum feasible independence for special needs groups requires affordable housing and community-based services that allow individuals to live independently but still receive appropriate levels of support. Because of the lack of adequate housing, those individuals often "cluster" into

public housing complexes, which is deemed inadvisable by special needs advocates.

9. **Coordinate housing and community-based services.** Subsidized services for special needs and low-income households often are not available where there is a need. In addition, funding is not adequate to meet the need for all programs, and service providers are overwhelmed by the variety of programs available.
10. **Continue to make physical accessibility improvements.** There is a statewide shortage of housing units with physical accessibility improvements.
11. **Improve Indian reservation housing.** There is a shortage of housing units on all the Indian reservations in the state, and the existing housing is often poorly constructed and under-maintained. In addition, much of the reservation housing is unaffordable.
12. **Provide migrant worker housing.** Migrant worker housing often is not available.
13. **Make a range of senior housing available in urban areas.** North Dakota has gaps in its continuum of senior housing. There is a shortage of affordable assisted living units that sometimes results in elderly persons entering nursing homes prematurely.

State Consolidated Housing Plan

The National Affordable Housing Act of 1990, Public Law 101-625, requires each state and local jurisdiction that receives housing assistance under the Act and the community development block grant program to prepare and to submit to the Department of Housing and Urban Development a comprehensive housing affordability strategy to cover a five-year period with annual updates. The comprehensive housing affordability strategy must examine the need for housing and homeless assistance in the jurisdiction and devise a strategy to supplement and expand upon existing programs. The strategy must include:

1. A description of the estimated housing needs for the ensuing five years and the need for assistance for very low-income, low-income, and moderate-income families.
2. A description of the nature and extent of homelessness within the jurisdiction and of the jurisdiction's strategy for addressing the needs of various categories of the homeless.
3. A description of the means of coordination among the state and local governments to implement the housing strategies.

The Office of Intergovernmental Assistance has replaced the comprehensive housing affordability strategy with a consolidated plan that combines the planning and application aspects of various Department of Housing and Urban Development programs with the

requirements for the comprehensive housing affordability strategy. The consolidated plan for North Dakota fiscal years 1995 through 1999 is to further the following goals: (1) to provide decent housing; (2) to establish and maintain a suitable living environment; and (3) to expand economic opportunities for each citizen of North Dakota. The plan describes housing and community development needs and resources, establishes strategies, and prioritizes the use of housing and community development dollars for the state and each planning region. Because Bismarck, Fargo, and Grand Forks received housing assistance directly, those cities also are required to prepare comprehensive plans. The Indian reservations are not required to be included within the plan. However, the Office of Intergovernmental Assistance included Bismarck, Fargo, and Grand Forks and the Indian reservations in the plan to the extent possible.

With respect to affordable housing, the consolidated plan for fiscal years 1995 through 1999 identifies the following objectives:

1. Improve the quality and condition of the existing rental and owner-occupied housing stock for extremely low-, low-, and moderate-income households through rehabilitation.
2. Provide home ownership opportunities to more low- and moderate-income families.
3. Increase the supply of affordable multifamily housing units.
4. Assist more extremely low-income families in obtaining affordable rental units through the provision of security deposits.
5. Pursue the creation of a fair housing law that is substantially equivalent to the federal Fair Housing Act.
6. Strengthen landlord/tenant rights laws and update the *Landlord/Tenant Rights in North Dakota* handbook.
7. Create a mechanism to inform lenders, developers, nonprofits, cities, counties, and other interested entities about state and federal housing programs.

The plan identifies potential federal, state, and other funding resources that may be available to address housing priorities identified in the plan and lists the following state resources that may be available:

1. The state revolving fund program administered by the North Dakota Bond Bank and the State Department of Health to provide financing for the construction and improvement of wastewater treatment systems owned by political subdivisions through a below-market subsidized interest rate on loans.
2. The North Dakota Future Fund, Inc., (now the North Dakota Development Fund) administered by the Department of Economic Development and Finance to provide funds to primary sector businesses and grants to local development agencies.

3. The regional rural development revolving fund (now the North Dakota Development Fund) administered by the Department of Economic Development and Finance to provide funds to new or expanding primary sector businesses located outside cities having a population of 8,000 or more.
4. The PACE fund administered by the Bank of North Dakota to provide loans to businesses involved in manufacturing, processing, value-added processing, major destination tourist attractions, and targeted service industries.

North Dakota Housing Programs

The Industrial Commission, acting as the State Housing Finance Agency, is authorized under NDCC Section 54-17-07.3 to establish the following housing finance programs:

1. **Home mortgage finance program.** A program to provide financing or refinancing of loans made by lenders, including second mortgage loans and leasehold mortgage loans on tribal trust or other reservation lands, and leasehold mortgage loans that are insured or guaranteed through an affordable housing program, to persons or families of low and moderate income for the purchase or substantial rehabilitation of owner-occupied, single-family residential dwelling units, which includes mobile homes and manufactured housing.
2. **Mobile home and manufactured housing finance program.** A program to provide financing of loans made by lenders to persons or families of low and moderate income to finance the purchase of mobile homes and manufactured housing other than on a real property mortgage basis.
3. **Multifamily housing finance program.** A program to provide financing directly or indirectly of construction, permanent, and combined construction and permanent mortgage loans (including participations in mortgage loans) for the acquisition, construction, refurbishing, reconstruction, rehabilitation, or improvement of multifamily housing facilities.
4. **Mortgage loan financing program.** A program to provide for the purchase of mortgage loans originated by lenders on residential real property in addition to such mortgage loans acquired or to be acquired under subsections 1 through 3.
5. **Home improvement finance program.** A program to provide full or partial indirect financing of improvements to existing residential dwelling units.
6. **Housing grant program.** A program to provide grants other than those authorized by Section 54-17-07.6 to encourage and promote housing

availability for persons of low or moderate income.

Section 54-17-07.4 authorizes the Industrial Commission to fund its housing finance programs by issuing and refunding revenue bonds or evidences of debt and indebtedness of the state. The section provides that the principal of and the interest on the bonds are payable only from revenues generated under the housing financing programs and that the bonds do not constitute a debt of the state.

Section 54-17-07.10 authorizes the Industrial Commission to establish a program or programs to provide housing for persons of low or moderate income through the acquisition of residential real property and related personal property and to maintain, repair, improve, or convey leasehold interests in that real and personal property to, or for the benefit of, persons of low or moderate income.

Section 54-44.5-04 designates the Office of Intergovernmental Assistance as the state entity to administer federal block grant programs. In addition, the office is required to develop a state energy conservation policy and manage federal energy conservation program activities. The Governor designated the office as the lead agency for developing, facilitating, implementing, and monitoring the consolidated plan to comply with the requirements of the National Affordable Housing Act of 1990.

Among the housing-related programs administered by the Office of Intergovernmental Assistance are:

1. An emergency shelter grants program, which provides assistance to homeless and domestic violence shelters in the state.
2. A low-income shelter assistance program, which provides assistance with heating and cooling costs to shelters.
3. The HOME program, which provides federal funds for home ownership assistance and rental assistance.
4. The housing acquisition and rehabilitation program, which provides assistance to low-income families to purchase or rehabilitate homes.
5. A security deposit program, which assists families in providing funding for security deposits.
6. A weatherization program, which provides funding to improve the energy efficiency and comfort level of residences occupied by low-income persons.
7. The community development block grant program, which provides funding to cities and counties to assist with housing rehabilitation assistance.

Section 23-11-03 authorizes the governing body of a city or county to adopt a resolution declaring that there is a need for a housing authority in the city or county if it finds that unsanitary or unsafe inhabited dwelling

accommodations exist in the city or county or that there is a shortage of safe or sanitary accommodations in the city or county available to persons of low income at rentals they can afford to pay. A local housing authority may operate housing projects and issue bonds and accept financial assistance from the federal government for housing projects.

Testimony

The Governor appointed a housing task force to address concerns regarding affordable housing in the state. The task force was considering a number of recommendations to help provide for availability of housing, provide the tools necessary to create available housing, and to address educational concerns with respect to housing needs.

The committee received testimony from a representative of the State Housing Finance Agency regarding the programs available to provide assistance for single-family housing. In addition to the home mortgage finance program, the State Housing Finance Agency administers programs to assist with downpayment and closing costs; to provide a secondary market for residential real estate mortgages guaranteed under the federal Rural Housing Service Section 502, Single Family Rural Housing Guaranteed Loan Program; to assist low-income households achieve affordable homeownership through homeowner education, assistance in finding an affordable home, and provision of rehabilitation funds; and to provide low interest rate mortgages for major home improvement programs. The Housing Finance Agency also administers a home buyer education incentive program, which is designed to help first-time home buyers be prepared for homeownership and an application processing service to provide application processing, loan underwriting, closing document preparation, loan closing disbursement, final packaging, and delivery services for participating lenders.

Conclusion

The committee makes no recommendation regarding its study of affordable housing.

AGRICULTURAL RESEARCH BOARD ANNUAL EVALUATION

North Dakota Century Code Section 4-05.1-19 requires the Agricultural Research Board annually to evaluate the results of research activities and expenditures and report the findings to the Legislative Council. The board was created by the 1997 Legislative Assembly (Senate Bill No. 2064) and consists of 15 members. The board is responsible, subject to the policies of the State Board of Higher Education, for the budgeting, supervision, and policymaking responsibilities associated with the supervision of the Agricultural Experiment Station.

A representative of the board informed the committee that the board conducted a thorough review of the entire research program at North Dakota State University, established priorities for the programs, and prepared a budget to implement the initiatives that were identified as being most important.

Section 4-05.1-16 provides that the 10 appointive members of the board be appointed by the State Board of Higher Education from lists of candidates provided by the Ag Coalition and the extension services multicounty program units advisory groups. Representatives of the Agricultural Research Board testified that the board has experienced some difficulty working with the State Board of Higher Education in the selection of candidates and that the State Board of Higher Education may not be the group best able to determine the qualification of the members of the Agricultural Research Board.

ANNUAL REPORT OF STATE BOARD OF ANIMAL HEALTH

The Legislative Council assigned the committee the responsibility of receiving the annual report of the State Board of Animal Health required by NDCC Section 36-01-08.3. The board submitted two annual reports to the committee and a copy of the 1997 evaluation of the State Veterinarian.

A representative of the Board of Animal Health testified that the merger of the Board of Animal Health with the Department of Agriculture has progressed well, but it also has been the source of some problems, particularly with respect to the lack of statutory guidance to determine the powers of the board and the Commissioner of Agriculture with respect to the fiscal authority of the board and the State Veterinarian. Representatives of the board also expressed concern that the State Veterinarian may need additional assistance to ease some of the administrative burden of the position and allow the State Veterinarian to perform more veterinary work.

WORKERS' COMPENSATION REPORTS

North Dakota Century Code Section 65-06.2-09 requires the Workers Compensation Bureau to perform a safety audit of the Roughrider Industries work programs and a performance audit of the program of modified workers' compensation coverage and submit the report with recommendations to an interim committee designated by the Legislative Council no later than 30 days before the commencement of each regular session of the Legislative Assembly. The Legislative Council assigned the committee the responsibility to receive the report.

The modified workers' compensation coverage program was established for inmates incarcerated at the State Penitentiary who are engaged in work in a prison industries work program. The bureau, in cooperation with the Department of Corrections and Rehabilitation, has adopted administrative rules and a fee schedule for

the modified coverage. However, because Roughrider Industries has not applied for or requested an account to be established for the modified coverage, the bureau has not conducted a performance audit of the program.

The Legislative Council also assigned to the committee the responsibility to receive the report of the Workers Compensation Bureau required by Section 7 of Chapter 527 of the 1997 Session Laws, regarding the bureau's study of its wage-loss benefit structure. The 1997 Legislative Assembly directed the bureau to conduct the study to determine if the current structure provides for equitable compensation for wage-loss resulting from a work-related injury. The bureau was directed to identify the advantages and disadvantages of the current system and of any proposed system and to include recommendations on how the bureau's benefit structure could be refined to provide an appropriate balance between adequate benefits and return-to-work incentives.

The bureau's report concluded that the wage-loss benefits received by injured workers in North Dakota are comparable to or slightly higher than the average benefit rates in other states and the wage-loss benefit structure is fundamentally sound. The report also concluded that many disabled workers receive benefits that are actually higher or lower than the rate recommended by the 1972 National Commission on State Workmens Compensation Laws because of the minimum benefit floor and the maximum benefit cap. The report indicated that the Legislative Assembly could ensure that a higher percentage of disabled workers receive benefits at the statutory rate by increasing the maximum benefit cap or decreasing the minimum benefit floor. With respect to the comparison of postinjury benefits to preinjury benefits for long-term benefit recipients, the report concluded that benefit levels are sufficient for most cases. However, approximately 27 percent of the cases surveyed were receiving over 125 percent of the preinjury net wages. The report concluded that the current workers' compensation benefit levels and yearly Social Security disability cost-of-living adjustments allow most injured workers to save toward retirement at least to the degree that the workers were able to before the injury.

STATE BOARD FOR VOCATIONAL AND TECHNICAL EDUCATION REPORT

Section 17 of Chapter 32 and Section 7 of Chapter 49 of the 1997 Session Laws require the State Board for Vocational and Technical Education to provide, during the 1997-98 interim, periodic reports to the Legislative Council or its designated committee, regarding the agency's progress in coordinating statewide access to work force training programs. The Legislative Council assigned the committee the responsibility to receive the reports from the State Board for Vocational and Technical Education.

A representative of the State Board for Vocational and Technical Education presented a report to the committee indicating that progress in coordinating state-wide access to work force training programs has been excellent. The representative of the board testified that representatives of the following entities were involved in the coordination of access to work force training programs: the North Dakota University System, the Department of Economic Development and Finance, the Work Force Development Council, the Secretary of State, the Labor Commissioner, the Department of Health, the Department of Corrections and Rehabilitation, the Highway Patrol, Job Service North Dakota, the Department of Human Services, the Superintendent of Public Instruction, the Agriculture Commissioner, the Department of Transportation, the Indian Affairs Commission, the State Board of Plumbing, and the Public Service Commission. In addition, the representative of the board testified that representatives from several industries were involved in the coordination process.

INDUSTRIAL HEMP REPORT

Section 1 of Chapter 56 of the 1997 Session Laws required the Agricultural Experiment Station to study the feasibility and desirability of industrial hemp production in the state. The Experiment Station was required to include an analysis of required soils and growing conditions, seed availability, harvest methods, market economies, environmental benefits, and law enforcement concerns. The Legislative Council assigned the committee the responsibility to receive the report.

The report indicated:

1. The industrial hemp world market consists of over 25,000 products in nine submarkets: agriculture; textiles; recycling; automotive; furniture; food, nutrition, and beverages; paper; construction materials; and personal care.
2. World hemp fiber production has declined from over 400,000 tons in 1961 to 113,000 tons in 1996. India, China, Russia, and Korea are the major low-cost producers.
3. A revitalization of industrial hemp may be occurring as a result of technological advances in processing, an increase in prices, or interpretation of existing information.
4. The largest market opportunity for North Dakota may be hemp seed oil.
5. North Dakota may have a comparative advantage because a state-of-the-art multi-oil processing facility already exists that is capable of processing hemp seed.
6. Hemp hurds appear to be price competitive with wood chips, fine wheat straw, other types of animal bedding, and other high-end pet needs.
7. Certified seed production is a market opportunity.

8. Another recent study projects returns ranging from \$220 per acre for producing hemp seed for crushing to \$605 an acre for certified hemp seed.
9. Law enforcement agencies have legitimate concerns regarding the ability to enforce laws regulating industrial hemp production. However, advances in biotechnology may provide solutions to those concerns.

The report recommended that because industrial hemp may have potential as an alternative rotation crop, the Legislative Assembly should consider action that would allow controlled experimental production and processing so that necessary baseline production, processing, and marketing data could be collected and analyzed.

JOB SERVICE UNEMPLOYMENT TAX STRUCTURE

The Legislative Council chairman assigned the committee the responsibility to receive a report from Job Service North Dakota relating to any administrative changes, statutory changes, and changes in the unemployment insurance tax structure that may be proposed by Job Service North Dakota for consideration by the 1999 Legislative Assembly. In December 1997, Job Service North Dakota reported that the unemployment insurance trust fund balance was projected to drop below \$40 million. The executive director of Job Service North Dakota indicated that the agency would take a three-prong approach to restore the balance to the \$40 million target established by the 1995 Legislative Assembly. The approach included an increase in the unemployment insurance tax rate, administrative changes to speed the reemployment process, and other policy changes. However, the executive director testified that no specific proposals for legislation had been developed by the agency.

ANIMAL CONFINEMENT FEEDING OPERATIONS REPORT

The Legislative Council chairman assigned the committee the responsibility to receive a report from representatives of the State Department of Health and the Attorney General's office regarding current laws and rules relating to the regulation of animal confinement feeding operations in the state. The Department of Health has adopted administrative rules regarding the control of pollution from certain livestock enterprises, but the department does not have the authority to determine the location of concentrated animal feeding operations. The department may regulate certain aspects of concentrated animal feeding operations, particularly with respect to air and water quality. Because county and township zoning authorities are generally limited in their authority to zone normal farming operations and because it is difficult to differentiate between a normal

farming operation and an enterprise of an industrial nature that may be beyond what is considered a normal farming operation, there is often little that local authorities can do to regulate the siting of a concentrated animal feeding operation. However, representatives of the Department of Health indicated that the department attempts to address siting concerns through air and water quality requirements.

BARLEY DISEASE REPORT

The committee received testimony regarding concerns expressed by barley producers relating to barley diseases in the state. A representative of the North Dakota Barley Council testified that fusarium head blight is the worst crop disease to hit the Dakotas since the 1950s and has had an economic impact to barley

producers in the midwest of approximately \$400 million since 1993. Before 1993, 60 percent of the barley produced in the midwest was used for malting and brewing. As a result of the problems experienced as a result of disease, less than 30 percent of the midwest-produced barley is now used for malting and brewing.

Representatives of barley producers testified that procedures for testing for disease in barley are generally set by the brewing companies and are inconsistent. As a result, many barley producers are unable to sell their barley for malting purposes and therefore receive a much lower price for the barley. The committee received testimony indicating that although the Barley Council and the federal Grain Inspection Service conducted a study to develop better sampling techniques for barley, the study did not identify any improved methods for testing for barley quality.

CRIMINAL JUSTICE COMMITTEE

The Criminal Justice Committee was assigned four studies. Senate Concurrent Resolution No. 4025 directed a study of the effects of child abuse on child victims, strategies to assist child victims and parents of child victims, the use and effectiveness of the mandatory reporting law, effective deterrents, and the need for training of professionals, public awareness initiatives, and training of school personnel in the recognition of victims and in prevention activities. Senate Concurrent Resolution No. 4049 directed a study of the feasibility and desirability of revising sections of the North Dakota Century Code which relate to sexual offenses. Senate Bill No. 2016, Section 10, directed a study of programs to prevent crime and delinquency and reduce incarceration. Senate Concurrent Resolution No. 4053 directed a study of the prevention of and dispositional alternatives to juvenile crime with a focus on services offered to American Indian children.

Committee members were Representatives Merle Boucher (Chairman), Duane L. DeKrey, G. Jane Gunter, Dale L. Henegar, Kim Koppelman, Paul Murphy, Bill Oban (until his death on July 10, 1998), Sally Sandvig, Al Soukup, Laurel Thoreson, and John M. Warner and Senators Jim Berg (until his death on September 20, 1997), Les J. LaFountain, Marv Mutzenberger, Donna L. Nalewaja, Wayne Stenehjem, Steven W. Tomac, and Darlene Watne.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

SEXUAL ABUSE AND SEXUAL OFFENSES STUDIES Background on Sexual Abuse

Senate Concurrent Resolution No. 4025 directs the Legislative Council to study the awareness of, prevention of, treatment of, effects of, and deterrents to child sexual abuse. Senate Concurrent Resolution No. 4049 directs the Legislative Council to study the portions of the North Dakota Century Code (NDCC) that relate to sexual offenses. This portion of the report covers both studies.

Effects of Child Sexual Abuse

Sexual abuse may cause behavioral problems in children. Some behavioral problems that are common to people who were sexually abused children include interpersonal problems, problems with sexual intimacy, substance abuse and addiction, self-mutilation, eating problems, anxiety, low self-esteem, and anger. In addition, children who have been sexually abused commonly suffer from psychological disorders that include borderline personality disorder, dissociate identity disorder, posttraumatic stress disorder, and clinical depression. In fact, sexually abused children are four times more likely

than nonabused children to become severely depressed at some time in their lives. In addition, child sexual abuse may be a significant factor in delinquency. In a recent study of juvenile felons in Ohio, 75 percent of the girls and 50 percent of the boys had been sexually assaulted.

Protection of Child Sexual Abuse Victims

There are two systems that are active in responding to a report of child sexual abuse—the human service system and the law enforcement system. The first step in activating these systems is a report of child sexual abuse.

Under NDCC Section 50-25.1-03, any person having reasonable cause to suspect child sexual abuse may report to the Department of Human Services. Under the same statute, certain persons are required to report child sexual abuse to the department. These persons include:

Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, day care center or any other child care worker, police or law enforcement officer, or member of the clergy

The report must be based upon knowledge or reasonable cause for suspicion. Under NDCC Section 50-25.1-13, a person required to report who willfully fails to do so is guilty of a Class B misdemeanor.

Under NDCC Section 50-25.1-02(4), a report may be made to the department's designee. Under North Dakota Administrative Code (NDAC) Section 75-03-19-02, the department's designees for the purposes of receiving reports of child abuse and neglect are the county social service boards. As a matter of practice, if the department receives a report directly, it refers the report to the county social service board with jurisdiction over the child in question.

Under NDCC Section 50-25.1-05, immediately upon the report of child sexual abuse, the department will conduct an assessment of the report. Under NDAC Section 75-03-19-02, a county social service board is the department's designee for the purpose of conducting an assessment. If a crime involving a sexual offense is alleged, the department must notify an appropriate law enforcement agency. The department must coordinate its assessment with the law enforcement agency's investigation.

In these proceedings, the department provides child protective services when a person responsible for the child's welfare is the person sexually abusing a child. Under NDCC Section 50-25.1-05.3, if the department determines that a report of child sexual abuse is of a stranger sexually abusing a child, the department does

not have jurisdiction for protective services and may refer the report to law enforcement.

If the report of child sexual abuse is that a person responsible for the child's welfare has sexually abused a child, then the department will go on to the next step—the determination. The department may make three possible determinations based upon the assessment. The department may determine that no services are required, in which case the department will take no further action. The department may determine that services are recommended, in which case services will be offered by the department and no formal action will be taken. Under NDCC Sections 50-25.1-05.2 and 50-25.1-06, if the department determines that services are required, the department will report its determination to the juvenile court and will begin formal child protective services.

Under NDCC Section 50-25.1-02(9), protective services include a social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessments, monitoring service delivery, and direct services. Under NDCC Section 50-25.1-06, upon a finding of services required, the department provides protective services for the abused or neglected child and other children under the same care. In addition, the department provides other appropriate social services to the caregiver of the abused or neglected child.

The department is required to have a court order to force protective services. Under NDCC Section 27-20-20, to force protective services, a petition must be brought in juvenile court alleging that the child is deprived. Under NDCC Section 27-20-02, a deprived child is a child who is without proper parental care. Under NDCC Section 27-20-29, the burden of proof in determining whether a child is deprived is the clear and convincing standard.

There is protection for victims and witnesses in child sexual abuse cases as they go through the criminal justice system. North Dakota Century Code Chapter 12.1-34 provides the baseline protections for victims of and witnesses to crimes. This chapter provides for the release of information to the victims and witnesses on the status of the investigation, charges filed, pretrial release, all court proceedings, and available services. The chapter also provides for the return of property, a waiting area, protection of identifying information, and the right to be present at proceedings. There are also provisions for involvement in postconviction proceedings. Protections are mainly effectuated by the state's attorney.

North Dakota Century Code Chapter 12.1-35 provides additional protections for children. This chapter addresses the unique problems encountered by victims and witnesses who are minors. The state's attorney is encouraged to facilitate the court's, the child's, and the family's understanding of the special circumstances that surround the testimony of a minor. In 1997 the

Legislative Assembly passed House Bill No. 1049, which added the requirement that the court protect a child victim or witness from psychological damage or lengthy interrogation, testimony, or discovery proceedings.

Treatment of Offenders Through Involuntary Civil Commitment

House Bill No. 1047 (1997) created a procedure for the civil commitment of sexually dangerous individuals. The bill defines a sexually dangerous individual as an individual who has:

[S]hown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others.

Sexually predatory conduct is conduct that is similar to the conduct required for the crime of gross sexual imposition.

The burden of proof for commitment is clear and convincing evidence, and the person to be committed has the right to counsel, to be present, to testify, and to present and cross-examine witnesses. If a person is found to be a sexually dangerous individual, the court commits that person to the care, custody, and control of the executive director of the Department of Human Services. The executive director has the duty to place the sexually dangerous individual in an appropriate facility or program at which treatment is available. Unless the sexually dangerous individual is already in the custody of the Department of Corrections and Rehabilitation, the executive director may not place the individual at the State Penitentiary or affiliated penal facilities.

The court must release the individual once the individual is no longer sexually dangerous. Each committed individual must have an examination of that individual's mental condition at least once a year. In addition, once a year the executive director must give written notice of the right to petition for discharge to the committed individual. If the committed individual files a petition for discharge and has not had a hearing during the preceding 12 months, the committed individual will receive a hearing.

On June 23, 1997, the United States Supreme Court issued an opinion in *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072. In *Hendricks*, the Court held in a 5-4 decision that the Kansas Sexually Violent Predator Act comports with due process requirements and neither runs afoul of double jeopardy principles nor constitutes an exercise in impermissible ex post facto lawmaking.

Substantive due process requires that a decision be principled. The Court reasoned that involuntary civil commitment requires a finding of dangerousness either to oneself or to others and an additional factor, such as

mental illness or mental abnormality. The determination of the additional factor is within the purview of the state legislature. However, the additional factor must serve to limit involuntary civil commitment to those who suffer from a volitional impairment deeming them dangerous beyond their control. The Court held that the Kansas Act satisfied these requirements.

For the Kansas Act to violate the constitution's double jeopardy prohibition or its ban on ex post facto lawmaking, the Act must create a punishment. The Court held that the Act cannot be characterized as punitive. The Court reasoned that the legislature's stated intent was to have a civil label applied. The Court said that the Act does not implicate either of the two primary objectives of punishment—retribution or deterrence. For example, the Act does not have an element of scienter, which is customarily an important element in distinguishing criminal from civil statutes.

Background on Sexual Offenses and Sentencing

Under NDCC Section 12.1-20-01, if a victim of a sexual offense is under the age of 15, it is not a defense that the offender thought the victim to be older. However, if the victim is 15, 16, or 17 years of age, then it is an affirmative defense that the offender reasonably believed the victim to be an adult.

North Dakota Century Code Section 12.1-20-02 contains the definitions for "sexual act" and "sexual contact". The term sexual act includes certain defined sexual contacts. The term sexual contact is broadly defined to include any touching of the sexual or intimate parts of another for arousing or satisfying sexual or aggressive desires. Generally, the certain sexual contacts contained in the definition of sexual act are punished more severely than sexual contacts as broadly defined.

Under NDCC Section 12.1-20-03, the crime of "gross sexual imposition" is defined. Gross sexual imposition is categorized by whether a sexual act or a sexual contact was performed. Gross sexual imposition that results from a sexual act includes:

1. A forced victim. This is a Class A felony.
2. An unknowingly intoxicated or drugged victim. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.
3. An unknowing victim. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.
4. A victim under 15 years of age. This is a Class A felony.
5. A victim with a mental disease or defect. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.

Gross sexual imposition that results from sexual contact includes:

1. A victim under 15 years of age. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.
2. A forced victim. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.

Under NDCC Section 12.1-20-03.1, the crime of "continuous sexual abuse of a child" is defined as a combination of three or more sexual acts or sexual contacts with a minor under the age of 15 years during a period of three or more months. This crime is a Class A felony.

Under NDCC Section 12.1-20-04, the crime of "sexual imposition" is defined as a sexual act or contact as a result of a threat of a victim that would render a person of reasonable firmness incapable of resisting. This crime is a Class C felony unless the victim is 15, 16, or 17 years of age, then the crime is a Class B felony.

Under NDCC Section 12.1-20-05, the crime of "corruption or solicitation of minors" is defined as a sexual act by an adult on a victim that is 15, 16, or 17 years of age. This crime is a Class A misdemeanor unless the offender is at least 22 years of age, then the crime is a Class C felony. The solicitation of a sexual act or contact with a victim under 15 years of age is a Class A misdemeanor.

Under NDCC Section 12.1-20-06, the crime of "sexual abuse of wards" is defined as a sexual act performed on a victim in official custody by an offender with supervisory or disciplinary authority over the victim. This crime is a Class A misdemeanor.

Under NDCC Section 12.1-20-07, the crime of "sexual assault" is defined as sexual contact that is:

1. Offensive to the victim. This is a Class B misdemeanor.
2. On a victim with a mental disease or defect. This is a Class C felony.
3. On an unknowingly intoxicated or drugged victim. This is a Class C felony.
4. On a victim in official custody by an offender with supervisory or disciplinary authority over the victim. This is a Class A misdemeanor.
5. On a victim that is 15, 16, or 17 years of age and the offender is a parent or guardian. This is a Class C felony.
6. On a victim that is 15, 16, or 17 years of age and the offender is 18 years of age or older. This is a Class C felony if the offender is 22 years of age or older and a Class A misdemeanor if the offender is 18, 19, 20, or 21 years of age.

There are other NDCC Chapter 12.1-20 sexual offenses; however, they do not interrelate in the same manner as the sexual offenses previously listed. The other sexual offenses include:

1. Section 12.1-20-06.1 - Sexual exploitation by a therapist. Sexual contact with a patient is a Class C felony.

2. Section 12.1-20-08 - Fornication. A sexual act in public is a Class A misdemeanor. A sexual act by a minor is a Class B misdemeanor.
3. Section 12.1-20-09 - Adultery. This crime is a Class A misdemeanor.
4. Section 12.1-20-10 - Unlawful cohabitation. Living openly and notoriously as a married couple without the benefit of being married is a Class B misdemeanor.
5. Section 12.1-20-11 - Incest. This crime is a Class C felony.
6. Section 12.1-20-12 - Deviate sexual act. Sexual contact with an animal, bird, or dead person is a Class A misdemeanor.

7. Section 12.1-20-12.1 - Indecent exposure. Exposing certain body parts with the intent to annoy or harass another or masturbating in public is a Class B misdemeanor.
8. Section 12.1-20-13 - Bigamy. This crime is a Class C felony.

The remainder of NDCC Chapter 12.1-20 contains evidentiary rules and the crime of transferring body fluid that may contain the human immunodeficiency virus.

The following table compares the severity of offense for certain sexual offenses as they were before and as they are after changes made by the 55th Legislative Assembly.

Before	After
<p>Class A felony</p> <ul style="list-style-type: none"> • Gross sexual imposition - Sexual act by force • Gross sexual imposition - Sexual act on a victim under 15 years of age • Gross sexual imposition - Any sexual act or sexual contact that is defined as gross sexual imposition which results in serious bodily injury <p>Class B felony</p> <ul style="list-style-type: none"> • Gross sexual imposition - Any sexual act, except an act by force or on a victim under 15 years of age, or sexual contact that is defined as gross sexual imposition and does not result in serious bodily injury • Sexual imposition - Sexual act or contact on a victim who is 15, 16, or 17 years of age by an irresistible threat <p>Class C felony</p> <ul style="list-style-type: none"> • Sexual imposition - Sexual act or sexual contact on a victim by irresistible threat <p>Class A misdemeanor</p> <ul style="list-style-type: none"> • Corruption of a minor - Sexual act by an adult on a victim who is 15, 16, or 17 years of age • Solicitation of a minor - Solicit a sexual act or contact of a victim who is under 15 years of age • Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is a parent or guardian 	<p>Class A felony</p> <ul style="list-style-type: none"> • Gross sexual imposition - Sexual act by force • Gross sexual imposition - Sexual act on a victim under 15 years of age • Gross sexual imposition - Any sexual act or sexual contact that is defined as gross sexual imposition which results in serious bodily injury • Continuous sexual abuse of a child <p>Class B felony</p> <ul style="list-style-type: none"> • Gross sexual imposition - Any sexual act, except an act by force or on a victim under 15 years of age, or sexual contact that is defined as gross sexual imposition and does not result in serious bodily injury • Sexual imposition - Sexual act or contact on a victim who is 15, 16, or 17 years of age by an irresistible threat <p>Class C felony</p> <ul style="list-style-type: none"> • Sexual imposition - Sexual act or sexual contact on a victim by an irresistible threat • Corruption of a minor - Sexual act by an adult who is at least 22 years of age on a victim who is 15, 16, or 17 years of age • Sexual assault - Sexual contact on a victim with mental disease or defect • Sexual assault - Sexual contact on a victim unknowingly intoxicated or drugged • Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is a parent or guardian • Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is at least 22 years of age <p>Class A misdemeanor</p> <ul style="list-style-type: none"> • Corruption of a minor - Sexual act by an adult who is 18, 19, 20, or 21 years of age on a victim who is 15, 16, or 17 years of age • Solicitation of a minor - Solicit a sexual act or contact of a victim who is under 15 years of age • Sexual assault - Sexual contact on a ward

Before	After
<ul style="list-style-type: none"> Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is an adult <p>Class B misdemeanor</p> <ul style="list-style-type: none"> Sexual assault - Sexual contact that is offensive to victim Sexual assault - Sexual contact on a ward Sexual assault - Sexual contact on a victim with mental disease or defect Sexual assault - Sexual contact on victim unknowingly intoxicated or drugged 	<ul style="list-style-type: none"> Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is 18, 19, 20, or 21 years of age <p>Class B misdemeanor</p> <ul style="list-style-type: none"> Sexual assault - Sexual contact that is offensive to victim

Under NDCC Chapter 12.1-32, there are specific provisions for the sentencing of sexual offenders. Under Section 12.1-32-02, before sentencing a defendant on a felony charge for gross sexual imposition, continuous sexual abuse of a child, incest, or certain sexual performances by children, a court shall order a presentence investigation and a presentence report. This section requires a risk assessment in presentence investigations of individuals charged with gross sexual imposition.

Under NDCC Section 12.1-20-03.1, a court may not defer imposition of sentence or suspend any part of a sentence for the continuous sexual abuse of a child unless the offense was the defendant's first violation of Chapter 12.1-20 and there are extenuating circumstances that justify a suspension.

Under NDCC Section 12.1-32-04, a court is prohibited from deferring imposition of sentence for gross sexual imposition on a victim under 15 years of age in cases where the defendant cannot prove by clear and convincing evidence that the defendant reasonably believed the victim was 15 years of age or older.

Under NDCC Section 12.1-32-06.1, a court may impose an additional period of probation not to exceed five years for a person found guilty of a felony sexual offense against a minor which is a gross sexual imposition, sexual imposition, or incest, if the additional period of probation is in conjunction with sexual offender treatment. If a person is guilty of a misdemeanor sexual offense that is a corruption or solicitation of a minor, a sexual abuse of a ward, or a sexual assault, the court may impose an additional period of up to two years, if in conjunction with sexual offender treatment.

Under NDCC Section 12.1-32-08, a court may require the defendant to pay the prescribed treatment cost for a victim of a sexual offense.

Under NDCC Section 12.1-32-09.1, a person who is convicted of and receives a sentence of imprisonment for forcible gross sexual imposition or other certain crimes is not eligible for release from confinement until 85 percent of the sentence imposed has been served.

Under NDCC Section 12.1-32-15, a person who commits a crime against a child or is a sexual offender is required to register in the county in which the person resides. A sexual offender is defined as a person who has pled guilty or has been found guilty of the following:

Sexual Offender Offenses	
NDCC Citation	Offense
12.1-20-03	Gross sexual imposition
12.1-20-03.1	Continuous sexual abuse of a child
12.1-20-04	Sexual imposition
12.1-20-05	Corruption or solicitation of minors
12.1-20-06	Sexual abuse of wards
12.1-20-07	Sexual assault
12.1-20-11	Incest
12.1-22-03.1	Surreptitious intrusion
12.1-27.2	Sexual performance by children

This section requires the release of registration information if a law enforcement agency determines that a sexual offender is a public risk and registration information is necessary for public protection.

Testimony and Discussion on Child Sexual Abuse Study

The committee was informed assisting victims of sexual abuse requires providing services to the child's family members, the offender, siblings, and the community at large; the recovery process is long and intense; the criminal justice response is not an option in many cases; there must be a commitment of resources to address the issues of prevention, intervention, and recovery; and the multidisciplinary partnership works well in creating a system of response to sexual abuse issues. The committee was informed funding is required for continued services to children and their nonoffending family members at no cost, for medical examinations, for training individuals to treat offenders, for prevention through information distributed through schools, and for treatment services for children.

Sexual Abuse Awareness and Education

The Red Flag Green Flag program provides information relating to child sexual abuse to children in kindergarten. This program provides children in kindergarten through grade 4 the skills needed to identify a potentially abusive situation and what to do when in one.

Effects on Victims, Parents, and Community

The committee received testimony from a victim of child sexual abuse. The victim was abused by her father. The victim was put in foster care upon reporting

the sexual abuse to a school counselor. The trial took four years. Her contact with the state's attorney and the judge was positive. She received no emotional support from her family, but the treatment provider gave support. The most prominent effect of sexual abuse against her was depression.

The committee received testimony from a set of parents on the effects of child sexual abuse on their child. The abuse came from a neighboring teenage boy and resulted in posttraumatic stress disorder, a depressive disorder, multiple phobias, an eating disorder, speech difficulties, anger discontrol, a psychosomatic disorder, and sexual development disturbance, among other things. The long-term effects of child sexual abuse include psychiatric hospitalization, self-abuse, somatization disorder, eroticization, learning difficulties, stress disorder, conversion disorders, running away, prostitution, revictimization, and poor parenting.

The committee received testimony on the effects of child sexual abuse on the community. The committee was informed of a community in which an individual had abused approximately 28 to 30 victims, the individual was still in the community, and the individual denied offending. The situation has prevented the community from healing and has created tension in the community.

Treatment of Victims of Sexual Abuse

The reporting of child sexual abuse is the first step in involving the criminal justice and social service systems. The committee was informed the mandatory reporting law has been effective, but reporting could be better if there were mandatory training.

The committee received information on medical examinations of children who are suspected of being victims of child sexual abuse. A forensic medical evaluation is needed to determine if there is any tissue that needs repair, if there is a potential for sexually transmitted disease, if the victim is pregnant, and to collect information and provide information to the child. A colposcopy is a noninvasive device used for medical evaluations. MeritCare in Fargo has been performing the procedure since 1996. The colposcopy may be paid for by North Dakota medical assistance programs. Other examination techniques include photography, the use of a wood lamp, toluidine blue dye stains, nonclean catch urine, papanicolaou smear, and other tests for sexually transmitted diseases. Providing medical examinations for children suspected of being victims of sexual abuse requires special expertise by a physician.

After the initial medical needs of a child are met, the child may need treatment for emotional and psychological problems. The committee was informed by treatment providers that victims of sexual abuse developed mental health problems partly because of inadequate support after abuse. Individually tailored therapy is required for victims. Group therapy is important because it provides feedback. Group therapy provides a social system or "family" for the victim. One-on-one treatment

is important because it provides a trusting relationship. If there is child sexual abuse, there usually is emotional and physical abuse. It is difficult to separate the specific sexual component from the other abuse components in treatment. There are other methods of treatment including the dialectic behavior therapy for borderline personalities and nondirective play therapy. Dialectic behavior therapy is one of the few therapies that can help a borderline personality. Nondirective play therapy can provide early intervention with a victim which greatly reduces the long-term damage to that child.

There are many unknown individuals who have suffered sexual abuse as children and are functioning in the community. The clinical setting attracts the people with the most severe problems as a result of the abuse.

The committee was informed as to treatment at the regional human service centers. It is difficult to provide all types of child sexual abuse assessments and treatments in regional human service centers in this state because of staff leaving and being hired with different areas of expertise.

The committee discussed the common perception that the term rape sounds more severe than the term abuse. It was perceived that in incidents of rape, society looks to incarceration, then at treatment. In addition, it was perceived in incidents of abuse, society looks at treatment, then at incarceration. Treatment providers agreed there is a tendency to look at child sexual abuse as a social issue instead of a crime.

Treatment of Child Sexual Offenders

The committee received testimony on child sexual offenders in custody. There are 39 child sexual offenders in custody, not all of whom have been adjudicated for a sexual offense. Most have not committed forcible acts, but have offended in the context of a relationship.

Predatory child sexual offenders are placed in the Youth Correctional Center. Offenders in the community and in school have not offended in the school setting and generally have offended against much younger children than are in school.

Out-of-state treatment costs approximately \$100 per day. The privately run Mille Lucs Academy provides an intensive program that is confrontational. This program is for offenders with peer-aged victims or with deep-seeded psychological problems.

The committee received information on the treatment of adolescent sexual offenders at the Dakota Boys Ranch. The program began in 1993 and is an intensive residential treatment program for boys between the ages of 12 and 18. Sexual problems typically begin around 11 to 12 years of age with the first sexual offense occurring around 14 to 15 years of age. The goal of adolescent offender treatment is to help the offender take full responsibility for the offender's behavior, for the offender to learn the pattern or cycle of the offender's sexually offensive behavior, for the offender to develop empathy

for the victim, and for the offender to develop a realistic and usable relapse prevention plan. The treatment plan includes ten phases. The program is based on several nationally recognized models. The most difficult task for many offenders is to develop empathy for the victim.

Of the 59 boys who have been treated, very few victims have been strangers to the offender. Of the 59 boys, 22 boys were unsuccessful in treatment. The high rate of nonsuccess can often be attributed to the court or parents removing some of the children from treatment.

The committee was informed that juvenile sexual offenders need to be identified and held accountable by being adjudicated delinquent. The Alliance for Sexual Abuse Prevention and Treatment proposed there be the involvement of the Supreme Court, the Attorney General, the Division of Parole and Probation, the juvenile court system, and state's attorneys to track juvenile sexual offenders through the criminal justice system. The tracking would provide information to evaluate work done in the area of child sexual abuse.

Treatment of Adult Sexual Offenders

The committee received testimony on the treatment of adult sexual offenders in a community-based program at the Northeast Human Service Center. The treatment program is on an outpatient basis and is designed to meet the needs of the victim's recovery. The program requires the offender to help the victim with the victim's treatment. The program focuses on incest offenders and does not accept offenders who target strangers and only treats offenders with child victims. The decision to exclude rapists with adult victims is a way to limit expenditures. The program does not accept offenders in adamant denial because those offenders are not amenable to treatment.

The program has clients that are court-ordered into treatment. Most courts order sexual offenders to successfully complete treatment. Many times the orders do not include language that allows the offender to be forced back into the system if the offender were to relapse after the completion of treatment. Sometimes courts order treatment but not specifically sexual offender treatment.

Many incest offenders are pedophiles and choose victims of the age at which the offender was abused as a child. There is no cure for pedophilia. Treatment can greatly reduce the chance of reoffending. Group treatment is preferential to individual treatment for sexual offenders. The chance of reoffending is greatly reduced by using friends and relatives as de facto probation officers. According to a treatment provider, sexual offenders should have to deal with the entire community as part of their treatment.

The committee received testimony on the involuntary civil commitment of sexually dangerous individuals. The committee was informed about the *Hendricks* case and its effect on the constitutionality of this state's law for the

involuntary civil commitment of sexually dangerous individuals. The Kansas statute uses the beyond a reasonable doubt standard. This state uses the clear and convincing standard. The Kansas law requires a criminal conviction for a person to be committed. This state does not require a criminal conviction for a person to be committed; however, this state requires a predicate act. A predicate act will most likely be a criminal act. The predicate act has to be of a nature that shows the person will be a danger in the future. This state's law has special recordkeeping provisions so that predicate acts of a juvenile can be retrieved after the juvenile has become an adult.

A representative from the Attorney General's office informed the committee it is too early to make any changes in this state's law. This state's law appears constitutional and the Attorney General would defend the statute if it is challenged in court. State's attorneys may require more funding because involuntary civil commitments are not simple cases. Only state's attorneys may initiate a petition for involuntary civil commitment.

There are a handful of inmates at the Penitentiary who could be committed under this law. Most committed offenders from the Penitentiary will be offenders who have not completed treatment. Inmates who do not want to be involved in group treatment at the Penitentiary are not forced to attend treatment. An inmate who refuses to go to treatment would appear more dangerous, and this may have an effect on a court in deciding whether to commit that person.

Most sexual offenders have long sentences of imprisonment so there is no immediate need for involuntary civil commitment. Sexual offenders receive on average five to ten years' imprisonment. Treatment at the Penitentiary takes three to five years.

The State Hospital treats sexually dangerous individuals. The treatment program for sexual offenders consists of 32 hours per week of treatment. There has not been any noticeable improvement with the individuals presently being treated; however, the program began on August 1, 1997. All three individuals in the program had prior convictions for sexual offenses. It is expected that those who have been involuntarily committed will stay 9 to 12 years in the program. There are 11 beds in the program and an expectation that there will be a need for an additional 15 beds. Before there was treatment for the sexually dangerous offenders at the State Hospital, the only treatment was out of state and it was very expensive. In addition, most of these out-of-state treatment programs did not have room for individuals committed in this state. The cost of the program is approximately \$100,000 per year per patient. It is more expensive to treat a patient at the State Hospital than to place that person in the Penitentiary for a crime. The majority of the funding comes from the general fund. The individuals in the sexual offender unit are indigent so there is no charge for services.

There would need to be some followup services for individuals released from the sexually dangerous offender program. The regional human service centers could followup on sexual offenders released from the State Hospital. These individuals would be under court-ordered conditions upon release.

According to a representative from the State Hospital, chemical castration can be relatively effective, but should not be a major part of a sexual offender program. Chemical castration is most helpful when a patient has requested the medication.

The committee toured the State Hospital. The State Hospital has approximately 200 patients. There are approximately 1,650 admissions per year. Approximately 1,000 of these admissions are for the chemical dependency unit. Approximately 140 of these admissions are for minors. Approximately 510 patients are admitted for adult psychiatric services. There are 590 staff members at the State Hospital. The ratio of patients to staff is one to three. It is predicted that the hospital will maintain a population of 180 patients.

Child Fatality Review Panel

The Child Fatality Review Panel reviews every child's death for which a North Dakota death certificate is issued, including deaths on Indian reservations. The panel has difficulty, however, in receiving information on child deaths from reservations. American Indian children comprise 7.9 percent of the children in the state. Of the deaths the panel reviewed, 27 percent were of American Indian children. The statistics are comparable to statistics that relate to crime and delinquency.

In 1996 the Child Fatality Review Panel formally reviewed 58 of the 103 cases of child deaths in North Dakota. The panel looks at preventable deaths but does not review cases that are due to a medical anomaly or natural causes. The panel also reviews child deaths attributable to suicides. In 1996, 9.7 percent of child deaths were attributable to suicide. The school records for children who have committed suicide are usually very positive. Crisis teams respond to students' needs after a suicide. The Bismarck crisis response team has aided smaller school districts when there has been a lack of local services.

In 1996 there were 13 shaken baby cases in which no one was arrested because there were multiple caregivers. It is difficult to identify one suspect when there are multiple caregivers. There is a cooperative effort among the Children and Family Services Division, the North Dakota Committee to Prevent Child Abuse, and Blue Cross Blue Shield of North Dakota to place "Don't Shake the Baby" billboards next to highways. The "Put Down Your Fist" billboard is the result of an effort by the North Dakota Committee to Prevent Child Abuse. Brochures on shaken baby syndrome are provided at maternity wards in hospitals and obstetrics/gynecology offices around the state. New mothers receive a rattle which is inscribed "Never Shake a Baby."

The committee considered a bill draft proposed by the Child Fatality Review Panel which amended NDCC Section 50-25.1-04.4 to require an educational facility to disclose all records upon request of a coroner or the presiding officer of the Child Fatality Review Panel. The bill draft provided schools with the authority to provide information for the investigations of deaths. This information could be provided at little cost, and the records would still remain confidential.

Testimony and Discussion on Sexual Offenses and Sentencing Risk Assessments

The committee received testimony on risk assessments, which are required in all presentence reports on defendants charged with gross sexual imposition. The Department of Corrections and Rehabilitation has adopted the Minnesota sex offender screening test for risk assessments. This risk assessment test provides a numerical score.

The risk assessment tool is useful in providing a recommendation for the involuntary civil commitment of sexually dangerous individuals and for providing local law enforcement a tool in determining whether to notify the public of an offender. The risk assessment tool will provide uniformity among law enforcement agencies.

Sexual Offender Registration and Notification

There are 995 offenders who have been convicted of a sexual offense or a crime against a child in this state. There are 705 offenders who are registered with local law enforcement agencies and between 20 and 40 offenders per year will be added to the registration list. The remainder are either incarcerated or living in another state, and 67 have not been found. Between one-half and three-fourths of registered offenders are for felonies. A list of all sexual offenders is available free of charge to the public. Some states post sexual offender information on a web page.

Sexual offenders on parole and probation are monitored as to their behavior and as to where they are living. A sexual offender has ten days to notify local authorities if the offender changes address. Tracking of a sexual offender is sometimes done by asking the postmaster if a person receives mail at an address.

The notification of the public of the presence of a sexual offender is left to the determination of local law enforcement because of the special circumstances in each community. This process avoids certain due process concerns. The notification may be an eight-block area or communitywide. The committee was informed law enforcement needs more direction as to how and whether to disseminate information. The committee was informed the public is not being notified of sexual offenders. It was suggested a list of local sexual offenders be made and law enforcement be required to notify the public of the list.

The committee was informed that community notification would be hard on the victim of an incest offender. In addition, there is a possibility that notification may cause harassment of or violence to offenders.

Marked Driver's License for Felonious Sexual Offenders and Offenders Against Minors

Delaware is the only state that requires a special mark, a "Y", on the driver's license of a sexual offender. Delaware chose the letter "Y" because it was the only letter that had not been used on the Delaware license. The purpose of this law is so law enforcement officers can instantly tell if a crying child in an automobile is with a sexual offender. In addition, the mark will also inform other states of the status of a person when that person exchanges a marked license for a new license in another state. The Delaware law is so new that law enforcement officers have had little experience with the new law.

The committee considered a bill draft requiring a mark on the driver's license of anyone required to register as a felonious sexual offender or anyone who has committed a crime against a child. The bill draft provided for the offender to receive notice of the required "Y" from the Department of Transportation. The mailing is a courtesy and the language of the bill draft deemed the mailing effective notice. The Bureau of Criminal Investigation would notify the Department of Transportation of the offenders who have already been convicted of a crime that require a marked license. Judges would notify the Department of Transportation of the conviction of offenders required to have a "Y" on their licenses.

A representative from the Department of Transportation testified it would cost between \$5,000 and \$10,000 to cover the extra expenses incurred to place a "Y" on the applicable licenses. This cost includes the computer programming and the creation of a file that would notify the department when notice of the placement of a "Y" or the removal of a "Y" would need to happen. The administrative costs associated with placing a "Y" on the driver's license would be \$50 to \$100 per license for the life of the license. The "Y" could be described in the restriction codes on the back of the license and notification of the meaning of the "Y" could be sent to other states.

The committee received testimony in opposition to the bill draft. The testimony questioned when punishment of sexual offenders needs to end and rehabilitation needs to begin. A marked license may encourage harassment of the sexual offender by law enforcement and others seeing the license. A marked license also could punish the children of a sexual offender.

Some committee members were concerned that the information the marked license provides already is provided to law enforcement through electronic means and a marked license would not solve any problems. It was suggested that registration information should be on a data base that gives the information to the law enforcement officer. This would alleviate any unintended consequences that could occur with a marked license.

Concern also was expressed over the "scarlet letter" nature of a marked license and the harassment that could result due to a marked license.

Recommendations

The committee recommends House Bill No. 1030 to require a school to provide information to the coroner or the Child Fatality Review Panel upon the death of a child. The committee recommends House Bill No. 1031 to require a mark on the driver's license of a felonious sexual offender and an individual who has committed a felony against a child.

DELINQUENCY AND CRIME PREVENTION AND DISPOSITIONAL ALTERNATIVES STUDY

Background Information

Section 10 of Senate Bill No. 2016 directs the Legislative Council to study programs to prevent crime and delinquency and reduce incarceration. This section directs the study of crime prevention programs other than incarceration and suggests a review of programs identified in the 1996 research report *Diverting Children From a Life of Crime - Measuring Costs and Benefits*, which includes information on early childhood interventions for children at risk of developing antisocial behavior, interventions for families with children exhibiting aggressive and antisocial behavior, providing graduation incentives for disadvantaged high school students, and early monitoring of youth exhibiting delinquent behavior. In addition, this section creates a delinquency prevention consortium composed of representatives from the Department of Corrections and Rehabilitation, Department of Human Services, Department of Public Instruction, and other state agencies and private organizations. This section directs the delinquency prevention consortium to cooperate with the Legislative Council in the completion of this study.

Senate Concurrent Resolution No. 4053 directs the Legislative Council to study the prevention of and dispositional alternatives to juvenile crime with a focus on services offered to American Indian children.

Diverting Children From a Life of Crime: Measuring Costs and Benefits

Diverting Children From a Life of Crime: Measuring Costs and Benefits is the name of a study conducted by the RAND Corporation, a nonprofit research firm, which compares prevention, intervention, and sanctions as investments for children at risk of being delinquent and delinquent children. The RAND study was a cost-benefit analysis of five responses to crime. These responses included:

1. Home visits by child care professionals beginning before birth and extending through the first two years of childhood, followed by four years of day care.

2. Training for parents and therapy for families with very young school-age children who have shown aggressive behavior or have begun to "act out" in school.
3. Four years of incentives, including cash, to induce disadvantaged high school students to graduate.
4. Monitoring and supervising high school age youth who have already exhibited delinquent behavior.
5. California's "Three Strikes Law."

The study resulted in estimates that can be expressed in terms of cost per serious crime prevented due to each program. The costs do not take into account savings realized by not having to eventually imprison youth diverted from criminal careers. In addition, the estimates are the result of limited demonstrations and educated guesses and actual values could vary considerably from those shown.

The most cost-effective approach for preventing serious crimes was graduation incentives for high-risk youth. The cost of preventing serious crimes with this program is approximately \$4,000 per crime.

The second most cost-effective approach was the parent training intervention. The cost of this approach is \$6,500 per serious felony prevented.

The third and fourth most effective approaches were delinquent youth supervision and California's "Three Strikes Law." The cost of delinquent youth supervision is \$14,000 per crime prevented, and the "Three Strikes Law" is \$16,000 per crime prevented.

Home visits and day care were the most costly approaches—\$100,000 per serious crime prevented. However, the kind of early childhood intervention considered in the study has been shown to reduce rates of child abuse by about 50 percent.

The RAND study found that the human service approaches depended on the ability to identify families with children at risk for future trouble with the law. The study said troublesome and delinquent children are more likely to come from troubled families. Previous studies cited by the RAND study revealed that family factors associated with higher rates of delinquency include:

1. Early childbearing.
2. Substance abuse during pregnancy.
3. Low birth weight and other types of birth complications.
4. Parents' criminal records or mental health problems.
5. Poor parental supervision.
6. Erratic child-rearing behavior.
7. Parental disharmony.
8. Parental rejection of children.
9. Abuse and neglect.

The study cited longitudinal studies that have demonstrated that inappropriate or inadequate parenting are among the strongest predictors of later delinquency. These studies consistently identify the following three

factors as associated with a significantly higher risk of being an ineffective or abusive parent:

1. Poverty.
2. Single parenthood.
3. Youthfulness.

Preventing Crime

In February 1997 the United States Department of Justice released *Preventing Crime What Works, What Doesn't, What's Promising*. This report is a compilation of the results of a congressionally authorized University of Maryland study of virtually every study of criminal prevention efforts to determine which worked best. The central conclusion of the report is that the effectiveness of most crime prevention strategies will remain unknown until the nation invests more in evaluating them. The Maryland study concluded that by scientific standards there are very few crime prevention "programs of proven effectiveness." However, the study did say that effective programs appear to share a common characteristic—they focus on specific crimes, convicts, or potential lawbreakers. The least effective tend to be broad-based. For example, the Maryland report found that additional police officers are mainly effective if sent to high crime areas. In an April 21, 1997, article entitled "A Taxpayer's Guide to Crime and Punishment," published in *U S News and World Report*, the author, in summarizing the 500 plus page Maryland study, said:

The same failure to focus on problems undermines other anticrime efforts. For instance, many police departments have scored public-relation points with programs to buy back guns from citizens. But gun violence has not necessarily gone down in those places. What does work, say the researchers, is more-aggressive police seizure of guns on streets from suspicious-looking characters. Putting more high-risk and violent offenders in prison has helped lower crime rates. Locking up low-risk drug offenders may have not. Rehabilitation programs designed to boost convicts' self-esteem have not lowered recidivism rates. Rehab programs that instill a work ethic have.

This report suggests that crime prevention practices can be organized by the seven local institutional settings in which these practices operate. The report organized these settings as follows:

1. Community-based crime prevention, which includes community organization and mobilization against crime, gang violence prevention, community-based mentoring, and after school recreation programs.
2. Family-based crime prevention, which includes home visitation of families with infants, preschool education programs involving parents, parents training for managing troublesome children, and programs for preventing family violence, including

battered women's shelters and criminal justice programs. The report found that intervening in troubled families is a good strategy in reducing juvenile crime; however, the services must reach the child before the age of 10 for the services to have a significant impact.

3. School-based prevention, which includes the drug abuse resistance education (DARE) program, peer group counseling, gang resistance education, antibully campaigns, law-related education, and programs to improve school discipline and improve social problem-solving skills.
4. Labor markets and crime risk factors, which include training and placement programs for unemployed people, including job corps, vocational training for prison inmates, diversion from court to employment placements, and transportation of intracity residence to suburban jobs.
5. Preventing crime at places, which includes practices to block opportunities for crime at specific locations like stores, apartment buildings, and parking lots by using cameras, lighting, guards, and alarms.
6. Policing for crime prevention, which includes the police practices of directed patrol in crime hotspots, rapid response time, foot patrol, neighborhood watch, drug raids, and domestic violence crackdowns.
7. Criminal justice and crime prevention, which includes prisoner rehabilitation, mandatory drug treatment for convicts, boot camps, shock incarceration, intensively supervised parole and probation, home confinement, and electronic monitoring.

The report states "that serious youth crime in America can be reduced most substantially by a simultaneous investment in all seven institutional settings for crime prevention, focused on the small number of neighborhoods in the nation where serious youth violence is concentrated." Complete and focused crime prevention appears to be the recommendation of the report.

Services, Treatment, and Rehabilitation

Crime prevention is anything that may reduce crime rates. This state's crime prevention efforts can be divided into groups by the governmental units that expend the effort—the human service system and the criminal justice system, including the juvenile justice system.

Many human service programs have an effect on crime and delinquency because they intentionally or unintentionally reduce risk factors. These risk factors are based on characteristics that are significantly related to criminal or delinquent populations. The manner in which these programs are administered is usually on a voluntary participation basis.

In this state, the county social service board hires staff who determine the eligibility for economic

assistance and provide human services. For example, county social service offices provide family social work, which may include family focus services, intensive in-home programs, and parent aide, foster care, case management, and health services for children. The board is responsible for the administration of federally directed human service programs.

The Department of Human Services administers economic assistance and offers programs to those families that may be at risk of having a delinquent child. For example, the Child and Family Services Division administers, develops, funds, supervises, monitors, licenses, and coordinates services to children who have become or who are at risk of becoming neglected, abused, deprived, delinquent, or unruly and regulates through licensure some children's services programs. In particular, the Children and Family Services Division establishes policies and procedures for child protection, foster care, family services adoption, pregnancy, and early childhood services and licensure of group homes, family foster care, residential child care facilities, child-placing agencies, maternity homes, and early childhood facilities.

Services are delivered to communities in this state through eight regional human service centers, 53 county social service agencies, and a variety of contracted service providers. Regional human service centers are the community service centers of the Department of Human Services. The regional human service centers are located strategically throughout the state in the eight major population centers. North Dakota Century Code Section 50-06-05.3(2) provides, in part:

Regional human service centers shall provide human services to all eligible individuals and families to help them achieve or maintain social, emotional, and economic self-sufficiency; prevent, reduce, or eliminate dependency; prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests; aid in the preservation, rehabilitation, and reuniting of families; prevent or reduce inappropriate institutional care by providing for care while institutionalized or providing for community-based or other forms of less restrictive care; secure referral or admission for institutional care; provide outpatient diagnostic and treatment services; provide information concerning guardianship to people interested in becoming or who are guardians; and provide rehabilitation services for patients suffering from mental or emotional disorders, mental retardation, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility.

The second governmental unit expending effort in the area of crime prevention is the criminal justice system.

Although the criminal justice system includes many entities, the focus of this report is on juveniles.

The juvenile justice system operates by intervening when there is unhealthy behavior by a child or directed at a child. Certain behaviors may bring the child under the jurisdiction of the juvenile court. The juvenile court makes determinations as to juveniles in three specific instances. These instances are when a child is deprived, unruly, or delinquent. In short, a deprived child is a child who is abused or neglected. A deprived child has not broken the law. An unruly child is a child who is truant, does not obey the child's parents, is a status offender, has violated the open container or minor in possession prohibitions, or has committed a noncriminal traffic offense without an operator's license or permit. A delinquent child is a child who has committed an act designated as a crime under the law.

Once a child is found to be deprived, unruly, or delinquent, the court will determine what services, treatment, or rehabilitation is needed at a disposition hearing. Under NDCC Section 27-20-30, the juvenile court in the disposition of a deprived child, in the best interests of that child, may return the child to the child's parents subject to conditions and limitations or transfer temporary legal custody to a qualified individual, public agency, or private organization. A deprived child may not be confined to a facility designed or operated for the benefit of delinquent children.

Under NDCC Section 27-20-32, the disposition for an unruly child is the same as for a delinquent child, except there can be no commitment to a secure facility. Under Section 27-20-31, the juvenile court in the disposition of a delinquent child, in the best interests of the child, may make any order authorized for the disposition of a deprived child; place the child on probation under the supervision of the juvenile supervisor, probation officer, an appropriate officer of the court, or the director of the county social service board; order the child to pay a fine in limited circumstances; place the child in an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority; commit the child to the Division of Juvenile Services or another state department; order the child to make monetary restitution or complete community service; order periodic drug and alcohol testing; or suspend driving privileges for an offense that would be a Class A misdemeanor or felony if the offense were committed by an adult.

The juvenile court has broad powers in the disposition of children that come under the court's purview. Any limitation on what kind of service, treatment, or rehabilitation a child may be assigned appears to be a result of what services are offered by various agencies. The Division of Juvenile Services is the main in-state agency that provides services to chronically unruly and delinquent children.

Under NDCC Section 27-21-02, the Division of Juvenile Services takes custody of delinquent and unruly

children committed to its care by the juvenile courts. Upon taking custody of a child, the division processes the child through a diagnostic testing and evaluation program to determine the treatment and rehabilitation that is in the best interests of the child and the state. The division uses the following out-of-home placements (which are listed from the least restrictive to the most restrictive):

1. Family foster care (county social service homes).
2. P.A.T.H. (Professional Association of Therapeutic Homes)—therapeutic foster family care.
3. Group homes and residential child care.
 - a. Charles Hall Youth Services operates three group homes and one shelter care facility in the Bismarck/Mandan communities. They accept referrals from the entire state.
 - b. Prairie Learning Center in Raleigh.
 - c. Dakota Boys Ranch in Minot and Fargo.
 - d. Home on the Range in Sentinel Butte.
 - e. Eckert Youth Home in Williston.
4. Residential treatment centers (used for youth with severe mental problems).
 - a. Dakota Boys Ranch in Minot.
 - b. Luther Hall in Fargo.
 - c. Ruth Meiers Adolescent Center in Grand Forks.

Note: A number of out-of-state facilities are utilized for specialized care, including sex offender treatment and severe conduct disordered youth.

5. North Dakota Youth Correctional Center.

The Division of Juvenile Services offers a number of community-based programs and sanctions. There are three levels of escalating sanctions recommended to case managers. Level 1 sanctions include:

1. Amends to victims, schools, law enforcement, and parents.
 - a. Apology letters.
 - b. Face-to-face visits.
2. Verbal reprimands.
3. Written reports and assignments.
4. Structure.
 - a. Curfew limits on use of driver's license.
 - b. Limits on use of telephone.
 - c. Supervision sessions.
 - d. After school reporting.
 - e. Tracking.
5. Community services and restitution.
6. Employment.
7. Community activities.
8. Education and self-help groups.
 - a. Anger management.
 - b. Aggression replacement training.
 - c. Alcoholics Anonymous.
 - d. Grief counseling.
9. Urine analysis.

Level 2 sanctions are in addition to level 1 sanctions. These sanctions include:

1. More structure.
 - a. Increased tracking.
 - b. Increased supervision sessions.
 - c. Daily reporting.
 - d. Telephone contact.
 - e. Written log of daily activities.
 - f. Reduced privileges.
 - g. Closed campus at school (no free time outside school building).
2. Increased frequency of urine analysis.
3. Conversation with the Youth Correctional Center or placement facility.
4. Required community service.

Level 3 sanctions are in addition to level 1 and level 2 sanctions. These sanctions include:

1. Electronic monitoring.
2. Contact with law enforcement regarding house rules and expectations.
3. Informal court hearing.
4. House arrest.
5. Time out at the Youth Correctional Center.

The Division of Juvenile Services provides programs that may enhance the success of reducing bad behavior by children committed to its care. These programs may be used at various times while the youth are under community sanctions:

1. Day treatment services - Provides a special classroom setting in schools for children unable to function adequately in a regular classroom.
2. Intensive in-home services - Provides six to eight weeks of in-house training for families to improve the family's relationship.
3. Drug and alcohol evaluation and treatment.
4. Psychological evaluations.
5. Individual therapy.
6. Psychiatric interventions.

7. Job and vocational skills development - Provides training to children in daily living skills and job and vocational skills through a school-based program.
8. Independent living services are provided for juveniles over the age of 16 who may not return home. These services provide training to develop daily living skills.
9. Every child released from the Youth Correctional Center is provided aftercare services.

American Indian Children

The 1986 Governor's Commission on Children and Adolescents At Risk said, in relation to American Indian children:

Native American children and adolescents at risk were not singled out in this study since most have the same problems as the rest of the children and adolescent population. However, the Native American youth's problems may be more intensified because of social and economic factors: the high rate of unemployment, the lack of services available on the reservation, and the lack of understanding between tribal authorities and the State of North Dakota on service provision, authority limits, and cultural values.

According to 1992 statistics, American Indian children represent seven percent of all children in this state but represent 28 percent of the children in juvenile detention and 36 percent of the admissions to the North Dakota Youth Correctional Center.

The following schedule is a profile of American Indian children, as determined by the Child Welfare Research Bureau at the University of North Dakota.

Indicator	American Indian	White
1994 total population (estimate)	27,363	602,738
1994 percent of population (estimate)	4%	94%
1994 child population (estimate)	13,613	173,838
1994 percent of child population (estimate)	7%	91%
The following poverty information cannot be updated (census data):		
1990 poverty status	50%	13%
1990 below poverty income for less than 18 years old	58%	14%
1994 resident live births	13%	85%
1994 low birth weight ratios (per 1,000 births)	77.01	50.68
1994 resident live births by use of tobacco	39.1%	16.7%
1994 resident live births by use of alcohol	4.7%	1.2%
1994 percent of births to teen mothers by race	19.8%	7.7%
1994 out-of-wedlock ratio (per 1,000 births)	568.4	181.1
1995 infant mortality rate (per 1,000 births)	12.06	6.84
1995 youth death rates by age 1-19 years	1	0.41
1993 percent of youth who considered suicide grades 9-12	33%	27%
1993 percent of youth who attempted suicide grades 9-12	15%	9%
1993 youth sexual behavior (had sex) grades 9-12	70%	45%
1995 juvenile detention by race	29%	67%
1995 admissions to the Youth Correctional Center	38%	57%
FY 1995 victims of child abuse/neglect (probable cause cases)	18%	76%
FY 1995 children in foster care	31%	66%
1995 admissions to State Hospital Children and Adolescents Unit	27%	68%
FY 1995 children served by human service centers	11%	87%

In September 1996 a final report of the North Dakota American Indian Juvenile Justice Summit was released. A portion of the report summarized problems facing

American Indians and offered solutions for those problems. Those problems and solutions as they relate to this study include:

Problem	Solution
Tribes need facilities for unruly children and children with behavioral problems.	Establish tribal group home process of on-reservation facilities and develop resources to send families to attend off-reservation facilities.
Low self-esteem and discipline.	Construct a tribal juvenile detention facility on the reservation where traditional and spiritual ways can be used in the treatment process.
The tribal juvenile court has a heavy caseload.	Implement community conflict resolution through the tribal court and make changes to tribal law as it relates to child welfare and the judicial system.
No tribal youth probation officers.	Make an agreement in which the Division of Juvenile Services has jurisdiction over runaways.
Lack of coordination between key entities and individuals in the juvenile justice system.	Develop preventative programs that network into the community and coordinate all the entities in the juvenile process. Make a tribal contract with the Youth Correctional Center.

These are just a few of the problems and solutions listed in the summit's final report. Because of the status of Indian tribes as sovereign nations, there are limits on the jurisdiction of the state to aid in the juvenile justice system on reservations. According to a representative from the Indian Affairs Commission, the jurisdictional issue is not the major problem, but the issue is of coordination in providing services, especially to children who have entered both the tribal and state systems.

Testimony and Discussion

Causes of Delinquency

The committee received testimony from Mr. Kevin Thompson, Associate Professor, North Dakota State University, on the causes of delinquency. He is reviewing the effectiveness of juvenile court services programs so that the juvenile court may recommend program elimination, modification, or expansion. His evaluation will be a cost-benefit analysis.

Mr. Thompson conducted a study of the causes of delinquency in Cass County. The goal of the study was to find high-risk youth who are not in custody. High-risk youth are three to five percent of the population and commit 50 to 75 percent of the crime. The high-risk youth criminal activity peaks between 16 and 18 years of age. These youth usually begin crime at age 8. These children typically come from families with no rules and no monitoring behavior. The parents do not recognize or refuse to recognize defiance. These parents give inconsistent punishments. The punishment is usually physically severe when it occurs. These children have low self-esteem, are high risk takers, are pleasure-seekers, are shortsighted, and nonverbal.

The at-risk behaviors used to group the youth in the study were binge drinking, use of narcotics, police contacts, sexual activity, and seatbelt nonuse. The youth were divided into four groups. Seventy-five percent of the youth were in the minimal-risk group.

These youth are the conformists. Seven percent of the youth in the study were in the episodic-risk group. These youth have had episodic contact with the juvenile justice system. Fourteen percent were in the moderate at-risk youth group. These youth are the criminal opportunists. Five percent are in the high-risk group. In this group, 78 percent were male. The average age was 15.3 years and 70 percent came from two parent families. Although alcohol and lack of fathers in the family are factors, they are not strong predictors of whether a youth will be in the high-risk group. Hispanics had a disproportionate number of youth in the high-risk group.

The theory of the study is deficient child-rearing creates a child with low self-control, which then becomes a stable trait in the child's life, i.e., bad parents create bad kids who become bad parents. Deficient parenting and low self-control are major factors in delinquency.

The percentage of youth in the risk groups who spent five or more hours a week at home without the presence of an adult is a measure of deficient parenting. The high-risk group contained 38.2 percent, the moderate-risk group contained 21.1 percent, the episodic-risk group contained 20.9 percent, and the minimal-risk group contained 23.8 percent of the juveniles surveyed in that group who had spent five or more hours a week at home without the presence of an adult.

The percentage of youth in risk groups who do not get punished for breaking parents' rules is a measure of deficient parenting. The high-risk group contained 40.5 percent, the moderate-risk group contained 36.7 percent, the episodic-risk group contained 32 percent, and the minimal-risk group contained 22 percent of the juveniles surveyed in that group who did not get punished for breaking parents' rules.

The percentage of youth in risk categories who have four or more incidents of serious physical abuse is a measure of deficient parenting. The high-risk group

contained 15.7 percent, the moderate-risk group contained 7.9 percent, the episodic-risk group contained 2 percent, and the minimal-risk group contained 2.1 percent of the juveniles surveyed in that group who had four or more incidents of serious physical abuse.

The percentage of youth in risk groups whose parents would get very or extremely upset if they discovered the youth drinking at a party is a measure of deficient parenting. The high-risk group contained 49 percent, the moderate-risk group contained 52.9 percent, the episodic-risk group contained 73.3 percent, and the minimal-risk group contained 87.2 percent of the juveniles surveyed in that group who had parents who would get very or extremely upset if they discovered the youth drinking at a party.

The percentage of youth in risk groups whose parents have a serious problem with drugs or alcohol is a measure of deficient parenting. The high-risk group contained 18.8 percent, the moderate-risk group contained 9 percent, the episodic-risk group contained 6.1 percent, and the minimal-risk group contained 4.6 percent of the juveniles surveyed in that group who had a parent with a serious drug or alcohol problem. Although the survey assumed that children are interpreting the questions the same, each child's perception of an alcohol problem could be different. Children in the high-risk category might be underreporting because they think abuse of alcohol is normal.

The percentage of youth in risk groups who mostly receive grade C or below is a measure of low self-control. The high-risk group contained 44.9 percent, the moderate-risk group contained 29 percent, the episodic-risk group contained 21.4 percent, and the minimal-risk group contained 6.4 percent of the juveniles surveyed in that group who receive C or below grades.

The percentage of youth in risk groups who report gang involvement is a measure of low self-control. The high-risk group contained 80 percent, the moderate-risk group contained 41 percent, the episodic-risk group contained 31 percent, and the minimal-risk group contained 15 percent of the juveniles surveyed in that group who reported gang involvement.

The percentage of youth in risk groups who report most of their closest friends drink alcohol more than one time per week is a measure of low self-control. The high-risk group contained 55.1 percent, the moderate-risk group contained 23.6 percent, the episodic-risk group contained 10.2 percent, and the minimal-risk group contained 3 percent of the juveniles surveyed in that group who reported that most of their friends drink alcohol once a week or more.

Youth in the moderate-risk group have the ability to reform. Some would say youth in the high-risk group are impossible to rehabilitate. If high-risk children are identified and given intervention services at an early age, the risk may be removed. Intervention works best if high-risk youth are identified at four to five years of age.

Intervention with parents to teach parenting skills is a method for removing risk.

The literature suggests that children who are physically and sexually abused and who do not become high risk have had an adult role model and conventional peer group for support. The committee received testimony on the effect of sexual abuse on crime. Thirty to forty percent of the residents at Dakota Boys Ranch have had a history of being sexually abused.

Religion is not a good predictor of risk level. Extracurricular activities can prevent bad behavior; however, extracurricular activities in the community are not a good predictor of the level of risk behavior. Intelligence may be a factor in the removal of risk. Alternative schools seem to have youth who are either of low intelligence or high intelligence.

The committee received testimony on gangs and delinquency. Some gang activity is brought back by juveniles who attend larger out-of-state institutions. Fargo and West Fargo have had school and community efforts against gangs, which has produced a dramatic drop in gang activity.

The committee was informed that a lower ratio of children to adults in schools would be advantageous in lowering delinquency. California is preventing delinquency by legislating lower primary class sizes. If class sizes were more manageable, teachers could better assess problems and the school system could better educate and provide programs for the children.

Programs for At-Risk and Delinquent Children

The committee received testimony on statistics on commitments to the Department of Juvenile Services and referrals to juvenile court. There has been a decline in commitments due to a decline in population of children in this state and due to prevention services. The recidivism rate in this state for children is approximately 20 percent. There was an increase in juvenile court referrals from 1995 to 1996 of approximately eight percent. The increase is attributable to an increase in youth between 14 and 17 years of age, an increase in reports to authorities, and an increase in delinquent behavior.

The committee received testimony on the facilities and programs for children at the Youth Correctional Center. There is a program at the Youth Correctional Center for children with gang involvement. Children involved with gangs lack a positive role model. The program does not allow borderline gang members into this program because it would teach them more about gangs. There is amazing fluidity in the number of children who claim to be in any one gang on any one day. This is a somewhat positive sign because these children are not in big city urban gangs. A big city urban gang does not allow members to leave.

The children at the Youth Correctional Center are given jobs during the summer because classes are not offered by the center. The Division of Juvenile Services

suggested the Youth Correctional Center have a 12-month school.

The committee received testimony from members of the Delinquency Prevention Consortium. The consortium meets once a month and consists of representation from the Division of Mental Health, the Superintendent of Public Instruction, Children and Family Services Division, and the Division of Juvenile Services. The consortium provided information on a variety of programs for at-risk and delinquent children in this state.

The committee received testimony on five programs that have been proven successful and five pilot programs that have potential for expansion. The five existing programs are the day treatment, intensive in-home, Keys to Innervision, diversified occupations, and tracking services. The five pilot programs are the Success Academy, financial incentives, early intervention with preschool children, the turnabout after school program, and the American Indian preservation project.

The day treatment program offers help with school work. The involvement of parents in the day treatment program is a key to the successful treatment of children in that program. A day treatment center uses three staff members to work with an ideal range of 10 to 12 children. It takes approximately \$110,000 annually to fund the day treatment program. This compares well fiscally with placement at the Youth Correctional Center and out-of-state treatment. The day treatment program has a social worker who acts as the liaison between the home and school. Seven schools in this state have day treatment programs. The Superintendent of Public Instruction pays 40 percent and the local school districts pay 60 percent of the program.

In 1990 a day treatment program started in Belcourt for grades 4 through 8. There is a cultural component in the day treatment program which includes a tribal elder providing instruction for two hours twice a week. Four schools receive services from the day treatment program.

Intensive in-home services are offered by licensed social workers with master's degrees. The goal of the services is try to keep the family intact. The services are 80 percent successful. The services are funded 20 percent by the Department of Juvenile Services and 80 percent by a combination of federal and state human service funds. The cost per year for each licensed social worker with a master's degree is approximately \$50,000. Intensive in-home services may be offered to six families at a time by a licensed social worker with a master's degree. This would result in helping 18 to 24 families per year. The services are being offered in Fargo, Grand Forks, Devils Lake, Jamestown, and Bismarck. Expansion of these services to Minot, Williston, and Dickinson is being evaluated.

The committee received testimony on the Keys to Innervision program. The program is taught by juvenile court probation staff. The program is designed to provide a positive relationship for a child with an adult.

Any person may be the adult person in the program. This program does not replace counseling. It is an educational program about changing one's beliefs and behaviors. The program says the child has choices and the child can make those choices. The program involves parents. The program is a court-ordered and self-referral program. The program is interactive and the optimal class size is under 20 people. The program is funded by the Supreme Court. The Supreme Court is going to provide a scientific evaluation of the program. Some schools have been adopting the program. The Dickinson school system uses the program as a credit class.

As anecdotal evidence, the committee received testimony that the program had taken eight children who were going to be recommended for out-of-home placement and kept those children placed at home. Of the eight children, half had a parent involved in the program. Four of the children learned to survive and four children established a relationship with their parents.

The diversified occupations program assists at-risk students in obtaining vocational training and daily living skills. The program is aimed at children who are going to drop out of school. The program involves the school, various agencies, and the business community. In Grand Forks, during this year there have been 141 employment contracts.

Tracking services are offered through a contract between the Division of Juvenile Services and Lutheran Social Services. Both regular tracking services and intensive tracking services are provided by Lutheran Social Services.

The Success Academy is a school-based program in Grand Forks. The Success Academy has included children who have been suspended from school multiple times. The program devises a way for these children to get caught up in their school work. There are agreements with all the schools to have teachers come to the Success Academy and teach different time periods. Older students are used as mentors. The chamber of commerce and service groups are used as mentors from the community. The Success Academy is different from an alternative school because there cannot be an alternative school for a person under the age of 16 years. A student under the age of 16 must have a teacher of record. This is not an alternative, but an attempt to remediate the student back into the normal school population. The program includes disabled students if they do not need specialized instruction programs.

The financial incentives program offers small financial incentives to encourage vocational school attendance, continued school progress, job skill development, and graduation. This program is being piloted in Belcourt. This program was specifically mentioned in the RAND study. Financial incentives are offered to sophomores and juniors. The financial incentives program is a vocational and not an academic program. One downfall of

financial incentives is if children come to the program only to receive the money.

The family-focused early intervention program was addressed in the RAND study. The program offers good prevention; however, the effects of the program take 10 to 12 years to appear. The family-focused early intervention program is for at-risk children up to 5 years of age.

The turnabout after school program is being provided in Mandan and Bismarck by Youthworks. Turnabout is an intensive, multipurpose program for at-risk youth. Turnabout creates a plan to turn things around at home and at school to prevent further involvement in the juvenile justice and child welfare systems. Turnabout provides supervision during unsupervised and after school hours. The program is a middle ground between routine probation and residential care and inpatient treatment.

The American Indian preservation project includes two programs that have not begun. The program will be placed on one reservation and in one urban area. This program is a family-based program that provides intensive in-home family services that are tailored to each family.

The committee received testimony on the Partnership Project. The mission of the Partnership Project is to support children with emotional and behavioral difficulties in their home or community by using a family-focused, collaborative, cost-effective, community-based system of individualized care that is unconditional, ongoing, and culturally relevant. The Partnership Project is a demonstration grant being administered in Minot, Fargo, and Bismarck. Sixty-nine percent of the children in the program are male. Males tend to have behaviors that are more identifiable, e.g., aggression, and these behaviors come to the notice of other people quicker and more often. The human service center areas are the same areas used for the boundaries of the Partnership Project. The grant is administered through human service centers.

The Partnership Project uses the wraparound process. The wraparound process is a process whereby friends, family, and community agencies work together to provide one plan for a child. This process removes duplication of services. The services are more successful because they involve the family. Wraparound services are analogous to an individual education program in the education system. Usually, school officials are invited to take part in wraparound services; however, family members can exclude education providers.

The committee discussed the need for the juvenile justice system and schools to work together. The committee also discussed the need for linkage of entities that are providing services. Multiple providers may confuse the client with different treatment programs and philosophical differences in treatment.

The Juvenile Services Division is using approximately \$930,000 in funding from the federal juvenile accountability block grant to fund the administration of the grant, intensive tracking, victim/offender mediation, tribal probation staff, and the building of a secure correctional unit enhancement onto Pine Cottage at the Youth Correctional Center. The Division of Juvenile Services is contracting with the North Dakota Association of Counties for the administration of the grant. Local communities are receiving funding under the juvenile accountability block grant. The money has to be used for one of the specific purposes listed by Congress. It is expected the counties will spend the grant money on detention facilities.

The committee received testimony on restorative justice. Restorative justice is the opposite of retributive justice. Restorative justice provides an extended role for victims and includes victim/offender mediation. Restorative justice focuses on personal responsibility and tries to repair the harm that crime has caused and to make things right.

Victim/offender mediation works well with front-end children. Victim/offender mediation will be available to the juvenile court and will be funded by the Division of Juvenile Services. Mediation is at the victim's discretion—not all crimes are appropriate for mediation. Restorative justice offers the victim a say in the punishment.

The confidentiality of the mediation is up to the victims. There has not been a problem with victims releasing sensitive information. The offenders are aware that the information may be released by the victim.

Educational Services for Expelled and Suspended Children

The committee considered a bill draft that required the provision of educational services for suspended and expelled students. Suspension is a limited exclusion or isolation that lasts for a period of up to 10 days. Expulsion is a permanent exclusion from school and requires the action of the school board. Individual school boards have the authority to develop policy on suspensions and expulsions. A few states have programs to educate expelled and suspended students by placing them in alternative settings. These states include Arkansas, California, Louisiana, and Nebraska. Suspensions and expulsions are rising in number. If the pattern of suspension and expulsion increases, then the pattern of dropouts increases and then greater societal problems begin. Children who are suspended or expelled are at risk of ending up in the juvenile justice or criminal justice system if they do not receive skills training. This could be avoided if schools have a continuing responsibility to provide education to expelled and suspended students. In 1997 there were 34 expulsions and 2,471 out-of-school suspensions in this state. Small schools account for most of the suspensions.

Some children are suspended or expelled for nonviolent behavior. Some schools suspend students for wearing caps in school. Generally, schools have more rules and are stricter than they were in the past. Schools used to look the other way for certain offenses, such as cigarette smoking off schoolgrounds.

There is no incentive for schools to deal with children instead of suspending or expelling them. Under the present system, the school can remove itself from a troubled child's life. Foundation aid payments stop for expulsion, but not suspension. A student needs to have four credits for a school to receive foundation aid. The bill draft provided for foundation aid even if a student is expelled from school.

Schools can create partnerships for alternative education and do not necessarily have to have a separate building or create programs. The provision of educational services for expelled and suspended children does not have to be in the same building as the regular school. There are alternatives for schools that offer education to suspended and expelled students. Large schools have alternative schools that would be able to offer education. Small schools could offer independent study that could be offered over the Internet or by hiring a teacher's aid. Before class or after class access to school with a tutor would provide an alternative education. Vocational programs are also an option.

Testimony in favor of the bill draft argued suspension and expulsion are punitive and can alienate a child from school, and it is unfair to expel students with behavioral problems from school. It was argued suspension and expulsion should not be used as punishment without an education component. A student should be able to keep up with the student's class work while suspended or expelled. Behavior should be dealt with without removing education. The services for suspended and expelled students in the bill draft are required by federal law for special education students.

Testimony in opposition to the bill draft was not against the concept, but against the manner in which the bill draft implemented the concept. The committee was informed the bill draft would require an individual education plan for a suspension and it would not be practical to create an individual education plan for a short-term suspension. In addition, the bill draft limited alternative education to school hours. It would be difficult to provide an alternative education during school hours. The committee was informed small schools would have difficulty providing an alternative education. The committee was informed placing an expelled student in an alternative school might not be a good option. The student who is disruptive in regular school would most likely be disruptive in an alternative school. The committee was informed that suspension should not be included in the bill draft. The committee was informed the bill draft asked teachers to take care of a problem that parents and the community have not been able to solve. The bill draft would use classroom dollars to solve a societal

problem. The bill draft would create state control and rules. The committee was informed that the local community would react if a school district was abusing suspension or expulsion.

Some committee members were concerned with the bill draft because it required an individual education plan for students suspended for a day for smoking. They thought this was too much work for this situation. Some members were concerned that the bill draft did not address parental responsibility. It was discussed that students make a choice to engage in bad behavior, and there should be a consequence for that bad behavior.

It was discussed the bill draft was in response to an escalating corrections budget and was intended to eliminate the long-term costs of crime in terms of money spent and wasted lives.

Juvenile Data Base

The committee received testimony on the juvenile data base for law enforcement created in NDCC Section 27-20-52.1. The data base contains crimes from simple assault to gross sexual imposition. This section provides for the notification of schools, the Department of Human Services, and law enforcement of individuals on the data base. There are 60 children on the data base and 15 of them committed sexual offenses. Fifty to 60 juveniles are expected to be placed on the list each year. The juvenile data base retains records for 10 years. Juveniles on the data base have a duty to inform the Attorney General of a change in name or address.

The committee considered a bill draft that removed simple assault from the data base. Simple assault was included in the data base because of a desire to include juveniles who, for example, are 15 years old and commit a simple assault against a 3-year-old child. The simple assaults on the data base, however, are for assaulting children of the same age. If simple assault were removed from the data base, there would still be a county record that schools could access.

The committee was informed that over 50 percent of the juveniles on the data base are listed because of simple assault. Some committee members expressed concern that teachers and schools need to be informed of a simple assault so they can deal with the situation. Not notifying teachers may minimize the seriousness of a simple assault. In addition, simple assaults may be a prelude to more serious assaults.

Crime by Adults

The committee received testimony on the James River Correctional Center and the State Penitentiary. The committee toured the James River Correctional Center. Federal funds are paying for most of the renovation at the James River Correctional Center. The federal dollars are only for renovation and new construction and not for programs. The federal government offers 90 percent of the funding for renovation and new construction. This state is expecting \$4.5 million for the

renovation of the James River Correctional Center. The facility will be able to house 380 inmates. Population trends project the facility will be filled within four years.

The Penitentiary houses inmates in county jails. The Penitentiary primarily contracts with county Class I facilities that are designed for housing a person for up to a year. These contracts average \$40 per day for housing and \$5 per day for medical plus transportation. The cost is comparable to the cost at the Penitentiary; however, there are no treatment facilities in the counties.

The committee was informed local offenders could be sentenced to the local jail instead of being sentenced to state facilities and then returned to a local jail elsewhere in the state. If an offender is sentenced to a local jail, the county pays for the incarceration. If an inmate is sentenced to the Department of Corrections and Rehabilitation, the state pays for incarceration. If a judge sentences a criminal to jail, this places a burden on the county. A local sentence allows a person to keep that person's job, stay with that person's family, and continue with treatment and services already being used in the community. It was suggested that the state fund county jails.

There are three solutions to meet increasing prison populations. The state could build more prisons, contract with private prisons, or overcrowd. Increased inmate population may be attributable to the increase in severity of penalties for driving while intoxicated, more convicted sexual offenders, and mandatory sentencing. Thirty percent of the inmates are under mandatory sentences, which combined with longer prison terms results in a lower number of releases. Most research shows that the mandatory sentences increase the prison population by three times and do not affect the crime rate. In the 1970s, the average age of an inmate was 26 years old. The present average age is approximately 33 years of age.

Crime Lab

The committee received testimony from a task force created to review the State Laboratory and the medical examiner program, which included representatives from the Bureau of Criminal Investigation, the coroner system, the state crime lab, and the State Medical Examiner. The committee was informed that the positions of director of the state crime lab and the State Toxicologist had been separated; and the crime lab has inadequate space, is in need of more personnel, and has a high turnover of employees. The committee was informed out of the 53 counties in this state, 33 have a medical county coroner and 20 have a designated coroner. The designated coroner is usually a funeral director or sheriff. In 1997 the medical examiner autopsied 169 bodies.

American Indian Issues

The committee held meetings at the Fort Berthold Indian Reservation, the Standing Rock Indian

Reservation, the Turtle Mountain Indian Reservation, and the Fort Totten Indian Reservation.

According to 1994 statistics, American Indians make up four percent of the total population of this state. Approximately 38 percent of the American Indians in North Dakota live off reservation. American Indians make up 22 percent of the adult population at the Penitentiary. In addition, there is a high proportion of American Indian population at the Youth Correctional Center.

The committee was informed the reasons for the high proportion of American Indians at the Youth Correctional Center and the State Penitentiary may be that the Indian culture expects a high level of honor and honesty. The committee was informed American Indians tend to be quiet and that makes it difficult to get information when sentencing them. This may result in American Indian offenders not using attorneys or plea bargains, choosing instead to plead guilty. The committee was informed the high number of American Indian children at the Youth Correctional Center may be attributable to the lack of programs from the state and the tribes for American Indian children.

Nearly 50 percent of the children in the juvenile justice system are American Indians. Approximately 35 percent of the children in the child welfare system and over 30 percent of children in the mental health system are American Indian children. There is an over representation of American Indian children in the foster care system. American Indians are the largest growing portion of this state's population. The Indian children population is growing by five to seven percent, and the white population is decreasing.

The committee received testimony on the causes of crime and delinquency. One cause of crime and delinquency is unemployment. At Standing Rock, the committee was informed that the most pressing problem on the reservation is unemployment. Prairie Knights Casino employs approximately 300 people. The casino in South Dakota employs approximately 100 people. The committee was informed that if the employment rate were lower there would be fewer family problems. The weather and long distances make it difficult for many to gain and retain employment. The outlying areas of the reservation have few businesses. Most of the businesses are in Fort Yates or McLaughlin. Most businesses in McLaughlin are owned by non-Indians.

At Fort Totten, the committee was informed unemployment is a major cause of societal problems on the reservation. The committee was informed the main reason for the lack of employment is prejudice. High unemployment results in families not having enough money, which results in stress, which results in societal problems. Treatment for those problems can only work for a limited time if the stresses that caused the problem remain.

Most employment on the reservation comes from governmental entities. There is a lack of small

businesses on the reservation. The banks will not loan money to people to start a small business on the reservation. One reason for banks not loaning money is unemployment is high on the reservation, and no one will be able to buy the products produced by a small business. This reasoning perpetuates unemployment. Other reasons for the lack of businesses on the reservation are prejudice, concern with litigation, sovereignty issues, and an unstable work environment. In addition, the assistance that some American Indians receive if they do not work is equivalent to a \$10 an hour job. Most jobs for American Indians pay less than \$10 an hour.

Because of the lack of employment at Fort Totten, many Indians on the reservation work in Devils Lake. The committee received testimony from an American Indian who had applied for jobs in Devils Lake. The committee was informed this person was discouraged from applying at four or five places. The discouragement came from the attitude and looks of prospective employers. Some employers said they had already hired someone else. Some employers asked for a name and address so they could mail an application.

The committee was informed that American Indians have the same work ethic as the white community. The main barrier to American Indians not being punctual is the lack of adequate transportation.

One cause of crime and delinquency is the lack of parental involvement and improper parenting. Parental involvement in schools has a dramatic positive effect. Parental involvement produces well-behaved children with good grades. The committee was informed parents need to be given aid when children are young so parents can spend time with their children. Children listen better and parents are more influential with their children when children are young.

The committee was informed cases of abuse of the elderly are increasing. Parents are making parents out of grandparents and those grandparents are being abused by their grandchildren.

At Fort Totten, the committee was informed the tribe has received an abstinence education grant to implement programs to prevent teen pregnancy. The number of single parent homes on the reservation is growing, and it is a significant number of homes on the reservation. The tribe seems to have a larger than average problem with teen pregnancy.

One cause of crime and delinquency is alcohol and chemical abuse. The committee received testimony from the only licensed addiction counselor at Fort Berthold working with the children under federal programs on the reservation. The committee was informed there needs to be more alcohol and chemical abuse prevention and intervention.

At Fort Berthold, 92 percent of all arrests are drug and alcohol-related. At Turtle Mountain, police officers have conducted the DARE program. DARE is a drug and alcohol abuse awareness program presented in the schools. In addition to addressing drug and alcohol

abuse, this program has helped police in developing a positive relationship with the youth.

The committee received testimony on the Youth Alcohol and Drug Program at Turtle Mountain. The program received approximately five to seven referrals for drug and alcohol treatment a typical Monday. There is only one person who works in this program and that person's caseload involves 212 adolescents. The committee was informed that focusing drug and alcohol treatment on juveniles and not providing any for adults may be a better use of resources. The problem of teenage drunk driving is intensified on the Turtle Mountain Reservation because there is a heavy concentration of teenagers and only one major road. In 1997 there were 416 driving while under the influence cases. In 1995 through 1996, there were 55 high school students involved with alcohol, 32 with drugs, and 12 with inhalants at the Turtle Mountain High School.

The committee was informed that the Fort Totten Indian Reservation is a dry reservation; however, the tribe cannot enforce its no alcohol policy on non-Indian visitors to the casino. Even though alcohol is forbidden, alcohol is a factor in over 80 percent of juvenile delinquency. The penalty for purchasing alcohol for a juvenile is a \$360 fine with up to 60 days' imprisonment. There were 143 minor in possession cases last year.

The committee was informed the state provides tribes with funds through the Indian Affairs Commission for substance abuse services.

Another cause of crime and delinquency is gang involvement. Children who are sent to the Youth Correctional Center are exposed to gangs and bring back information to the reservation when they are released. The committee was informed gangs have strict rules that are enforced, and gangs offer children the discipline that families should offer to their children. There are gangs at the Standing Rock Indian Reservation, but there does not appear to be much gang influence in Fort Yates; most of the gangs are in Cannon Ball. The difference between the two places is Fort Yates has employment and Cannon Ball has high unemployment. There has been a positive intervention by schools at Standing Rock to stop any gang problems.

At Fort Berthold, there has been a joint effort against gang activity by New Town, the tribe, and the Bureau of Indian Affairs. Law enforcement has begun bike patrols as a form of community policing. Fort Berthold is networking with other reservations to stop the gang problems on the reservations in North Dakota.

Another cause of crime and delinquency is a high population of children. In 1996 there were 12,000 tribal members on the Turtle Mountain Reservation. Over 50 percent were over the age of 18 years. There is a high number of juveniles at the Youth Correctional Center from the Turtle Mountain Reservation because of a high population. There is also a high number from the Fort Totten Reservation because of the proximity to a large police department in Devils Lake. The tribe with

the highest population of inmates at the State Penitentiary is the Turtle Mountain Chippewa Tribe. This tribe has the highest number of members in this state.

Another cause of crime and delinquency is the lack of an adequate education. At Fort Totten, the committee was informed each child must stay in school until the age of 18 years. Compliance is enforced by the school keeping records on attendance and notifying the court of suspicious absences. If a child 14 years of age or under is not validly away from school, charges are brought against the parents. A child 15 years or older is treated as an unruly child and placed on probation.

The committee received testimony on Turtle Mountain community schools. The committee was informed 76 students dropped out of school last year. The Turtle Mountain community high school population has increased from 560 to 600 students in the last year. The building is built for 450 students.

At Turtle Mountain, absenteeism in school increases with the age of the students. There is a 94 to 95 percent attendance level at the elementary school. If young students begin a pattern of being absent from school, the pattern increases with frequency as they get older. The dropout rate has increased from 14 percent last year to 17 percent this year. The school has a policy that requires the expulsion of a student until the end of the school year for fighting. Some students involve themselves in fights so they do not have to go to school.

The committee received testimony on students with educational disabilities at Standing Rock. These children take more of a teacher's time than other children. A separate building is being built in Fort Yates for students who have educational disabilities. The committee was informed if children with educational disabilities are not provided the appropriate education they may end up in the criminal justice system.

Yet another cause of crime and delinquency is child sexual abuse. The committee received testimony from representatives of the Fort Berthold and Standing Rock Reservations on child sexual abuse. Children at risk of sexual abuse are children whose parents are suffering from marital conflict, domestic violence, or a drug or alcohol problem. In addition, parental unemployment and depression are the causes of child abuse and neglect. In New Town, the elementary school has had six reports of sexual abuse in the last six years. The high school has had six per year. The reservation does not have a therapist for sexual abuse. There is limited treatment for very young children at human service centers. Distance and cost are the major inhibitors to mental health services for Indians on the reservation.

In 1996 there were 611 allegations of child abuse and neglect at Standing Rock. Services were recommended in 57 percent of these cases. There were approximately 10 cases that involved juvenile sexual offenders.

When children are abused or neglected, they may be placed in foster care on the Standing Rock Reservation.

Last year 110 children were placed in foster care. The tribe pays for foster care. Recidivism into foster care is a big problem caused by returning children to the same problems in their family after foster care. There is an effort to move children out of foster care by promoting adoption. At Standing Rock, the county, the tribe, and the Bureau of Indian Affairs provide social services. Most of the social services to children are provided by the tribe.

Specialized treatment for sexual abuse victims is offered in South Dakota. The placement of a child from North Dakota to South Dakota requires the approval of the Department of Human Services. The committee was informed this process is cumbersome.

There are other causes of crime and delinquency. At Fort Berthold, the committee was informed that the creation of Lake Sakakawea caused a loss of the social fabric that provided a support mechanism for Indian youth. At Fort Totten, the flooding of Devils Lake has added stress.

The committee received testimony on prevention, treatment, and detention facilities. The committee received testimony on the need for social services on reservations. The committee was informed that there are major gaps in social services. At Fort Berthold, part of the gap is a result of the large geographic area of the reservation. The committee was informed that the tribes lack funding to provide adequate social services.

The committee received testimony on the problems with off-reservation treatment and detention. Comprehensive onsite programs are lacking on the reservations, and there are waiting lists to receive off-reservation treatment. There is a high cost to off-reservation treatment. Generally, off-reservation treatment is ineffective because it removes children from friends and family. A child is returned to the same environment after treatment. Most treatment programs have a family day or week; however, most potential attendees cannot make these events because of transportation problems.

The committee was informed that troubled children need parental involvement in their treatment and should not be placed outside of the community. Within an American Indian community, extended family is important. The committee was informed that treatment of American Indian juveniles must include mental, emotional, physical, and spiritual healing. State human service centers are not used because of distance and cultural differences.

The committee was informed off-reservation treatment is not culturally sensitive to American Indian youth. The tribal youth would feel more comfortable obtaining treatment on the reservation by counselors who are American Indian. Many juveniles suffer from the guard your heart syndrome. The guard your heart syndrome occurs because most everyone who provides services on the reservation leaves after a few years. This problem could be alleviated if there were local staffing of programs.

The committee received testimony from a juvenile who left the reservation to receive treatment in Minot. It was hard for the juvenile to be away from home. Treatment would be more attractive to juveniles if they did not have to leave the community. The program in Minot helped the juvenile with the juvenile's problems; however, the program did not help others in the community to which the juvenile returned after the treatment.

At Fort Totten, the committee was informed there is a lack of available programs in Devils Lake, and the programs offered there are not sufficient because there is no 24-hour detention facility for juveniles. A juvenile must travel to Minot, Grand Forks, Fargo, Bismarck, or Sisseton for 24-hour facilities. The committee was informed that state facilities do not select American Indian children for treatment. State facilities do not accept children with the most problems because of the perceived lack of a successful outcome.

Children who are not Medicaid-eligible and do not have insurance are usually referred to state-offered human service programs in Devils Lake. These individuals must pay on a sliding fee scale. Human Services in Devils Lake had offered outpatient group treatment but has canceled the treatment due to lack of participation. This treatment requires at least 10 individuals in a group and there was too long of a wait before 10 juveniles were available for group treatment.

The committee received testimony on the lack of community-based programs on reservations. The committee was informed that the tribes want a 24-hour facility to provide treatment instead of foster care to provide aftercare for juveniles returning to the community from off-reservation treatment, and for the detention of juveniles by the tribal court. The committee was informed 24-hour facilities would provide meaningful punishment and treatment.

The tribes have an intertribal juvenile facility work group to investigate the placement of a detention center. A juvenile detention center would be for all four tribes to share. The tribes want a detention center because it would keep youth in the Indian community, and it would help in the retention of the cultural identity of the children. In addition, it would save money. The work group has stalled because of the difficulty in determining where the facility should be located. Each tribe wants the facility on that tribe's reservation because of the

benefits of local treatment. Building a treatment and detention facility on a reservation would require the cooperation of all the tribes if they use the money available under the Violent Offender/Truth-In-Sentencing Act.

The Youth Correctional Center tries to maintain open slots for children from the reservations. The tribes are responsible to pay for the services offered at the Youth Correctional Center if there is a slot available. Most of the children who are at the Youth Correctional Center are adjudicated in district court. When a child is adjudicated delinquent in district court, the state pays for the services provided at the Youth Correctional Center.

The committee received testimony on the sacred child project. The sacred child project has received a \$5 million grant. The grant will provide \$200,000 per year at five sites throughout the state. The sacred child grant is for one million dollars for the first year, and this money is for planning purposes. The sacred child project is a solution to placing children out of the home and community. The sacred child project is working through the Tribal Children's Services Coordinating Committee to tailor a system of care for American Indian children. The program is designed to develop wrap-around services using existing service providers to address the needs of children. The program is a partnership with the family and works with family resources and uses family beliefs and strengths. Family members may be used as mentors. The program brings all of the service providers together to look at the needs of the client and to individualize treatment with the strengths of all involved. The committee was informed that it is difficult to get different agencies to work together. There are turf battles between different agencies. The wraparound process would prevent the need for children going to a 24-hour facility. The wraparound process is a creative solution that is better than detention.

Recommendation

The committee recommends House Bill No. 1032 to except a child from the law enforcement data base for that child's first adjudication for simple assault. Under this bill, the Attorney General would still receive information on simple assault adjudications, but there would be notification only if there were a second adjudication.

EDUCATION FINANCE COMMITTEE

The Education Finance Committee was assigned two studies. Section 4 of 1997 Senate Bill No. 2338 directed a study of the financing of elementary and secondary schools and the availability of state support for school construction, a review of the formulas used to equalize state aid for student transportation and special education, funding sources that would be alternatives to property taxes, and any other issues related to the financing of elementary and secondary education. Senate Concurrent Resolution No. 4047 directed a study of the short-term and long-term impact of federal education legislation and other direct and indirect mandates from whatever sources on the educational goals and fiscal well-being of school districts.

Committee members were Senators Layton Freborg (Chairman), Dwight C. Cook, Tony Grindberg, Jerome Kelsh, Les J. LaFountain, Rolland W. Redlin, Terry M. Wanzek, and Jim Yockim and Representatives Rick Berg, James Boehm, Michael Brandenburg, Lois Delmore, Pat Galvin, William E. Gorder, Bette Grande, Howard Grumbo, Lyle L. Hanson, Dennis Johnson, RaeAnn Kelsch, Richard Kunkel, and David Monson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

FINANCING OF ELEMENTARY AND SECONDARY EDUCATION STUDY

Background

Initiation of the Foundation Aid Program

A foundation aid program designed to provide financial assistance to local school districts has been in effect in North Dakota since 1959, at which time the Legislative Assembly enacted a uniform 21-mill county levy and provided a supplemental state appropriation to ensure that school districts would receive 60 percent of the cost of education from nonlocal sources. This initial program was adopted in part because the Legislative Assembly recognized that property valuations, demographics, and educational needs varied from school district to school district. The Legislative Assembly embraced the broad policy objective that some higher cost school districts in the state "must continue to operate regardless of future school district reorganization plans." Taking into account the financial burdens suffered by the low valuation, high per student cost school districts, the Legislative Assembly forged a system of weighted aid payments that favored school districts with lower enrollments and higher costs. This initial program also allocated higher weighting factors to districts that provided high school services.

The 1970s

For several legislative sessions after 1959, the foundation aid program remained essentially unchanged. However, during that time, federal and state courts were beginning to address issues of spending levels for elementary and secondary education and whether those levels should be dependent upon the wealth of the school district in which a student resides. The Legislative Assembly, in an attempt to preempt the issue in North Dakota, responded by amending the foundation aid program in a way that evidenced a higher level of sophistication. The state more than doubled the per student payment and replaced the flat weighting factor with one that recognized four classes of high schools. Elementary weighting factors were altered as well. Adjustments continued to be made during the mid-1970s. A new category encompassing seventh and eighth grade students was created, and fiscal protection for schools experiencing declining enrollments was instituted. This latter provision ensured that no school district could receive less in foundation aid payments for a current year than that district would have received based on its enrollment during the previous school year. For the 1975-77 biennium, the foundation aid appropriation was \$153.4 million. In 1979 the Legislative Assembly appropriated \$208.4 million for the foundation aid program and added an additional appropriation of \$1 million to pay for free public kindergartens.

The 1980s

The next major development affecting education finance occurred with the approval of initiated measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax must be used to make possible state funding of elementary and secondary education at the 70 percent level. To meet this goal, the 1981 Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated measure No. 6 also provided for a tax credit that made the 21-mill levy inapplicable to all but the owners of extremely high-value properties. The Legislative Assembly eliminated the 21-mill county levy and increased state aid to compensate for the revenues that would have been derived from the levy.

During the early 1980s, discussions continued to center around purported funding inequities. Districts spending similar amounts per student and having similarly assessed valuations were not levying similar amounts in property taxes to raise the local portion of education dollars. It was alleged that the system encouraged some districts to levy much smaller amounts than their spending levels and assessed valuations justified.

In response, the Legislative Council's Education Finance Committee, during the 1981-82 interim,

examined a method of funding education known as the "70-30" concept. This proposal was a significant departure from the existing foundation aid formula in that it took into account the cost of providing an education in each school district. The formula required determination of the adjusted cost of education and then required the computation of a 30 percent equalization factor to arrive at each district's entitlement. It was contemplated that a local mill levy would be employed to raise the district's local share of the cost of education.

Proponents touted this approach as one that included a comprehensive equalization mechanism and which recognized local variances in the cost of education. Opponents argued it did nothing more than award high spending districts and penalize those that had been operating on restricted budgets. The interim committee did not recommend the concept.

Discussions regarding the many aspects of education finance continued through the 1980s. Legislative Council interim committees explored weighting factors, considered the effects of increasing the equalization factor, and explored the excess mill levy grant concept. During the 1987-88 interim, the Education Finance Committee even established specific goals and guidelines to guide its deliberations on matters of education finance. While the interim committees articulated the need to alter the state's education funding system, they reached little agreement beyond recommending increases in the level of per student aid.

State Litigation

In 1989 legal action was initiated for the purpose of declaring North Dakota's system of public school finance unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity which were directly and unconstitutionally based upon property wealth.

On February 4, 1993, after hearing 35 witnesses and examining over 250 exhibits, the district court issued 593 findings of fact and 32 conclusions of law. The court listed these "constitutionally objectionable" features of the school financing system:

- Disparities in current revenue per student are the result of variations in school district taxable wealth.
- The 22-mill equalization factor in the foundation aid formula fails to equalize for variations in district wealth because the equalization factor is below the state average school district tax rate for current revenue and leaves much of the school millage outside the foundation formula.
- The low level of foundation educational support fails to ensure substantial equality of resources for students in similarly situated school districts.

- The use of cost weightings that are inaccurate unjustifiably benefits districts with large amounts of taxable wealth.
- The flat grant allocation of tuition apportionment ignores the vast differences in taxable wealth among school districts and operates as a minimum guarantee for wealthy districts.
- The transportation aid program exacerbates existing resource disparities by reimbursing some, often wealthy, districts for more than the actual cost of transportation and requires other, often poorer, districts to fund a substantial share of transportation costs from other revenue sources.
- The special education funding program exacerbates existing resource disparities by giving higher spending districts an advantage in obtaining state reimbursement of special education costs and requiring school districts to fund a large share of the excess costs of special education programs from their disparate tax bases.
- The state aid for vocational education exacerbates existing resource disparities.
- The state system for funding school facilities relies on the unequal taxable wealth of school districts.
- The payment of state aid to wealthy districts enables them to maintain large ending fund balances.
- The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of North Dakota students, rather than on the unequal taxable wealth of North Dakota school districts.

The district court declared the North Dakota school financing system to be in violation of the Constitution of North Dakota, Article VIII, Sections 1 and 2 and Article I, Sections 21 and 22. The Superintendent of Public Instruction was directed to prepare and present to the Governor and the Legislative Assembly, during the 1993 legislative session, plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

Response to the Litigation

In response to the district court's order, the Superintendent of Public Instruction presented the following recommendations to the 1993 Legislative Assembly:

- Raise the per student payment to \$3,134.
- Fund special education by dividing the 13 disabilities categories into three broad categories and assigning weighting factors to each.
- Fund vocational education by assigning weighting factors to high-cost and moderate-cost programs.
- Provide transportation reimbursements based on six categories of density.

- Provide state funding of education at the 70 percent level.
- Establish a uniform county levy of 180 mills.
- Distribute tuition apportionment in the same manner as foundation aid.
- Provide that federal and mineral revenues in lieu of property taxes and districts' excess fund balances be part of a guaranteed foundation aid amount.
- Allow districts the option of levying 25 mills above the 180-mill uniform county levy.
- Require that all land be part of a high school district and that districts having fewer than 150 students become part of a larger administrative unit.
- Provide \$25 million for a revolving school construction fund.

The Legislative Assembly offered its response by way of House Bill No. 1003 (1993). The bill was the appropriations bill for the Superintendent of Public Instruction, and, as it progressed through the legislative process, it became the principal 1993 education funding enactment. The bill:

- Set the state support for education at \$1,572 per student for the first year of the 1993-95 biennium and at \$1,636 for the second year.
- Raised the equalization factor from 21 to 23 and then to 24 mills.
- Set weighting factors at 25 percent of the difference between the prior statutory amount and the five-year average cost of education per student, as determined by the Superintendent of Public Instruction, for the first year of the biennium and at 50 percent of the difference for the second year of the biennium.
- Capped state transportation payments at 100 percent for the first year of the 1993-95 biennium and at 90 percent for the second year of the biennium and directed that any savings resulting from imposition of the 90 percent cap during the second year of the biennium be used by the Superintendent of Public Instruction to increase the per student transportation payments available under North Dakota Century Code (NDCC) Section 15-40.1-16.
- Reiterated the existing statutory requirement that school districts admitting nonresident students charge tuition but exempted school districts that admit nonresident students from other districts offering the same grade level services.
- Directed the Legislative Council to conduct another study of education finance and appropriated \$70,000 for purposes associated with the study, including necessary travel and consultant fees.

1993-94 Interim Study

The Legislative Council's interim Education Finance Committee began its efforts during the 1993-94 interim before an appeal of *Bismarck Public School District No. 1* was taken to the North Dakota Supreme Court. The committee was aware that many of the issues addressed by the trial court had been the subject of interim studies and legislative deliberations for many years. However, the committee also realized that the requisite number of Supreme Court justices (four) might not necessarily agree with the lower court's determination that the state's system of funding education was unconstitutional.

The North Dakota Supreme Court issued its decision on January 24, 1994—*Bismarck Public School Dist. No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994). Although three of the five justices held that the state's education funding system was unconstitutional, the Constitution of North Dakota, Article VI, Section 4 requires four members of the court to declare a statute unconstitutional.

A majority of the Supreme Court indicated that there were three principal areas in need of attention—in lieu of revenues, equalization factors, and transportation payments. The Supreme Court did not, however, mandate specific legislative action. The court indicated the areas of concern and left it up to the Legislative Assembly to determine how those areas should be addressed. In a dissenting opinion, Chief Justice VandeWalle stated:

... [T]he present funding system is fraught with funding inequities which I believe have not yet transgressed the rational-basis standard of review but which appear to me to be on a collision course with even that deferential standard.

The Supreme Court decision was issued midway through the 1993-94 interim. By the time the Education Finance Committee had completed its work, it had considered 35 bill drafts and three resolution drafts. Twenty-seven pieces of legislation were recommended to the Legislative Council for introduction during the 1995 legislative session.

The committee's recommendations included increases in the minimum high school curriculum; establishment of an additional Governor's school; appropriation of funds for elementary summer school programs, professional development programs, professional development centers, and refugee student assistance; placement of all land in a high school district; alteration of the weighting categories; a variable equalization factor; reclassification of special education categories; distribution of tuition apportionment according to average daily membership; an increase in transportation payments from 28 cents to \$1 per day for all students transported by schoolbuses; and an \$80 million increase in the level of foundation aid over that appropriated during the 1993-95 biennium.

Education Finance - 1995 Legislative Assembly

Although the 1995 Legislative Assembly enacted a variety of bills dealing with education and education finance, the most significant provisions were found in three bills—Senate Bill No. 2059, Senate Bill No. 2063, and Senate Bill No. 2519.

Senate Bill No. 2059 dealt with the funding of transportation. The bill maintained the per mile payment of 25 cents for small buses and 67 cents for large buses, and it added a payment for in-city transportation of 25 cents per mile. The per head payment for in-city students riding schoolbuses or commercial buses was increased from 17.5 cents to 20 cents per one-way trip. The 90 percent cap on payments, which was instituted by the 1993 Legislative Assembly, was left in place.

Senate Bill No. 2063 dealt with the funding of special education. The bill provided that \$10 million must be used to reimburse school districts for excess costs incurred on contracts for students with disabilities, for low-incidence or severely disabled students, and for certain boarding care. The bill also provided that \$400,000 must be used to reimburse school districts for gifted and talented programs approved by the Superintendent of Public Instruction, and \$500,000 must be used to reimburse school districts with above-average incidence of moderately or severely disabled students. Any amount remaining in the special education line item must be distributed to each school district in accordance with the number of students in average daily membership. The line item for special education was \$36,850,000. The bill also provided that, during the 1995-96 school year, no district or special education unit could receive less than 95 percent of the amount it received during the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. During the 1996-97 school year, no district or special education unit could receive less than 90 percent of that amount.

Senate Bill No. 2519 provided an increase in the per student payment for isolated elementary schools and high schools and increased by 20 percent the weighting factors applied to students attending school out of state. The bill raised the equalization factor from 24 mills to 28 mills for the first year of the biennium and to 32 mills for the second year of the biennium, and provided that thereafter the equalization factor would be tied by a mathematical formula to increases in the level of foundation aid. The equalization factor would not be permitted to fall below 32 mills nor rise above 25 percent of the statewide average school district general fund mill levy. Weighting factors, which had been set at 50 percent of the difference between the factor stated in statute and the five-year average cost of education per categorical student, were left at 50 percent of the difference for the first year of the biennium and then raised to 65 percent of the difference for the second year. High school districts whose taxable valuation per student and whose cost of education per student were both below the

statewide average could receive a supplemental payment, again based on a mathematical formula. The sum of \$2,225,000 was appropriated for supplemental payments. Per student payments were set at \$1,757 for the first year of the biennium and at \$1,862 thereafter.

The 1995 Legislative Assembly appropriated \$517,598,833 for foundation aid, transportation aid, supplemental payments, tuition apportionment, and special education. That figure exceeded the 1993-95 appropriation by \$41,561,941.

Education Finance - 1997 Legislative Assembly

The 1997 Legislative Assembly incorporated the substantive provisions of its education finance package within Senate Bill No. 2338. That bill set the per student payments at \$1,954 for the 1997-98 school year and at \$2,032 for the 1998-99 school year. The equalization factor, which was raised to 32 mills by the 1995 Legislative Assembly and thereafter tied by a mathematical formula to future increases in the level of foundation aid, was left at 32. All references to formulated increases were removed. Weighting factors, which were set at 65 percent of the difference between the statutory factor and the five-year average cost of education per categorical student, remained at 65 percent for the 1997-98 school year and increased to 75 percent for the 1998-99 school year.

Supplemental payments to high school districts whose taxable valuation per student and average cost of education are below the statewide average were maintained by House Bill No. 1393, but the mill range for eligible districts was raised from the 1995 level of 135-200 mills to the 1997 level of 150-210 mills. Payments to school districts for the provision of services to students with special needs were increased from the 1995-97 appropriation of \$36,850,000 to the current appropriation of \$40,550,000. Ten million dollars of this amount was set aside for student contracts, \$400,000 for the provision of services to gifted students, and the remainder was to be distributed on a per student basis.

The total amount appropriated for the foundation program, transportation, supplemental payments, tuition apportionment, and special education by the 1997 Legislative Assembly was \$559,279,403. That figure exceeds the 1995-97 appropriation by \$41,680,570.

State Demographics - Effects on Education Finance

Over the past two decades, central United States has experienced a dramatic decline in childbirth. Much of the baby boom generation has finished having children and its successors, the members of Generation X, have delayed starting families and have chosen to have significantly smaller families. This decline has been especially noteworthy in an area covering 279 counties in six states. The area includes the states of Wyoming and Montana, half of Kansas, approximately

three-fourths of Nebraska, and most of South Dakota and North Dakota.

In this state, much of the demographic decline has been attributed to changes in agriculture. What was once a highly labor-intensive industry has become a highly capital-intensive industry. People who at one time resided in rural areas because of their involvement in agriculture had to move elsewhere to take advantage of job opportunities. In 1900 over 90 percent of this state's population resided in rural areas. Today, over two-thirds reside in the 17 "urban" communities having more than 2,500 residents.

In 1960 nearly one-quarter of the state's population was under the age of 10. Today, deaths exceed the number of births in 31 of the 53 counties. This decline in population can be seen even in relatively short periods of time. In 1990 children under the age of 6 comprised 9.1 percent of the state's population. By 1996 that figure dropped to 7.7 percent. Assuming a continuation of the downward trend in birthrates, coupled with outmigration, the state's kindergarten through grade 12 student population is expected to drop from a 1997 level of 121,708 to 100,152 within ten years.

With these factors as a backdrop, the committee concluded that fewer children and fewer taxpayers will affect the number of school closures and school district consolidations. It will affect the availability of public and private sector services available in parts of the state. It will affect real estate prices and the availability of job opportunities, and it will result in increased migration of people toward economically viable centers.

School District Boundary Restructuring

School district boundary restructuring is the inevitable result of cyclical decline. A declining student population results in a declining budget. A declining budget results in a declining number of staff. A declining number of staff results in a declining number of programs and services. A declining number of programs and services results in declining educational quality and opportunity and inevitably leads to a further decline in the number of students. Research has shown there are 12 factors that point to the need for boundary restructuring by a school district. Those factors are:

- A small critical mass of students.
- Declining student enrollment.
- Declining fund balances.
- Prior or projected budgetary reductions.
- Escalating property taxes.
- Inflation.
- Cost-ineffective class sizes.
- Minimal or declining course offerings and programs.
- Minimal or declining educational support services.
- Staff members teaching multiple preparations.

- Antiquated facilities and equipment.
- Cost-ineffective physical plants.

Research has also shown that certain efficiencies come with school district boundary restructuring. If class sizes are in the low 20s per teacher, there is a reduction in the cost-ineffectiveness found with small classes. Cost savings are achieved by a reduction in the number of duplicatory programs, services, and specialty areas, including libraries, gymnasiums, shops, science laboratories, home economics rooms, food service equipment, athletic or physical education equipment, custodial equipment, and computer technology. Cost savings are also achieved through a reduction in the number of staff, including support staff, custodians, and administrators. Larger year-end budget balances allow for even further gain through investment.

The potential benefits of successful boundary restructuring tend to include:

- Reduced tax rates or more equalized tax rates and therefore greater equity.
- Options to expand the number of, or improve the quality of, courses, programs, and services.
- Fewer course preparations for teachers and therefore greater specialization and enhanced teaching quality.
- Cost-effective class sizes.
- Cost effectively used and higher quality facilities.
- Greater access to more modern equipment, textbooks, references, and computer technology.
- Enhanced curriculum development.
- Enhanced staff training development.
- Increased instructional support personnel.
- Higher staff salaries and benefits.
- More attractive atmosphere for businesses and homeowners.

Potential School District Boundary Restructuring in North Dakota - Testimony and Recommendation

Although research defines a viable school district as one having at least 120 students in grades 9 through 12, the committee considered scenarios involving a high school enrollment of at least 75 students. This level of enrollment was chosen because the first of the state's weighting factor categories references school districts having fewer than 75 students in grades 9 through 12.

North Dakota has 231 school districts. One hundred seven of those have more than 75 students enrolled in grades 9 through 12. It is anticipated that by the 2010-11 school year only 52 districts will have more than 75 students in grades 9 through 12, and of those, only 37 will have more than 120 students in grades 9 through 12.

In order to determine an effective and efficient number of school districts, the committee looked at the

placement of the 65 school districts that presently have high school enrollments in excess of 120 students. If those 65 were the only school districts in the state, the greatest distance that a student would have to travel in order to attend school would be 77 miles. If the number of school districts was increased to 78, the maximum distance to be traveled by a student is reduced to 30 miles. If the number of school districts was increased to 89, the maximum distance to be traveled by a student is 25 miles. If the number of school districts was increased to 116, the maximum distance to be traveled by a student is 20 miles.

The committee was concerned that a scenario that required the existence of 116 school districts meant the demise of 115 other districts. The committee determined that of the current 231 districts, 49 are kindergarten through grade 8 districts and 182 are high school districts, and if a statute were to require all land to be in high school districts, or all school districts to be high school districts, the net effect would be the elimination of roughly half the school districts determined to be unnecessary.

The committee considered a bill draft that required school districts to offer all educational grade levels from 1 through 12 or become attached, through reorganization or dissolution, to a district that does offer those grade levels. Noncomplying school districts would be given one year within which to reconfigure themselves. Although the bill draft did not require the closure of schools, opponents residing in kindergarten through grade 8 districts expressed concern that closure would be the inevitable result. They also expressed concern that the bill draft would generate much infighting among residents as they determined the districts to which their property would be attached and finally, that the bill draft would require them to pay higher property taxes. They indicated to the committee that the issue should be left alone and that the responsibility to determine when closure of a district is appropriate should be within the sole purview of school district residents. The committee determined that overriding concerns regarding equity and educational opportunity validated the bill draft. However, in order to provide maximum opportunity for citizens to consider available options and make the transitions contemplated by the bill draft, the committee added a delayed effective date.

The committee recommends House Bill No. 1033 to require that on or before June 30, 2002, each school district offer all educational grade levels from 1 through 12 or become attached, through reorganization or dissolution, to a district that does offer those grade levels.

School Construction

School buildings and their required maintenance efforts have been likened to a five-stage life cycle. The first 20 years of a building's life comprise stage I. During

this period, maintenance costs are normally limited to minor repairs and small improvements necessitated by changes in instructional programs. Stage II consists of the period between 20 and 30 years. During this period, buildings require increasing annual maintenance expenditures and more frequent replacement of wornout equipment. Stage III consists of the period between 30 and 40 years. General maintenance needs increase rapidly at this point. Most of the original equipment has been replaced and major items, such as roofs and lighting fixtures, normally have to be replaced during this period. Stage IV consists of the period between 40 and 50 years. This is a time of accelerated deterioration. In most instances, the needs, neighborhood, or the community have changed. The school may no longer be located where the children reside. A building of this age is frequently not old enough to be abandoned but too old to serve the school district effectively. The fifth and final stage consists of the period in excess of 50 years. At this point, research shows that the building should be completely reconstructed or abandoned.

North Dakota has over 21.6 million square feet of school space, 31.2 percent of which is less than 10 years old, 10.8 percent of which is between 10 and 30 years old, 41.7 percent of which is between 30 and 50 years old, and 15 percent of which is over 50 years old. A recently conducted survey of North Dakota school districts indicated that necessary repairs and maintenance to existing schools would carry a fiscal impact in excess of \$421 million. The scope of the projects referenced in the survey included site work (paving and lighting), building exteriors (windows, doors, and exterior walls), roofing, handicapped accessibility (restrooms, drinking fountains, and elevators), teaching areas (classrooms, laboratories, and music rooms), nonteaching areas (corridors, restrooms, and media centers), heating, ventilation, and air-conditioning systems, plumbing systems, electrical services, and electrical systems (public address, clocks, and fire alarms).

Basic Ways to Finance School Construction and Building Repair

In surveying the manner in which other states finance school construction and building repairs, it became apparent that nine funding methods exist, most of which exhibit both positive and negative features:

1. Current or existing revenues. This method is often referred to as "pay-as-you-go financing." It is usually available only to the wealthiest school districts or to districts willing and able to compromise their needs over a period of time.
2. Reserve funds. This method involves setting aside tax revenues in order to accumulate moneys for future construction projects.
3. General obligation bonds. This method involves serial bonds, or those that mature at different intervals over a period of time. Their use is generally regulated by the state through limits

on the amount of a district's bonded indebtedness. The limit is usually based on the assessed valuation of property in the district.

4. Complete state support. Hawaii is the only state that offers complete state support, and even it allows a local contribution to capital expenditures. California and Florida offer assistance that is close to full state support. Maryland used to offer such support but is now phasing it out. While this funding method is initially attractive, districts have found that it requires their extenuating needs to be placed against and reviewed with other equally compelling state-level needs.
5. State-local sharing. Some states provide a fixed percentage of each school district construction or repair project. While this is attractive to districts that have the ability to raise matching funds, it does very little to assist districts that are not capable of raising such funds.
6. Flat grants. Some states allocate a certain dollar amount annually to assist school districts with capital expenses. The allocations are generally based on formulas covering square footage, local effort, and necessity.
7. Equalization aid. This type of support supplements those districts that do not have the ability to pay for facilities.
8. State loans. Some states maintain a permanent loan fund. This fund tends to be modest in relation to school district needs. The state generally limits the number of districts that can benefit from the loan fund, as well as the extent to which the districts may benefit.
9. Authorities and lease-rental financing. Under this method, a school district relies on another authority or entity to construct a building and then leases it from that authority or entity until the bonds used to construct it have been repaid.

Financing School Construction in North Dakota

The principal state funding mechanism for school construction is the school construction fund program. Loans are made to school districts by the Board of University and School Lands from the coal development trust fund. The outstanding principal amount of school construction loans from the trust fund is statutorily limited to \$25 million. The Superintendent of Public Instruction accepts applications for loans and determines an interest rate for each loan based on a school district's financial circumstances. The interest rate set by the Superintendent of Public Instruction may not exceed the lesser of two percent below the net interest on comparable tax-exempt obligations or six percent.

As of October 29, 1997, additional loans in the amount of \$10.3 million have been approved by the

Superintendent of Public Instruction. The loans have not been funded because the approved loan amount exceeds the available funds by over \$2.1 million. It will not be possible to fund these loans, in full, until principal repayments of an equal amount are received on the outstanding loans. Given the scheduled principal repayments, sufficient funds will not be available to fund all the school construction projects approved through 1997 until June 1, 2000.

Proposals for Change

One method suggested to the committee for increasing school construction funding involves eliminating the cap on the dollar amount of school construction loans that could be made from the coal development trust fund. This would allow the Board of University and School Lands to loan an additional \$20 million to \$25 million for school construction projects. However, the concern regarding this option is that it is a short-term fix. Given current requests for assistance, the program would be capped out again in approximately four to five years, and new loans would again be limited to the amount of principal repayments received each year under the expanded program. These repayments are estimated to be in the range of \$2.5 million.

A second method suggested to the committee involved having the Board of University and School Lands sell the school construction loans it is holding under the existing program. This would allow for replenishment of the \$25 million available under the existing program. However, the Legislative Assembly would be required to provide a biennial appropriation to the Municipal Bond Bank in an amount that would equal the difference between the interest payments made by the schools on their outstanding (bonds) loans and the interest payments that the Bond Bank would make on the bonds it would sell in order to obtain the funds needed for purchase of the loans. The amount that would be needed by the Bond Bank under such a program would be approximately \$420,000 per year or \$840,000 per biennium. A proposal for the source of the funds was the investment earnings on the trust fund itself. Those earnings presently are deposited in the state's general fund.

A third method suggested to the committee involved the establishment of a new school construction fund program that would use the investment earnings of the trust fund. The Legislative Assembly would be required to provide a continuing appropriation to a new school construction fund covering investment earnings on approximately \$50 million. These moneys would be available only for the following purposes:

1. To make an annual payment to the Municipal Bond Bank in the amount necessary to make interest payments on Bond Bank bonds issued to buy existing school loans from the trust fund;

2. To make annual payments to the Municipal Bond Bank in the amount necessary to make interest payments on additional Bond Bank bonds issued to make new school construction loans at a blended rate of approximately two percent, provided an annual limit of \$10 million, or some other amount determined by the Legislative Assembly, was set; and

3. To make direct, below-market interest rate loans to school districts.

This method would provide a new school construction fund with approximately \$3 million each year. If the existing program is fully funded at the time an alternate program such as this would be implemented, the amount needed annually by the Bond Bank to make interest payments on the bonds issued to buy the \$25 million in outstanding school loans would be approximately \$420,000. Each \$10 million of additional school construction loans, if funded by the Bond Bank and made with an average interest rate of two percent, would require an annual subsidy of approximately \$400,000.

After three bienniums, and assuming a demand each year for \$10 million in school construction loans, \$60 million of new school construction loans would have been funded together with \$25 million of loans made under the existing program. The total school construction loan amount would be \$85 million, at a cost to the state of \$16.5 million. Without allowing for any investment earnings, the new school construction fund would have a balance at the time of approximately \$8.98 million. At the same time, however, the fund would be committed to provide \$2.42 million in interest subsidy payments to the Bond Bank for an additional 14 years. Thereafter, the annual amount would decrease as each series of Bond Bank bonds matures.

The fourth and final method suggested to the committee could be used in addition to the other options or established on its own. This method involves the establishment of a state credit enhancement program. The benefit of such a program would be to strengthen the credit quality of the program's bond rating, thereby lowering the interest rates on the Bond Bank bonds issued to fund school construction loans. Lower interest rates would lower the cost of each school loan annual subsidy or one-time buydown amount and would allow either more loans or lower interest rate loans.

Under a credit enhancement program, provisions would be made for the direct payments to the Bond Bank of state aid appropriated to a school district if the school district fails to make full and timely debt service payments on its construction loan.

Committee Consideration and Recommendation

The committee was concerned that the present school construction loan program is at its capacity and that future loans will be restricted to the amount of principal repayments made each year. The committee therefore recommends Senate Bill No. 2041 to increase

the coal development trust fund loan limit from \$25 million to \$40 million.

Because the committee also recognized that for many school districts a building replacement project is very nearly beyond their means, the committee recommends Senate Bill No. 2042 to allow for the withholding of state-aid payments to a school district if the district fails to make full and timely payments on any evidences of indebtedness sold to the Bond Bank. The committee determined that the likelihood of ever having to employ such a provision was extremely remote. However, the committee also determined that a state-aid intercept program would result in lower interest rates. The benefit to school districts would be the availability of more moneys for school construction loans or lower cost school construction loans.

Education Funding - Equity Issues

Equity in educational funding continues to be a nebulous concept. Traditionally, issues of equity or fairness have been measured in terms of per student revenues and per student expenditures. For the 1995-96 school year, however, the range of funding per student, after eliminating both the high and low extremes, still exceeded \$2,000. During the 1984-85 school year, the state contribution was approximately 42 percent. Ten years later, the state contribution had fallen to 38.4 percent.

The inequity in per student funding is magnified when the discussion turns to facility funding, because equity factors are not built into facility funding. If every school district in the state were to levy 10 mills for facility funding, the district at the 95th percentile would raise \$152.98 per mill and the district at the fifth percentile would raise \$38.30. The difference is four to one.

The mill levy system was termed one of the greatest factors in school district funding disparity. If a piece of property worth \$50,000 were located in the district at the 95th percentile, its owners would pay \$1,479.10 in property taxes. If that same property were located in the district at the fifth percentile, its owners would pay \$758.90 in property taxes. The difference is nearly two to one. If one includes all school districts, the disparity in levies is greater than six to one.

The committee was presented with a number of options for reducing this kind of disparity. The first would involve increasing funding and concentrating it in a formula that would include local property taxation. The state would therefore pay a greater share of the cost in those districts that could not levy higher taxes. While greater equity could be achieved through a reduction in, and therefore an increase in the size of, taxing units, ultimate equity, however, could be achieved only through the creation of one consolidated school district. An alternative to having one consolidated district would involve requiring that all existing districts levy exactly the same number of mills. If all districts were to levy 200 mills, for

example, it may be more equitable than the present system, but a significant number of school districts would have their levies substantially increased.

Another method for achieving equity requires that all districts levy a specific number of mills and that the state deduct that same number of mills. This method would turn some money back to the state for redistribution to less wealthy districts. A recapture provision would have to be instituted as well as a provision capping districts that levy excessive mills.

Although such suggestions were termed "politically imponderable," the effect of other equity measures was found to be equally undesirable. If achieving equity in educational funding is based strictly on per student dollars, a much greater state contribution is required. However, with that increase in the state's contribution comes considerably more state control. That control will determine which facilities will be built, at what cost, and at what location. That control will also determine programming standards and curriculum.

Committee Consideration and Conclusion

The committee considered a bill draft that would require school districts to impose a minimum levy of 125 mills. If a school district did not levy at least 125 mills, the Superintendent of Public Instruction would have to withhold from the district's foundation aid an amount equal to the difference between the amount actually raised by the district and the amount that would have been raised had the district levied 125 mills.

The statewide average general fund mill levy is 186 mills, and the statewide average total mill levy is slightly higher than 200 mills. Under the bill draft, only \$242,000 would be returned to the state for redistribution. Because each high school district in the state levies at least 125 mills, the bill draft would affect only elementary or "K-8" districts. The committee determined that the bill draft would not be necessary if all property in the state belonged to a high school district.

The committee also considered a bill draft that would allow school districts to use their building fund levies for the purchase and maintenance of educational technology and for the salaries of school district personnel who supervise the use and maintenance of the technology.

Thirty-three school districts have an educational technology levy. Many of those districts without a technology levy would have difficulty passing a levy for any purpose. Because most districts have a building levy, it was initially thought that the proposed bill draft could make available much needed moneys for technology. However, testimony indicated that the bill draft would also cause significant equity problems. Many of the districts that cannot afford technology purchases are the same districts that cannot afford necessary school building repairs and maintenance. In effect, the bill draft would involve taking already inadequate dollars and

increasing the purposes for which those dollars could be expended. Secondly, by allowing the wealthier districts to utilize building fund dollars for technology, the bill draft would in effect increase the gap in technology spending between wealthy and nonwealthy districts.

The committee then considered an amended version of the bill draft. The amended version would appropriate up to \$7 million of an anticipated \$12 million foundation aid carryover to be used as matching grants for school district technology acquisition. The amended version also replaced the existing technology levy with one that would allow up to five mills to be levied by board action, rather than by voter approval. While the committee recognized that there is an acute need for technology in the state's school districts, the committee viewed the bill draft as proposing a contingency fund for technology. The committee was reluctant to earmark moneys for a specific purpose, preferring instead to allow local school districts flexible decisionmaking with respect to their expenditures.

IMPACT OF FEDERAL EDUCATION LEGISLATION AND MANDATES FROM WHATEVER SOURCES ON SCHOOL DISTRICTS

North Dakota Statutory Mandates

Each school district in this state is governed by an elected board. North Dakota Century Code Chapter 15-29 requires each such elected school board:

1. To establish for all children of legal school age residing within the district a system of free public schools which must furnish school privileges equally and equitably;
2. To organize, establish, operate, and maintain such elementary and high schools as it deems requisite and expedient; and
3. To employ and pay teachers, a superintendent of schools, principals, and a business manager.

The North Dakota Century Code also requires that there be 173 full days of classroom instruction and that during those days certain subjects be taught. North Dakota Century Code Section 15-38-07 provides that these subjects include "spelling, reading, writing, arithmetic, language, English grammar, geography, United States history, civil government, nature study, and elements of agriculture." Physiology and hygiene must also be taught. In teaching these subjects, the teacher is to:

1. Give special and thorough instruction concerning the nature of alcoholic drinks and narcotics and their effect upon the human system;
2. Give simple lessons in the nature, treatment, and prevention of tuberculosis and other contagious and infectious diseases;

3. Give, to all pupils below the high school and above the third year of schoolwork, no fewer than four lessons in hygiene each week for 10 weeks of each school year from textbooks adapted to the grade of the pupils; and
4. Give, to all pupils in the three lowest primary school years, no fewer than three oral lessons on hygiene each week for 10 weeks of each school year, using textbooks adapted to the grade of the pupils as guides or standards for such instruction.

North Dakota Century Code Chapter 15-38 requires that instruction be given in the Constitution of the United States beginning with grade 8, that physical education be taught in all grades, that there be moral instruction "tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, international peace, respect for honest labor, obedience to parents, and deference to old age," and that there be oral instruction in the humane treatment of animals.

In addition to the subjects that must be taught, NDCC Section 15-41-25 specifies a list of subjects that must be made available to students at least once during each four-year period. These subjects are:

1. English, four units.
2. Mathematics, three units.
3. Science, four units.
4. Social studies, three units, which must include one unit of world history and one unit of United States history, each of which must be integrated with a strong geography component.
5. Health and physical education, one unit.
6. Music, one unit.
7. Any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education, six units.

With respect to who teaches children enrolled in the state's public schools, NDCC Section 15-36-11 requires all persons teaching in the public schools to hold valid North Dakota teaching certificates. Section 15-41-25 expands this requirement for high school teachers by providing that "every teacher in any high school in this state teaching any of the course areas or fields mentioned in section 15-41-24 shall have a valid teacher's certificate and shall have a major or minor in the course areas or fields that the teacher is teaching if the high school is to receive any approval by the department of public instruction." Section 15-47-46 expands this requirement for teachers of kindergarten and grades 1 through 8 by requiring that such teachers also have appropriate majors, minors, or endorsements for the levels or areas in which they are teaching.

Finally, NDCC Section 15-35-01.2 requires that the State Fire Marshal is to inspect each public or private school at least once every three years. If deficiencies are noted, the school district superintendent is required

to correct any deficiencies within a time period acceptable to the State Fire Marshal. If a deficiency qualifies as an imminent hazard, the school is subject to immediate closure.

The North Dakota Century Code includes financial penalties for noncompliance with some of the above-referenced requirements. Section 15-40.1-06, which sets forth the educational support per student, provides that school districts not meeting the minimum curricular requirements of Section 15-41-24 or the teaching qualifications of Section 15-41-25 are entitled to only \$220 per student. School districts not maintaining an accredited status receive per student payments that are reduced by \$200 for each year such districts remain unaccredited.

North Dakota Regulatory Mandates

Until 1997 the Superintendent of Public Instruction had the authority to adopt rules, regulations, standards, guidelines, statements, and policies implementing a variety of statutory provisions. In 1997 Senate Bill No. 2336, the Legislative Assembly did not limit the statutory provisions that could be the subject of administrative promulgations but rather required that such promulgations be "rules" adopted in accordance with NDCC Chapter 28-32. Senate Bill No. 2336 also provided that any promulgation "adopted by the superintendent of public instruction in a manner other than that set forth in chapter 28-32 is ineffective after October 31, 1999." Among the best-known promulgations subject to the October 31, 1999, sunset are those referred to as the state accreditation standards. Published in a 1991 document entitled *North Dakota Accreditation Standards, Criteria and Procedures for the Classification of Elementary, Middle Level/Junior High, and Secondary Schools*, these standards articulate the minimum requirements for school district administration, instructional personnel, instructional programs, student evaluations, student personnel services, library media services, and school district policies. The criteria are broken down into those that are required and those that are optional. Schools are reviewed annually to ensure compliance with the required criteria and are given a biennial review to determine application of the optional standards and criteria.

North Dakota Judicial Mandates

While the North Dakota Supreme Court has been involved in education litigation from a variety of perspectives, including teacher personnel files, duties of school district clerks, the right of parents to educate their children at home, and the appropriateness of annexation proceedings, it was the court's involvement in the case of *Bismarck Public School District No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994) which generated the greatest potential for financial impact on school districts. The complaint, filed in 1989, charged that disparities in revenue among the school districts had caused corresponding disparities in educational

uniformity and opportunity which were directly and unconstitutionally based upon property wealth. The district court supported this charge, declared the state's system of financing education to be unconstitutional, and directed the Superintendent of Public Instruction to prepare and present to the Governor and the Legislative Assembly, during the 1993 legislative session, plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

On appeal, the North Dakota Supreme Court upheld the state's system of funding education by a vote of 3-2, with three justices concluding the state's system was unconstitutional. The Constitution of North Dakota, Article VI, Section 4 requires that four of the five members of the court declare a statute unconstitutional. The majority of the court articulated the areas those justices believed were most in need of attention—in lieu of revenues, the equalization factor, and transportation payments.

Federal Statutory Mandates

Federal statutory mandates that affect schools and school districts are found in numerous titles of the United States Code (U.S.C.). Examples include:

- U.S.C. Title 8 - Immigration and Nationality: Addresses the unlawful employment of aliens and unfair immigration-related employment practices.
- U.S.C. Title 15 - Commerce and Trade: Addresses toxic substances and includes the regulation of various chemicals that may be used by students or school personnel, as well as issues of asbestos and radon detection and removal or control.
- U.S.C. Title 29 - Labor: Addresses fair labor standards, age discrimination, vocational rehabilitation, the Employee Retirement Income Security Act (ERISA), and the Family and Medical Leave Act (FMLA).
- U.S.C. Title 41 - Public Contracts: Addresses drug-free workplace requirements.
- U.S.C. Title 42 - Public Health and Welfare: Addresses topics ranging from safe drinking water to voting rights and contains a variety of civil rights legislation, including the Americans with Disabilities Act.

Among the federal statutory mandates, there are three legislative enactments that have received significant attention—the Individuals With Disabilities Education Act, Goals 2000: Educate America Act, and the School-To-Work Opportunities Act.

Individuals With Disabilities Education Act

Formerly known as the Education for All Handicapped Children Act, this legislation is designed to ensure that all children with disabilities have available to them a free appropriate public education that

emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist the states and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities.

These goals are ensured through an entitlement formula that originally promised funding equal to:

. . . the number of children with disabilities aged 3-5, inclusive, in a State who are receiving special education and related services . . . and the number of children with disabilities aged 6-21, inclusive, in a State who are receiving special education and related services . . . multiplied by . . . 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States.

In order to obtain funding, a state must submit a plan that:

1. Sets forth the policies and procedures designed to assure that funds paid under the Act will be expended in accordance with the provisions of the Act;
2. Establishes programs and procedures to assure that funds received by the state will be utilized only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities;
3. Describes a comprehensive system of personnel development which must include a description of the procedures and activities the state will undertake to ensure an adequate supply of qualified special education and related services personnel;
4. Describes the procedures and activities the state will undertake to ensure that all personnel necessary to carry out this Act are appropriately and adequately prepared;
5. Sets forth policies and procedures to assure that to the extent consistent with the number and location of children with disabilities in the state who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this Act by providing special education and related services for such children;
6. Sets forth policies and procedures which assure that the state shall seek to recover any funds made available to any child who is determined to be erroneously classified as eligible to be counted under this Act;
7. Provides satisfactory assurance that the control of funds provided under this Act shall be in a

public agency for the uses and purposes provided in this Act;

8. Provides for reporting and recordkeeping as required by the Secretary of Education;
9. Provides procedures for program evaluations at least annually;
10. Provides that the state has an advisory panel to set policies and procedures for developing and implementing interagency agreements defining the financial responsibilities of each agency for providing children with disabilities with free appropriate public education and resolving interagency disputes;
11. Sets forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained; and
12. Sets forth policies and procedures designed to provide a child with a smooth transition from early intervention programs to preschool programs and providing a method for ensuring that, by the time a child reaches age 3, an individualized education program or family service plan has been developed and is being implemented.

The moneys received by the state are then distributed to school districts that submit applications to the Superintendent of Public Instruction. These applications must:

1. Provide satisfactory assurance that payments will be used for excess costs directly attributable to programs which:
 - a. Provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are disabled, regardless of the severity of their disability, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;
 - b. Establish policies and procedures in accordance with detailed criteria prescribed under this title;
 - c. Establish a goal of providing full educational opportunities to all children with disabilities, including:
 - (1) Procedures for the implementation and use of the comprehensive system of personnel development;
 - (2) The provision of, and the establishment of priorities for providing, a free appropriate public school education to

all children with disabilities, first with respect to children with disabilities who are not receiving an education and second with respect to children with disabilities who are receiving an inadequate education;

- (3) The participation and consultation of the parents or guardian of such children; and
 - (4) To the maximum extent practicable and consistent with the provisions of this title, the provision of special services to enable such children to participate in regular education programs;
- d. Establish a detailed timetable for accomplishing the goal described in subsection c; and
 - e. Provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subsection c;
2. Provide satisfactory assurance that:
 - a. The control of funds provided under this subchapter, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this subchapter, and that a public agency will administer such funds and property;
 - b. Federal funds expended by local educational agencies and intermediate educational units for programs under this subchapter:
 - (1) Shall be used to pay only the excess costs directly attributable to the education of children with disabilities; and
 - (2) Shall be used to supplement and, to the extent practicable, increase the level of state and local funds expended for the education of children with disabilities, and in no case to supplant such state and local funds; and
 - c. State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this subchapter;
 3. Provide for:
 - a. Furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the state educational agency to perform its duties

under this subchapter, including information relating to the educational achievement of children with disabilities participating in programs carried out under this subchapter; and

- b. Keeping such records, and affording such access to such records, as the state educational agency may find necessary to assure the correctness and verification of such information furnished under subsection a;
4. Provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all required evaluations and reports be public information;
5. Provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each child with a disability at the beginning of each school year and will then review and, if appropriate, revise its provisions periodically, but not less than annually;
6. Provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of this title; and
7. Provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of this title.

All local school district applications must be approved by the Superintendent of Public Instruction before the distribution of funds. During the 1997-99 biennium, the state will receive approximately \$14 million from the federal government for special education. The state general fund appropriation for special education for that period is \$40,550,000.

Goals 2000: Educate America Act

Goals 2000: Educate America Act is, according to its legislative history, a "means for the federal government to give a major boost to school reform in the United States." The Act begins with the congressional articulation of the following eight goals:

1. That by the year 2000, all children will start school ready to learn;
2. That by the year 2000, the high school graduation rate will increase to at least 90 percent;
3. That by the year 2000, all students will leave grades 4, 8, and 12 having demonstrated competency over challenging subject matter including English, mathematics, science, foreign languages, civics and government, economics,

the arts, history, and geography, and every school in America will ensure that all students learn to use their minds well, so they may be prepared for employment in our nation's modern economy;

4. That by the year 2000, the nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century;
5. That by the year 2000, the United States students will be first in the world in mathematics and science achievement;
6. That by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete on a global economy and will exercise the rights and responsibilities of citizenship;
7. That by the year 2000, every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning; and
8. That by the year 2000, every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

After agreeing on the national goals, Congress enacted legislation designed to provide a framework for meeting the goals. This framework included:

1. Promoting coherent, nationwide systemic education reform;
2. Improving the quality of learning and teaching;
3. Defining appropriate and coherent federal, state, and local roles and responsibilities for education reform and lifelong learning;
4. Establishing valid and reliable mechanisms for building a broad national consensus on American education reform; assisting in the development and certification of high-quality, internationally competitive content and student performance standards; and assisting in the development and certification of high-quality assessment measures that reflect the internationally competitive content and student performance standards;
5. Supporting new initiatives at the federal, state, local, and school levels to provide an equal educational opportunity for all students to meet high-academic and occupational skill standards and to succeed in employment and civic obligations;
6. Providing a framework for the reauthorization of all federal education programs by:

- a. Creating a vision of excellence and equity that will guide all federal education and related programs;
 - b. Providing for the establishment of high-quality, internationally competitive content and student performance standards and strategies that all students will be expected to achieve;
 - c. Encouraging and enabling all state educational agencies to develop comprehensive improvement plans that will provide a coherent framework for the implementation of reauthorized federal education and related programs in an integrated fashion that effectively educates all children to prepare them to participate fully as workers, parents, and citizens;
 - d. Providing resources to help individual schools, including those serving students with high needs, develop and implement comprehensive improvement plans; and
 - e. Promoting the use of technology to enable all students to achieve the national education goals;
7. Stimulating the development and adoption of a voluntary national system of skill standards and certification to serve as a cornerstone for the national strategy to enhance work force skills; and
 8. Assisting every elementary and secondary school receiving funds under this chapter to actively involve parents and families in supporting the academic work of their children at home and in providing parents with skills to advocate for their children at school.

In order to meet the national goals, Congress established a National Education Goals Panel to advise the President, the Secretary of Education, and Congress. The panel consists of 18 members. Eight members are Governors, four are congressmen, four are state legislators, and two are presidential appointees.

The panel reports annually to the President, the Secretary of Education, and Congress regarding the progress that the nation and the states are making toward achieving the national education goals. The panel is also charged with reviewing voluntary national content standards and voluntary national student performance standards, reporting on promising or effective actions being taken at the national, state, and local level to achieve the national education goals, and helping to build a nationwide bipartisan consensus for the reforms necessary to achieve the national education goals.

The Act also makes funding available to states wishing to engage in state-level and local-level systemic reform. In order to obtain federal moneys, a state must submit an application at the time and in the manner required by the Secretary of Education and provide

assurances that the state will cooperate with the Secretary of Education, that the state has in place adequate authority to allow it to carry out a state improvement plan, that the state content standards and state student performance standards developed for student achievement are not less rigorous than such standards used prior to March 1, 1994, and that the state will provide broad public participation in the planning process. A state awarded moneys in this manner must in turn provide, through a competitive process, subgrants to its participating school districts.

There is still much ongoing debate regarding the mandatory versus voluntary nature of this Act. Within the Act, the following prohibition on federal mandates, direction, and control can be found:

Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this chapter. (20 U.S.C. § 5898)

The Act goes on to provide that:

. . . [T]he congress agrees and reaffirms that the responsibility for control of education is reserved to the States and local school systems and other instrumentalities of the States and that no action shall be taken under the provisions of this chapter by the Federal Government which would, directly, or indirectly, impose standards or requirements of any kind through the promulgation of rules, regulations, provision of financial assistance and otherwise, which would reduce, modify, or undercut State and local responsibility for control of education. (20 U.S.C. § 5899) . . .

Nothing in this chapter shall be construed to require a State, a local educational agency, or a school, as a condition of receiving assistance under this subchapter--(1) to provide outcomes-based education; or (2) to provide school-based health clinics or any other health or social service.

. . . Nothing in this chapter shall be construed to require or permit any Federal or State official to inspect a home, judge how parents raise their children, or remove children from their parents, as a result of the participation of a State, local educational agency, or school in any program or activity carried out under this chapter.

School-To-Work Opportunities Act

In 1992 there were approximately 3.4 million individuals aged 16 through 24 in this country who had not completed high school and were not currently enrolled in high school. That amounts to 11 percent of this age group.

Congressional findings at the time indicated that:

1. Three-fourths of all students entered the work force without baccalaureate degrees and that many of those students did not possess the academic and entry-level occupational skills necessary to succeed in the changing United States workplace;
 2. Unemployment among youth in the United States is intolerably high and that earnings of high school graduates have been falling relative to the earnings of those having more education;
 3. The workplace is changing in response to heightened international competition and new technologies and that such forces are shrinking the demand for and undermining the earning power of unskilled labor;
 4. The United States lacks a comprehensive and coherent system to help its youth acquire the knowledge, skills, abilities, and information about and access to the labor market necessary to make an effective transition from school to career-oriented work or to further education and training; and
 5. The work-based learning approach, which is modeled after the time-honored apprenticeship concept, integrates theoretical instruction with structured on-the-job training and that this approach combined with school-based learning can be very effective in engaging student interests, enhancing skill acquisition, developing positive work attitudes, and preparing youth for high-skill, high-wage careers.
5. Helps all students attain high academic and occupational standards; and
 6. Builds on and advances a range of promising school-to-work activities such as tech-prep education, career academies, school-to-apprenticeship programs, cooperative education, youth apprenticeships, school-sponsored enterprises, business education compacts, and promising strategies that assist school dropouts.

Hence, Congress enacted the School-to-Work Opportunities Act of 1994. The Act was designed to:

1. Improve the knowledge and skills of youth by integrating academic and occupational learning and by building effective linkages between secondary and postsecondary education;
2. Encourage the development and implementation of programs that will require high-paid, high-quality, work-based learning experiences;
3. Motivate all youth to stay in or return to school;
4. Expose students to a broad array of career opportunities and facilitate the selection of career majors, based on individuals' interests, goals, strengths, and abilities;
5. Increase opportunities for minorities, women, and individuals with disabilities by enabling such individuals to prepare for careers that are not traditional for their race, gender, or disability; and
6. Further the national education goals set forth in the Goals 2000: Educate America Act.

The congressional solution was to create school-to-work opportunity systems that are a part of a comprehensive education reform package, that are integrated with the systems developed under Goals 2000, and that offer opportunities for all students to participate in an education and training program that will enable them to earn portable credentials, prepare them for their first jobs in high-skill, high-wage careers, and which will increase their opportunities for further education. It was the intent of Congress to facilitate the creation of a universal, high-quality school-to-work transition system that:

1. Enables youth to identify and navigate paths to productive and progressively more rewarding roles in the workplace;
2. Enables youth to utilize workplaces as active learning environments by making employers joint partners with educators in providing opportunities for participation in high-quality, work-based learning experiences;
3. Enables youth to promote the formation of local partnerships dedicated to linking the worlds of school and work;
4. Promotes the formation of local partnerships between elementary and secondary schools and local businesses as an investment in future workplace productivity and competitiveness;

In order to receive federal development grants for the school-to-work program, a Governor must submit an application to the Secretaries of Labor and Education. The application must include a timetable and an estimate of the amount of funding needed to complete the planning and development necessary to implement a comprehensive statewide school-to-work opportunities system for all students; a description of how the appropriate state officials and agencies will collaborate in the planning and development of the statewide school-to-work opportunity system; a description of the manner in which the state has obtained and will continue to obtain the active and continued participation in the planning and development of the statewide school-to-work opportunities system of employers and other interested parties, business associations, industrial centers, employees, labor organizations or associations, teachers, related services personnel, students, parents, community-based organizations, tribes, and registered apprenticeship agencies. Implementation grants are also available under the Act, as are grants for school-to-work programs for Indian youth and grants for local partnerships.

The Act contains specific provisions prohibiting the displacement of currently employed workers by students participating in school-to-work programs or the

replacement of temporarily laidoff workers by students participating in the program.

As with Goals 2000, the debate continues regarding whether or not this program is a federal mandate. The Act itself, in 20 U.S.C. § 6234, provides:

Nothing in this Act shall be construed to authorize an officer or employee of the federal government to mandate, direct, or control a state's, local educational agency's, or school's curriculum, program of instruction, or allocation of state or local resources or mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

Federal Regulatory Mandates

In North Dakota, the Superintendent of Public Instruction is given broad statutory authority to regulate education. One example of this broad authority can be found in the directive to "adopt rules for the accreditation of the public and private schools of the state." Federal regulations, on the other hand, appear to be more closely related to specific statutory sections. In some instances, the regulations are merely rephrasings of actual statutes. In other instances, they are designed to assist the public by providing examples of appropriate reimbursement computations or examples of correctly completed applications.

Federal Judicial Mandates

The increase of a federal presence in local education management comes not only from the exercise of congressional powers but also from the exercise of judicial powers. Examples of recent United States Supreme Court and federal appellate court decisions are included to demonstrate how judicial holdings may place on school districts requirements that were not articulated in legislation or necessarily even contemplated during a legislative process. They are also included to demonstrate the existence of inconsistencies and an occasional lack of clarity, which may result in:

1. School districts doing more than they legally need to, thereby incurring additional costs;
2. School districts doing less than they legally need to and incurring costs associated with litigation; or
3. School districts incurring costs simply to determine the scope and extent of their duties and obligations, given current judicial decisions.

Religious Issues

The Village of Kiryas Joel is a New York religious community of Hasidic Jews. The majority of the children from the village attend private religious schools. These schools, however, did not provide services to handicapped children. Before the Supreme Court's decision in *Aguilar v. Felton*, 473 U.S. 402, 105 S. Ct. 3232 (1985), assistance for Kiryas Joel children who needed

special education services was provided by the local school district at an annex to one of the religious schools. In response to *Aguilar*, which barred the New York City Board of Education from sending public schoolteachers into parochial schools to provide remedial education for disadvantaged students, the school district discontinued this manner of providing special education services to Kiryas Joel children and required that those students needing special education services attend public schools outside the village. This alternative proved unacceptable to the families of these students. The parents claimed placing the children in public schools caused them to suffer trauma and fear due to the drastic differences in culture between the groups. In response to this problem, the New York Legislature created a separate school district which had boundaries identical to the village.

In a 6-3 decision with six different written opinions, the United States Supreme Court, in *Kiryas Joel Village Sch. Dist. v. Grumet*, 114 S. Ct. 2481 (1994), invalidated the New York law as violating the establishment clause. Writing for the Court, Justice Souter held the law was invalid because governmental authority to run the school district was granted primarily on the basis of religion. The law was directly opposite to the state policy of consolidating school districts and was created by a special act of the legislature, rather than under the general laws governing school districts. The Court found that the statute failed the test of neutrality and led the Court to disbelieve that the legislature would provide this benefit equally to other religious and nonreligious groups.

In *Agostini v. Felton*, 65 USLW 4524 (1997), the United States Supreme Court overruled *Aguilar* by holding that a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the establishment clause when such instruction is given on the premises of sectarian schools by government employees under a program containing safeguards, such as those present in New York City's Title I program. The New York City program allocated aid on the basis of neutral, secular criteria that neither favored nor disfavored religion. The aid was made available to both religious and secular beneficiaries on a nondiscriminatory basis. Under such circumstances, the Court held, the aid is less likely to have the effect of advancing religion. The Supreme Court also held that the *Aguilar* court erred in concluding that New York City's Title I program resulted in an excessive entanglement between church and state.

Speech and Expression Issues

In *Lovell v. Poway Unified Sch. Dist.*, 847 F. Supp. 780 (S.D. Cal. 1994), the United States District Court for the Southern District of California held a student's statement that she was going to "shoot" a school counselor if she did not get a requested schedule change was not a threat and was protected by the First Amendment. The

court viewed the statement in light of the fact that the student had spoken to the counselor several times that same day, that the student did not act in a physically threatening manner, and that the counselor did not seek immediate assistance or speak with anyone else about the incident until several hours later. In this context, the court determined the statement could not be seen as "serious expression of intent to harm or assault." Accordingly, the three-day suspension based on this statement was a violation of the student's First Amendment right of free expression.

Search and Seizure Issues

A private security officer employed by a school district discovered a student in a lavatory and smelled smoke. He asked the student if he had been smoking. The student admitted he had been smoking and continued to act in a suspicious manner. The officer then did a patdown search of the student and discovered several bags of crack cocaine. The court, in *In re S. K.*, 647 A.2d 952 (Pa. Super. Ct. 1994), held the smoke in the bathroom and the student's admission created reasonable suspicion for the patdown and the continued behavior and finding of cigarettes created reasonable suspicion for the more thorough search that led to the discovery of the crack.

In contrast, the Illinois Court of Appeals, in *People v. Dilworth*, 640 N.E.2d 1009 (Ill. App. Ct. 1994), overturned the conviction of a student who had been caught with cocaine on school property. The school was assigned a full-time police officer who, acting on a tip from a teacher, searched a student's locker and found no contraband. While the search was under way, the student to whom the locker was assigned began talking with the defendant. The two students began giggling and the officer thought they had played him for a fool. The defendant student was holding a flashlight in his hand. The officer grabbed the flashlight, opened it, and found cocaine inside. The defendant student was convicted on the basis of this evidence. The appellate court, however, found the search unreasonable, holding that "the student's privacy interests are not so diminished as to permit an intrusion based primarily on an officer's subjective perception of an affront to his dignity."

Gender Discrimination

Having stricter grade standards for cheerleaders than for football players was held by the California Court of Appeals in *Fontes v. Irvine Unified Sch. Dist.*, 30 Cal. Rptr. 2d 521 (Cal. Ct. App. 1994) not to be a violation of equal protection based on gender discrimination. The court reasoned that because cheerleading was open to students of both sexes, the classification did not discriminate against females, but rather against cheerleaders. The court, however, held the classification not rationally related to any legitimate purpose and therefore invalidated the school policy.

Sexual Abuse

The Georgia Court of Appeals, in *Doe v. Howell*, 441 S.E.2d 767, 768-69 (Ga. Ct. App. 1994), held a teacher was immune from a suit for negligent supervision of a student who was sexually molested by another student while the classroom was dark for purposes of seeing a film. The court viewed supervision as a discretionary function. Because the assaulting student had no prior history of such behavior, the court held the assault was not reasonably foreseeable by the teacher.

In *Spivey v. Elliott*, 29 F.3d 1522, 1526 (11th Cir. 1994), the United States Court of Appeals held that a special relationship did exist between the state and an 8-year-old hearing-impaired boy who was a resident at a state-run school for the deaf and that this relationship did create the duty to protect the boy from sexual assault by other students.

Special Education

The Eighth Circuit Court of Appeals, in *Petersen v. Hastings Pub. Schs.*, 31 F.3d 705, 707 (8th Cir. 1994), held that a school was not required to provide a particular sign language system to hearing-impaired students. In this case, parents had claimed that because the system chosen by the school was different from the one used by the student at home, the district failed to provide the student with an adequate education. The court reasoned the school district met the requirements of providing a "free appropriate public education" in that the district's program was given with sufficient services to permit the child to benefit educationally.

In *Cremeans v. Fairland Local Sch. Dist.*, 633 N.E.2d 570 (Ohio App. 1994), the appellate court held that:

1. Cost is not a relevant concern when a district is fashioning an appropriate program for a disabled child;
2. Cost is not a relevant concern when the only appropriate program is highly expensive;
3. Cost is a relevant concern when a district is choosing between several options which provide an appropriate program.

In *Neely v. Rutherford County Schs.*, 851 F. Supp. 888 (M.D. Tenn. 1994), the Federal District Court in Tennessee joined other jurisdictions in holding that the relevant consideration in determining whether a service falls under the medical services exemption is not a bright line test dependent on whether a physician or a nurse provides the service. (See also, *Clovis Unified Sch. Dist. v. California Office of Admin. Hearings*, 903 F.2d 635, 642 (9th Cir. 1990); *Granite Sch. Dist. v. Shannon M.*, 787 F. Supp. 1020, 1026 (D. Utah 1992); and *Bevin H. v. Wright*, 666 F. Supp. 71, 75 (W.D. Pa. 1987)). In *Neely*, a student required constant attendance by a respirator specialist to ensure the child's breathing tube did not malfunction or become blocked. The court held this was a related service to be provided by the district. The school argued this was a service that fell within the

"medical services" exclusion of the supportive service definition. Medical services fall within the definition of "related services" if they are for diagnostic or evaluation purposes. "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services." (34 C.F.R. 300.16(4))

The court rejected the school district's argument holding that services necessary for the child to benefit from special education were not so burdensome to the district as to fall within the medical services exclusion. This determination focused on the cost of the service and found the cost was not extensive enough to put the service in the category excluded by the medical services exclusion.

CONCLUSION

The committee concluded that federal education legislation and other direct and indirect mandates do impact school districts, both in terms of their educational goals and their fiscal well-being. However, the committee also recognized that it is incumbent upon the state to uphold federal laws. The committee determined that while the state may choose to strengthen requirements set forth in federal laws, it cannot, through legislative, regulatory, or judicial procedures, weaken or otherwise circumvent such laws. The committee therefore makes no recommendation regarding the study.

EDUCATION SERVICES COMMITTEE

The Education Services Committee was assigned two studies. Senate Concurrent Resolution No. 4002 directed a study of those provisions of North Dakota Century Code (NDCC) Title 15 which relate to elementary and secondary education. Senate Concurrent Resolution No. 4051 directed a study regarding the desirability of requiring that a core curriculum be taught from kindergarten through grade 12. The committee was also directed to acknowledge the receipt of county plans assigning the duties of county superintendents of schools, to receive a report from the Superintendent of Public Instruction regarding the home schooling of children with autism, to receive a report from the Leadership in Education Consortium regarding training programs for teachers and administrators developed in cooperation with the teacher learning centers, and to receive periodic reports from the State Board for Vocational and Technical Education regarding its progress in coordinating statewide access to work force training programs. Committee members were Senators Ray Holmberg (Chairman), Pete Naaden, David O'Connell, Randy A. Schobinger, Vern Thompson, Terry M. Wanzek, and Dan Wogsland and Representatives Ole Aarsvold, Thomas T. Brusegaard, Linda Christenson, David Drovdal, Howard Grumbo, Lyle L. Hanson, RaeAnn Kelsch, John Mahoney, David Monson, Dennis J. Renner, and Laurel Thoreson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

PROVISIONS OF NORTH DAKOTA CENTURY CODE TITLE 15 WHICH RELATE TO ELEMENTARY AND SECONDARY EDUCATION

Background

Section 11 of 1995 Senate Bill No. 2013 directed the State Auditor to conduct a performance audit of the Department of Public Instruction. The audit was first presented to the 1995-96 Legislative Audit and Fiscal Review Committee. Because it addressed a number of issues relating to education programs and to their administration, the Legislative Council chairman, at the request of the Legislative Audit and Fiscal Review Committee, requested that the 1995-96 interim Education Finance Committee review the audit and make recommendations. The Education Finance Committee found that the issues highlighted within the audit were indicative of a pressing need to review all the provisions of NDCC Title 15 which related to elementary and secondary education. Certain sections within the title were found to be duplicative while others were inconsistent. Some were merely unclear in their intent or in their

requirements. Both sections and chapters were found to be illogically arranged.

The 1995-96 interim Education Finance Committee concluded that a title rewrite was a project of considerable scope. It would require a significant time commitment on the part of a committee, together with significant involvement of parties having legal, educational, and administrative expertise. The committee determined that the most desirable course of action would be the recommendation of a Legislative Council study to undertake such a task.

This task was assigned to the 1997-98 interim Education Services Committee.

Revised Title Structure

Title 15 consists of the following chapters:

15-01	Board of University and School Lands
15-02	Commissioner of University and School Lands
15-03	Investment of Funds
15-04	Leases of Original Grant Lands for Agricultural Purposes
15-05	Leasing Coal, Oil, Gas, and Other Rights
15-06	Sale of Original Grant Lands
15-07	Sale and Lease of Nongrant Lands
15-08	Provisions Relating to Original Grant and to Nongrant Lands
15-08.1	Transfer of Possessory Interests in Realty
15-08.2	Transfer of Possessory Interests in Sovereign Lands [Repealed]
15-09	Condemnation of Public Lands and Sales in Lieu Thereof
15-10	The State Board of Higher Education
15-10.1	Reciprocal Higher Education Agreements
15-11	State University and School of Mines
15-12	State University of Agriculture and Applied Science
15-13	State Normal Schools
15-14	State Normal and Industrial School [Repealed]
15-15	School of Science
15-16	School of Forestry
15-17	Institutional Holding Associations
15-18	Junior Colleges
15-19	High School Correspondence Courses
15-20	Vocational Education and Rehabilitation [Repealed]
15-20.1	Vocational Education
15-20.2	Area Vocational and Technology Centers
15-20.3	Postsecondary Education Commission [Repealed]
15-20.4	Postsecondary Educational Institutions
15-21	Superintendent of Public Instruction
15-21.1	Chemical Abuse Prevention Programs
15-21.2	Career Guidance and Development Programs
15-21.3	Comprehensive Health Education [Deleted]
15-22	County Superintendent of Schools
15-23	Organization, Division, and Consolidation of Common School Districts [Repealed]
15-24	Common School District Elections [Repealed]
15-25	Powers and Duties of Common School District Officers [Repealed]
15-26	School Buildings and Sites [Repealed]
15-27	Organization and Dissolution of Public School Districts [Repealed]
15-27.1	Annexation, Reorganization, and Dissolution of School Districts - General Provisions
15-27.2	Annexation of School Districts
15-27.3	Reorganization of School Districts
15-27.4	Dissolution of School Districts
15-27.5	Military Installation School District
15-27.6	School District Boundary Restructuring

15-27.7	School District Cooperative Arrangement
15-28	Public School District Elections
15-29	Powers and Duties of Public School District Officers
15-30	Organization of Independent School Districts [Repealed]
15-31	Independent School District Elections [Repealed]
15-32	Powers and Duties of Independent School District Officers [Repealed]
15-33	School Districts Operating Under Special Laws [Repealed]
15-34	Compulsory Attendance and Transportation [Repealed]
15-34.1	Compulsory School Attendance
15-34.2	Transportation of Students
15-35	School Buildings
15-36	Teachers' Certification
15-37	Teachers' Oaths
15-38	Teachers' Duties
15-38.1	Teachers' Representation and Negotiation
15-38.2	Teachers' Personnel Files
15-39	Teachers' Insurance and Retirement Fund [Repealed]
15-39.1	Teachers' Fund for Retirement
15-39.2	Teacher Retirement Options
15-40	State School Aid [Repealed]
15-40.1	State School Aid
15-40.2	Transfer of Students and Nonresident Tuition
15-40.3	Open Enrollment
15-41	High Schools
15-41.1	Postsecondary Enrollment Options Program
15-42	County Agricultural and Training Schools [Repealed]
15-43	Textbooks and Fees
15-44	School Funds
15-45	Kindergartens
15-46	Adult Education
15-47	General Provisions
15-48	Elections to Increase Debt Limits
15-49	Penalties, Fines, and Forfeitures
15-50	Trade and Correspondence Schools [Repealed]
15-51	Board of Education of the City of Fargo
15-52	State Medical Center
15-53	Reorganization of School Districts [Repealed]
15-53.1	Annexation, Reorganization, and Involuntary Dissolution of Public School Districts [Repealed]
15-54	Child Nutrition and Food Distribution Programs
15-55	Construction of Revenue Producing Buildings at Higher Educational Institutions
15-55.1	Higher Education Facilities Bonds [Unconstitutional]
15-56	County Tuition Fund [Repealed]
15-57	Teacher Preparation Scholarships [Repealed]
15-58	County High School Equalization Fund [Repealed]
15-59	Special Education of Children
15-59.1	County Special Education Program [Repealed]
15-59.2	Multidistrict Special Education Programs
15-59.3	Boarding Home Care for Students with Disabilities
15-60	State School Construction Fund
15-61	Surplus Property Director [Repealed]
15-62	Scholarship Loans [Repealed]
15-62.1	Guarantee Loan Program
15-62.2	Student Financial Assistance and Scholars Program
15-62.3	Tuition Assistance Grant Program
15-63	Indian Scholarships
15-64	Compact for Education
15-65	Educational Telecommunications Council
15-66	Regional Medical Education Board [Repealed]
15-67	Uniform Management of Institutional Funds Act

The committee determined that chapters not relating directly to K-12 education should remain within Title 15, while those relating directly to K-12 education should become part of a new Title 15.1. This also gave the committee an opportunity to arrange the chapters in what the members believed to be a conceptually appropriate manner.

Objectives and Scope of Committee's Efforts

The committee determined that the rewrite of Title 15 would necessarily involve addressing laws found to be irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction. However, the committee also determined that an equally important objective was to ensure that the rewritten sections accurately reflected the manner in which business was conducted at the school level, the school district level, and within the Department of Public Instruction. The ultimate objective was to craft a document that would clearly indicate rights, duties, obligations, and consequences with respect to the provision of elementary and secondary education in the state. Because the committee discovered that the scope of the undertaking would preclude its completion without compromise of the stated objectives, the committee determined that only a portion of the title should be addressed during the 1997-98 interim. Of the following 36 proposed chapters, 16 were rewritten and the remaining 20 chapters were reserved for a future effort:

15.1-01	State Board of Public School Education
15.1-02	Superintendent of Public Instruction
15.1-03	Department of Public Instruction
15.1-04	Compact for Education
15.1-05	North Dakota Educational Telecommunications Council
15.1-06	Schools
15.1-07	School Districts
15.1-08	Military Installation School Districts
15.1-09	School Boards
15.1-10	County Committees
15.1-11	County Superintendents
15.1-12	School District Boundaries
Reserved	Education Standards and Practices Board
Reserved	Administrators' Professional Practices Board
Reserved	Teacher and Administrator Dismissal
Reserved	Teacher Employment Contracts
Reserved	Teacher Personnel Issues
Reserved	Teacher Qualifications
15.1-19	Students
Reserved	Compulsory Attendance
Reserved	Courses & Curriculum
Reserved	Kindergartens
Reserved	Home Education
15.1-24	Chemical Abuse Prevention Programs
15.1-25	Postsecondary Enrollment Options
15.1-26	Adult Education
Reserved	School Finance
Reserved	State Tuition Fund
Reserved	Payment of Tuition
Reserved	Transportation
Reserved	Open Enrollment
Reserved	Special Education
Reserved	Multidistrict Special Education Programs
Reserved	Boarding Homes
Reserved	Textbook Purchases
Reserved	School Construction

Substantive Changes

The committee was advised of the North Dakota Supreme Court decision *City of Fargo v. Annexation Review Commission*, 148 N.W.2d 338 (N.D. 1966), in which the court found that the Legislative Assembly had not intended to make substantive changes in adopting a

revised code that had been prepared by a code revision commission but for which the record did not indicate an intention to make substantive changes. The committee determined, however, that in order to meet its stated objectives, certain substantive changes are necessary, and the committee specifically intends that these changes be documented. The following table lists the proposed North Dakota Century Code sections that contain substantive changes and briefly describes those changes:

15.1-01-01	Raises the compensation for members of the State Board of Public School Education from \$50 to \$62.50 per day
15.1-02-09	Omits the requirement that the Superintendent of Public Instruction's biennial report contain general matters, information, and recommendations relating to the educational interests of the state deemed important
15.1-02-10	Reduces mandatory recipients of the Superintendent of Public Instruction's biennial report
15.1-05-02	Clarifies membership of the North Dakota Educational Telecommunications Council
15.1-06-06	Clarifies that public and nonpublic school approval is a duty of the Superintendent of Public Instruction
15.1-06-10	Clarifies the notification procedure for fire inspections of nonpublic schools
15.1-06-11	Clarifies which doors must be kept unlocked and which doorways must be kept unobstructed during school hours
15.1-06-12	Clarifies responsibility for conducting emergency and disaster drills
15.1-06-13	Clarifies requirements for school district compliance with health, safety, and sanitation requirements
15.1-06-17	Omits the requirement that the board of a school district purchase a United States flag and requires only that the flag be displayed
15.1-06-18	Requires that the Governor convene an ad hoc committee to review school reports
15.1-07-17	Adds a definition of "conflict of interest"
15.1-08-02	Provides that members of a military installation school board may fill vacancies
15.1-09-01	Clarifies methods for electing school board members in reorganized districts
15.1-09-05	Requires that county superintendents of schools be notified of school board vacancies and clarifies the role of the State Board of Public School Education in ensuring that school boards have quorums
15.1-09-10	Omits sample ballot language
15.1-09-39	Omits sample ballot language
15.1-09-41	Omits \$3,000 limit of reward for destruction of school property
15.1-09-42	Clarifies conditions under which teachers may attend conferences with pay
15.1-11-01	Clarifies the procedure for hiring a county superintendent of schools
15.1-11-02	Clarifies the procedure for assigning duties of a county superintendent of schools and provides the Superintendent of Public Instruction with waiver authority
15.1-11-04	Adds duties performed by county superintendents of schools but not currently referenced in statute
15.1-12-07	Clarifies requirements for filing a certificate of title upon annexation, reorganization, or dissolution
15.1-12-12	Clarifies requirements for the certification of election results by school boards
15.1-12-18	Clarifies voting requirements for the closure of schools
15.1-12-27	Clarifies grounds for the dissolution of a school district
15.1-19-04	Clarifies release of a student for religious instruction

Omitted Provisions

During the study, the committee determined that a number of Title 15 sections were unnecessary or duplicative of other provisions. The committee consequently directed that such sections be omitted from proposed Title 15.1. The following table lists sections repealed by omission and the reason for their repeal:

15-21-06	Outdated
15-21-07.2	Duplicates efforts of the Attorney General
15-21-09.1	Duplicates authority of the Superintendent of Public Instruction
15-21-13	Subject matter included in proposed Section 15.1-12-13.1
15-21-19	Outdated
15-21.1-01	Unnecessary definition
15-21.1-02	Unnecessary statement of purpose
15-21.2-01	Unnecessary definition
15-21.2-02	Unnecessary statement of purpose
15-21.2-03	Nonexistent program
15-21.2-04	Nonexistent program
15-22-12	Conflicts with proposed Section 15.1-02-08
15-22-25	Conflicts with proposed Section 15.1-11-01
15-27.1-02	Unnecessary statement of applicability
15-27.1-08	Unnecessary statement of existing law
15-27.1-09	Unnecessary statement of existing law
15-27.3-06	Duplicates requirements of proposed Section 15.1-12-11
15-27.3-07	Conflicts with proposed Sections 15.1-12-11 through 15.1-11-14
Ch. 15-27.6	Nonexistent program
Ch. 15-27.7	Nonexistent program
15-29-03.1	Outdated
15.1-29-08	Content moved to present Chapter 15-38.1
15-38-06	Outdated
15-38-13	Outdated
15-41-01	Outdated
15-41-03	Conflicts with proposed Section 15.1-02-03
15-41-04	Conflicts with proposed Section 15.1-02-03
15-41-05	Relates to vocational and technical education
15-41-07	Relates to vocational and technical education
15-41-08	Outdated
15-43-11.1	Unnecessary definition and statement of public policy
15-47-10	Declared unconstitutional
15-47-12	Outdated
15-47-16	Outdated
15-47-24	Conflicts with proposed Section 15.1-02-04
15-47-29	Constitutionally suspect
15-47-30	Constitutionally suspect
15-47-31	Outdated
15-47-32	Duplicates proposed Section 15.1-07-01
15-47-37	Conflicts with proposed Section 15.1-02-04
15-47-40	Relates to higher education
15-47-41	Relates to higher education
15-49-03	Duplicative of criminal code provisions
15-49-04	Duplicative of criminal code provisions
15-49-05	Unnecessary requirement
15-49-06	Duplicative of criminal code provisions
15-51-03	Unnecessary provisions relating to Fargo Board of Education
15-51-05	Unnecessary provisions relating to Fargo Board of Education
15-51-06	Unnecessary provisions relating to Fargo Board of Education
15-51-08	Unnecessary provisions relating to Fargo Board of Education
15-51-09	Unnecessary provisions relating to Fargo Board of Education
15-51-10	Unnecessary provisions relating to Fargo Board of Education

15-51-14	Unnecessary provisions relating to Fargo Board of Education
15-51-15	Unnecessary provisions relating to Fargo Board of Education
15-51-16	Unnecessary provisions relating to Fargo Board of Education
15-51-18	Unnecessary provisions relating to Fargo Board of Education
15-51-19	Unnecessary provisions relating to Fargo Board of Education
15-51-22	Unnecessary provisions relating to Fargo Board of Education
15-65-01	Unnecessary statement of purpose

Cross-Reference Table

The following table lists the remaining sections of Title 15 and identifies their placement in Title 15.1:

15-21-01	15.1-02-01
15-21-01.1	15.1-03-01
15-21-02	15.1-02-02
15-21-03	15.1-02-03
15-21-04	15.1-02-04
15-21-04.1	15.1-02-11
15-21-04.2	15.1-26-02
15-21-04.3	15.1-26-07
15-21-04.4	15.1-26-01
15-21-04.5	15.1-06-08
15-21-05	15.1-02-06
15-21-07	15.1-02-04
15-21-07.1	15.1-02-05
15-21-08	15.1-02-04
15-21-09	15.1-02-04
15-21-13.1	15.1-02-08
15-21-13.2	15.1-03-03
15-21-13.3	15.1-26-05
15-21-13.4	15.1-26-06
15-21-13.5	15.1-03-02
15-21-14	15.1-02-09
15-21-15	15.1-02-10
15-21-17	15.1-01-01
15-21-18	15.1-01-02
15-21-21	15.1-02-07
15-21-22	15.1-02-11
15-21.1-03	15.1-24-01
15-21.1-04	15.1-24-02
15-21.1-05	15.1-24-03
15-21.1-06	15.1-24-04
15-21.1-07	15.1-24-05
15-21.1-09	15.1-24-06
15-22-01	15.1-11-01
15-22-01.1	15.1-11-02
15-22-02	15.1-11-01
15-22-04	15.1-11-03
15-22-07	15.1-11-06
15-22-09	15.1-11-04
15-22-14	15.1-11-05
15-22-17	15.1-02-04
15-22-18	15.1-11-04
15-27.1-01	15.1-12-01
15-27.1-03	15.1-10-01
15-27.1-04	15.1-10-02
15-27.1-04	15.1-10-03
15-27.1-05	15.1-10-04
15-27.1-06	15.1-01-03
15-27.1-07	15.1-02-04
15-27.1-10	15.1-12-07
15-27.1-11	15.1-12-25
15-27.1-11	15.1-12-26
15-27.1-12	15.1-12-08
15-27.2-01	15.1-12-01
15-27.2-01	15.1-12-03

15-27.2-01	15.1-12-04
15-27.2-02	15.1-12-02
15-27.2-04	15.1-12-05
15-27.2-05	15.1-12-06
15-27.3-01.1	15.1-12-10
15-27.3-02	15.1-12-10
15-27.3-02	15.1-12-11
15-27.3-05	15.1-12-11
15-27.3-07.1	15.1-12-13
15-27.3-08	15.1-12-12
15-27.3-10	15.1-12-22
15-27.3-11	15.1-12-14
15-27.3-12	15.1-12-15
15-27.3-13	15.1-12-16
15-27.3-13.1	15.1-12-17
15-27.3-14	15.1-12-18
15-27.3-15	15.1-12-19
15-27.3-16	15.1-12-11
15-27.3-17	15.1-12-20
15-27.3-18	15.1-12-21
15-27.3-19	15.1-12-22
15-27.3-20	15.1-12-23
15-27.3-21	15.1-12-24
15-27.4-01	15.1-12-27
15-27.4-02	15.1-12-28
15-27.4-02.1	15.1-12-29
15-27.4-03	15.1-12-30
15-27.5-01	15.1-08-01
15-27.5-02	15.1-08-02
15-27.5-03	15.1-08-03
15-27.5-04	15.1-08-04
15-27.5-04	15.1-08-05
15-27.5-05	15.1-08-06
15-27.5-06	15.1-08-07
15-28-01	15.1-09-01
15-28-02	15.1-09-04
15-28-03	15.1-09-02
15-28-03	15.1-09-03
15-28-03	15.1-09-22
15-28-03	15.1-09-23
15-28-03	15.1-09-24
15-28-04	15.1-09-13
15-28-05	15.1-09-20
15-28-06	15.1-09-09
15-28-07	15.1-09-10
15-28-08	15.1-09-12
15-28-09	15.1-09-08
15-28-09	15.1-09-11
15-28-10	15.1-09-19
15-28-10	15.1-09-21
15-28-11	15.1-09-31
15-29-01	15.1-09-29
15-29-01.1	15.1-09-32
15-29-02	15.1-09-30
15-29-03	15.1-09-27
15-29-04	15.1-09-28
15-29-05	15.1-09-06
15-29-06	15.1-09-05
15-29-07	15.1-11-04
15-29-08	15.1-09-33
15-29-08	15.1-09-35
15-29-08	15.1-09-38
15-29-08	15.1-19-09
15-29-08.4	15.1-09-33
15-29-09	15.1-07-21
15-29-10	15.1-07-25
15-29-11	15.1-07-23
15-29-13	15.1-07-10
15-29-13	15.1-07-11
15-29-13	15.1-07-12
15-29-14	15.1-07-13
15-34.2-12	15.1-09-43
15-34.2-13	15.1-09-45

15-34.2-14
15-34.2-17
15-34.2-18
15-35-01.2
15-35-01.2
15-35-09
15-35-11
15-35-12
15-35-14
15-38-04.1
15-38-13.1
15-38-13.2
15-41-02
15-41-27
15-41.1-01
15-41.1-02
15-41.1-03
15-41.1-04
15-41.1-05
15-41.1-06
15-43-11.2
15-43-11.3
15-43-11.4
15-44-06
15-44-09
15-44-10
15-44-11
15-46-01
15-46-04
15-47-01
15-47-01.1
15-47-02.1
15-47-04
15-47-05
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15-47-33.1
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15-47-40.1
15-47-43
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15-47-44.1
15-47-44.2
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15-47-48
15-47-49
15-47-50
15-47-51
15-48-01
15-48-02
15-48-03
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15-49-01
15-49-02
15-49-08

15.1-07-20
15.1-19-04
15.1-09-44
15.1-06-09
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15.1-02-04
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15.1-25-01
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15.1-09-36
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15.1-09-37
15.1-07-16
15.1-07-24
15.1-07-08
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15.1-26-03
15.1-26-04
15.1-06-01
15.1-19-08
15.1-09-33
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15.1-06-17
15.1-09-46
15.1-09-42
15.1-09-34
15.1-12-09
15.1-19-07
15.1-09-41
15.1-19-03
15.1-06-04
15.1-06-05
15.1-05-06
15.1-09-39
15.1-09-40
15.1-07-01
15.1-07-02
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15.1-09-49
15.1-09-50
15.1-09-51
15.1-09-52
15.1-04-01
15.1-04-02
15.1-05-01
15.1-05-02
15.1-05-03
15.1-05-04
15.1-05-05
15.1-05-05
15.1-05-05

Committee Recommendations

The committee recommends House Bill No. 1034 to rewrite those portions of Title 15 which relate to the State Board of Public School Education, the Superintendent of Public Instruction, the Department of Public Instruction, the Compact for Education, the North Dakota Educational Telecommunications Council, schools, school districts, military installation school districts, school boards, county committees, county superintendents of schools, school district boundaries, students, chemical abuse prevention programs, postsecondary enrollment options, and adult education.

The committee recommends House Bill No. 1035 to accompany the rewrite of Title 15 provisions. This bill draft reconciles references to Title 15 sections found in other portions of the Century Code.

The committee also recommends House Concurrent Resolution No. 3007 directing a study of those provisions of NDCC Title 15 which relate to elementary and secondary education. The committee proposes that this second study cover those provisions of NDCC Title 15 which relate to elementary and secondary education, but which were not addressed by the committee during this interim. Those provisions include:

15-21.1-08
15-29-08.5
15-29-08.6
Ch.15-34.1
15-34.2-01
15-34.2-03
15-34.2-04
15-34.2-05
15-34.2-06
15-34.2-06.1
15-34.2-07
15-34.2-07.1
15-34.2-07.2

15-34.2-08
 15-34.2-09
 15-34.2-10
 15-34.2-11
 15-34.2-15
 15-34.2-16
 15-35-01.1
 15-35-15
 15-35-16
 15-35-17
 Ch.15-36
 Ch.15-37
 15-38-01
 15-38-07
 15-38-08
 15-38-09
 15-38-10
 15-38-11
 15-38-12
 15-38-16
 15-38-17
 15-38-18
 15-38-18.1
 15-38-18.2
 15-38-19
 Ch.15-38.1
 Ch.15-38.2
 Ch.15-39.1
 Ch.15-39.2
 Ch.15-40.1
 Ch.15-40.2
 Ch.15-40.3
 15-41-06
 15-41-24
 15-41-25
 15-41-28
 15-43-01
 15-43-02
 15-43-03
 15-43-05
 15-43-12
 15-44-01
 15-44-02
 15-44-03
 15-45-01
 15-45-02
 15-45-03
 15-45-04
 15-47-00.1
 15-47-26
 15-47-27
 15-47-27.1
 15-47-27.2
 15-47-28
 15-47-34
 15-47-35
 15-47-38
 15-47-38.2

15-47-42
 15-47-46
 Ch.15-54
 Ch.15-59
 Ch.15-59.2
 Ch.15-59.3
 Ch.15-60

Appendix - Cross-Reference for Proposed Sections

The following table lists the sections in the new Title 15.1 and the former sections in Title 15 from which the new sections are derived:

15.1-01-01	15-21-17
15.1-01-02	15-21-18
15.1-01-03	15-27.1-06
15.1-02-01	15-21-01
15.1-02-02	15-21-02
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DEVELOPMENT AND DELIVERY OF A CORE CURRICULUM

The phrase "core curriculum" appears to have a definitional scope that ranges from a fixed series of required courses to the instructional methods and materials by which course content requirements are imparted to students. In North Dakota, the Legislative Assembly has already established the minimum courses that school districts must make available to high school students. North Dakota Century Code Section 15-41-24 provides:

... The following units of study must be made available to all students in each public and private high school in this state at least once during each four-year period, and each private high school shall comply with the requirements of this section if such high school is to receive approval by the department of public instruction:

1. English, four units.
2. Mathematics, three units.
3. Science, four units.
4. Social studies, three units. Effective July 1, 1994, social studies must include one unit of world history and one unit of United States history, each of which must be integrated with a strong geography component.
5. Health and physical education, one unit.
6. Music, one unit.
7. Any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education, six units. For purposes of this subsection vocational education includes home economics, agriculture, office education, distributive education, trade industrial, technical, and health occupations.

Each public or private high school may count for purposes of compliance with this section those vocational education courses which are offered through cooperative arrangements approved by

the state board for vocational and technical education.

In NDCC Section 15-41-06, the Legislative Assembly provided that "four units of high school work must be considered the minimum number of any year from the ninth grade through the twelfth grade." (Exceptions are made for students requiring fewer than four units for graduation.)

Minimum course requirements for elementary and middle level or junior high students are established by the Superintendent of Public Instruction through the school accreditation process. The requirements include instruction in language arts, mathematics, social studies, science, health, music, physical education, and art. Provision is also made for unallocated time that may be used for student-teacher planning and guided learning, the initiation or expansion of a subject area, the provision of elective offerings, and the provision of student personnel services. However, neither the North Dakota Century Code nor the state accreditation standards reference precisely what students should know and be able to do within a given discipline.

The articulation of clear, measurable expectations for all students is a relatively new concept. As a nation, many of our teachers, schools, and communities have always had high expectations for their children, but the expectations tended to be localized. The result is that students have been learning different things from school to school, district to district, and state to state. The varying expectations have allowed some children to be exposed to rigorous courses, while others have not been so exposed. Some students are awarded high grades only if they master challenging material while others are awarded high grades and promotions no matter what they do. Typically, students get passed from grade to grade regardless of how much they learn, and many graduate not even realizing how unprepared they are. Teachers who try to uphold high academic standards with tough grading and promotion policies and demanding homework loads are often pressured by administrators, parents, and students to ease up. In the absence of clear standards, they are powerless. (*Making Standards Matter 1996: An Annual Fifty-State Report on Efforts to Raise Academic Standards*, American Federation of Teachers)

CORE CURRICULUM OFFERINGS IN OTHER STATES

Following are examples of states that have legislatively addressed their expectations of students.

Alabama

Alabama Code Section 16-6B-2 requires that the following courses be offered in grades 9 through 12 in the state's public schools:

- (1) Four years (equivalent of four credit units) of English;
- (2) Four years (equivalent of four credit units) of mathematics, including material designed to ensure that no high school student fails to learn basic mathematical skills and computer literacy;
- (3) Four years (equivalent of four credit units) of science; and
- (4) Four years (equivalent of four credit units) of social studies with an emphasis on history, music history, fine arts history, geography, economics, and political science.

History courses must include material on the history of the United States and the Constitution of the United States. The curriculum content of American History must include the teaching of important historical documents, including the Constitution of the United States, the Declaration of Independence, the Emancipation Proclamation, the Federalist Papers, and other documents important to the history and heritage of the United States.

The required courses must be successfully completed by a student enrolled in grades 9 through 12 before the student's graduation or receipt of a diploma. Students with disabilities are exempt from this requirement and must instead meet the requirements set forth in their individual education plans. Graduation requirements are established by the Alabama State Board of Education and must include the minimum courses set forth above.

In addition to the required courses, a number of elective courses must also be successfully completed by a student enrolled in grades 9 through 12 before the student's graduation or receipt of a diploma. The State Board of Education also determines the number and classification of elective units required for high school graduation.

Statutory requirements for the elementary grades include reading with an emphasis on phonics; spelling; handwriting; mathematics; oral and written English using material designed to develop reading, writing, speaking, and listening skills; social studies emphasizing the geography and the history of the United States and Alabama; science; hygiene and sanitation; physical education; the arts, including music and the visual arts; and environmental protection. Local boards of education may set additional requirements.

The Alabama State Board of Education is authorized to adopt policies, procedures, rules, regulations, and standards requiring that college and university departments of education review their existing educational programs for all prospective teachers in order to ensure that they are properly prepared to teach the courses required by law.

Arkansas

Arkansas Statutes Section 6-60-208 provides that, beginning with the 1997-98 school year, a student must successfully complete the college preparatory core

curriculum or a technical preparatory core curriculum, with a minimum cumulative grade point average of 2.0 on a 4.0 point scale, to be eligible for unconditional admission to an associate of arts or a bachelor's degree program in a public four-year institution of higher education or to enroll in any certificate, diploma, or degree program in any public two-year institution of higher education.

Georgia

Georgia Code Section 20-2-140 directs the Georgia State Board of Education to establish competencies that each student is expected to master before completion of the student's public school education. The state board is also directed to establish competencies for which each student, at the discretion of the student and the student's parents, should be provided opportunities to master. The state board must then adopt a uniformly sequenced core curriculum for grades kindergarten through 12, based upon those competencies. Each local school board must include the state's uniformly sequenced core curriculum in its own curriculum. Local school boards may expand and enrich this curriculum to the extent they deem it necessary and appropriate for their students and communities.

At least once every four years, the adopted competencies and uniformly sequenced core curriculum must be reviewed by a task force broadly representative of educational interests and the public. After considering the findings and recommendations of the task force, the state board must make such changes in the student competencies lists and the core curriculum as it deems are in the best interests of the state and its citizens. The proposed changes are to be reported to and reviewed by local school boards and the Georgia General Assembly.

The Georgia State Board of Education also is directed to adopt a student assessment program consisting of instruments, procedures, and policies necessary to implement the core program. Nationally norm-referenced instruments in reading, mathematics, science, and social studies must be administered to students in grades 3, 5, and 8, and based on those results, the State Board of Education is to review, revise, and upgrade the core curriculum. Following such a revision, the State Board of Education is to contract for the development of criterion-referenced tests and to administer the tests to students in three grades not lower than grade 3. A curriculum-based assessment must be administered to students in grade 11 for purposes of determining graduation eligibility.

The nationally normed assessments are to provide students and their parents with grade equivalencies and percentile ranks while the criterion-referenced tests and the high school graduation tests are to provide for results that reflect state levels. In Georgia, student achievement is considered in the awarding of salary supplements to school district personnel.

Oklahoma

Section 11-103.6 of the Oklahoma Statutes directs the State Board of Education to adopt curricular standards for the instruction of students in the public schools and specifically provides:

All students must initially gain literacy at the elementary and secondary levels through a core curriculum. Students must develop skills in reading, writing, speaking, computing and critical thinking. They also must learn about cultures and environments - their own and those of others with whom they share the earth. Students, therefore, must study social studies, literature, languages, the arts, mathematics and science. Such curricula shall provide for the teaching of a hands-on career exploration program in cooperation with vocational-technical education schools. The core curriculum shall be designed to teach the competencies for which twelfth grade level students shall be tested . . . and shall be designed to prepare all students for employment and/or postsecondary education. It is the intent of the Oklahoma Legislature that Oklahoma history be included in the social studies core curriculum for purposes of this section.

The Oklahoma State Board of Education is directed not only to prescribe, adopt, and approve specified levels of competencies in each area of the core curriculum, but also to provide students with an option for high school graduation based upon the attainment of the desired levels of competencies. Students who have individualized education plans are exempt from these requirements.

SETTING EDUCATIONAL STANDARDS

The movement to develop high-quality academic standards that clearly define what students should know and be able to do has received considerable attention. In its 1995 report, *Assignment Complete*, the New York-based Public Agenda Foundation found that a majority of American citizens support setting and enforcing consistent academic standards that prompt students from all socioeconomic backgrounds to achieve at higher levels.

In March 1996, the nation's governors convened with prominent business leaders to lend support for state efforts to implement higher educational standards and use technology to enhance student learning. While the participants discussed the valuable role that standards play in supporting improved student learning, they also discussed the myriad of strategies used by the states to develop and implement the academic standards. With respect to both statutory and nonstatutory standards, they found that some are voluntary and others are not. They found that some are linked to high school graduation requirements, while others are linked to college entrance requirements. They found that some are written very specifically for the educational sector, while others are targeted toward parents.

Perhaps even more importantly, the participants found that standards, in the sense of curricular content, are only one of the many tools that the states need to employ in their efforts to improve classroom instruction and boost student performance. They concluded that in order for the curricular standards to be truly effective, they must be accompanied by performance standards that articulate specific levels of student performance at specific grade levels and by thorough and adequate performance assessments that measure students' progress toward attaining the standards. Participants argued that real change can occur only if we are willing to link state standards directly to and require accountability regarding teachers, teaching practices, teacher education schools, and resource allocation.

While numerous states, to a certain extent, have become involved with raising their educational standards, the states of Colorado, Delaware, Minnesota, and South Carolina have made the greatest progress in developing high-level content standards. They have embraced different approaches to developing and implementing their standards—approaches which reflect their varying social, political, and governance structures, as well as their unique modeling of innovative reform strategies. A description of their experiences follows.

Colorado

Facing polls indicating that a majority of Colorado parents, business people, and educators believed that the state's public schools were out of touch and out of date, that academic expectations for most students were too low, and that too many students were not acquiring the skills and knowledge they needed to succeed in today's world, then Governor Roy Romer convened a special session of the Colorado General Assembly in 1991. Among the accomplishments of that session was the creation of the Commission on Achievement in Education. The commission was directed to assess the need for education reform in the state. Commission members included representatives from the House and the Senate, as well as representatives of business, higher education, communities, school administrators, and teachers. The commission immediately created several task forces, including one charged with outlining a strategy for developing and implementing a statewide system of academic standards.

Development of Standards

Soon after HB93-1313 was signed, Governor Romer appointed nine members to the State Standards and Assessment Development and Implementation Council. The members included three teachers, two local curriculum directors, one high school principal, one school district superintendent, a community college president, and a university professor. One of the toughest challenges faced by the council was devising a way to establish high academic standards throughout the state while honoring Colorado's system of local control. The system is not only perceptually strong, it is

embedded in the Colorado state constitution. The constitution forbids the adoption of a state curriculum and grants the publicly elected school board in each of the state's 176 school districts the authority to grant diplomas, set graduation requirements, determine course offerings, and establish curricula.

When the council began its work in 1993, it created five subject area task forces—reading and writing, mathematics, science, history, and geography. Teachers from across the state, as well as several experts in higher education, were then invited to serve on the task forces. The teachers asked to serve were selected on the basis of their prior leadership in education reform and the development of education standards. Their mission was to draft, in each subject area, standards that would be disseminated for public review and comment.

Between August 1993 and December 1994, the task forces produced three separate drafts, each of which endured an extensive public review process. Thousands of Coloradans contributed comments and suggestions. At each stage, public involvement resulted in significant changes. On April 1, 1995, the council submitted to the State Board of Education its final recommendations for model academic content standards for kindergarten through grade 12 in the subject areas.

The state board approved the standards in September 1995. Thereafter, the council began work on the second phase of its mission—the development of an assessment framework for each of the standards. The assessments eventually will be used to measure student progress toward the content standards.

The decision to recommend "model" standards that define what students should know and should be able to do circumvented the constitutional concerns. Districts could either adopt the state's model or develop their own content standards, provided that their standards met or exceeded the state standards. In this way, districts were able to maintain their authority to define curriculum, programs of instruction, course offerings, and graduation requirements.

Costs

Operating costs for the council's efforts during the 1993-94 school year were approximately \$210,000. This covered printing and mailing expenses; meeting expenses, including travel, food, and lodging for council and task force members; and salaries for substitute teachers hired to replace those who served on the task forces. The Colorado Department of Education was responsible for 3.8 FTEs who provided staff support. Approximately 1.1 of the 3.8 FTEs were involved in administrative support. During the 1994-95 school year, the operating costs were approximately \$200,000.

Delaware

Development of Standards

"New Directions for Education in Delaware" is an initiative to develop statewide education content standards and assessments. It was conceived by the state

education superintendent, Dr. Pascal Forgione, when he returned to Delaware after serving as the director of the National Education Goals Panel in Washington, D.C. With the help of five district superintendents, Dr. Forgione constructed a five-year plan for developing and implementing content standards and related assessments. The plan was adopted by the State Board of Education in May 1992 and was inaugurated on July 1 of that year. The plan called for the following:

- Setting clear standards on what Delaware students should know and be able to do;
- Teaching children by participation in activities using real world problems;
- Measuring students' performance by having them demonstrate what they have learned;
- Holding schools accountable for students' progress;
- Ensuring that all children start school ready to learn;
- Creating an environment with minimal disruption;
- Allowing each school district to design its program; and
- Preparing students for a successful transition to work or to higher education.

The plan also called for three levels of partnership—school partners, community partners, and development partners.

To implement the reform plan, the state's commitment of \$7 per student was leveraged with \$5 per student of existing resources from the state's 19 local school boards for the development of standards and assessments. This amounted to nearly \$500,000 per year. The school boards agreed to fund the partnership for the following five years.

In addition, the Business Public Education Council, an organization representing the state's business community, matched the \$5 per student local contribution. A total of \$1.7 million was raised for education reform.

Initially, four curriculum framework commissions were created to draft standards in the areas of mathematics, science, English language arts, and social studies (including civics, history, geography, and economics). Additional commissions then were formed to write standards for the visual and performing arts, foreign languages, business and marketing, and agriculture. Each commission consisted of 45 to 48 members and was composed of teachers from every school district, parents, business and community leaders, higher education representatives, and curriculum experts.

The curriculum commissions in mathematics, science, English language arts, and social studies worked for almost three years to draft and revise the standards documents. Throughout the process, they consulted with national and international education experts to decide which topics should be included in the standards. They also conferred with officials in other states undertaking similar reform efforts.

After completing the content standards, the four curriculum framework commissions drafted a volume of classroom performance models to accompany the content standards. These documents contained 5 to 10 detailed lesson plans that were intended to show teachers how particular standards might be translated into instructional learning activities in the classroom. Unlike the Colorado task forces, the Delaware commissions did not make a concerted effort to write the standards in lay language. The Delaware standards were intended to be for teachers and curriculum professionals and to drive a school district's curriculum. The content standards were reviewed by the State Board of Education and formally approved in June 1995. Thereafter, work began on the development of new assessments consisting of performance-based assessments, portfolios, and norm-referenced tests.

Professional Development

In response to Delaware teachers who expressed a strong desire to learn new instructional practices necessitated by the content standards, the Delaware Legislature in 1995 approved \$2.5 million for professional development programs. The money was used to enhance the teachers' capacity to understand the new standards and to provide them with new teaching and learning strategies. As an adjunct, the Delaware Professional Standards Council, an independent body that reports to the State Board of Education, developed a plan to align teachers' standards with the academic content standards. The council is collaborating with teacher training institutions for the revision of their programs so that course requirements will match the new content standards.

Costs

The total cost of developing the standards and assessments in Delaware was \$15.5 million. According to the Delaware State Superintendent, the majority of the program's budget was spent on the operating expenses of the four curriculum framework commissions.

Minnesota

Minnesota, like many other states, traditionally awarded a high school diploma to any student who completed 20.5 course credits and received a passing grade of at least D- in all classes. Even though the state had required that all students take certain courses (e.g., four years of English, three years of social studies, etc.) there was little consistency among schools as to what was taught in those classes or as to what students learned in those classes. Minnesota had employed the traditional seat time rule, which required only that students be exposed to certain contents for a prescribed period of time. There was no requirement that the student learn the content or even learn it at a certain level.

In 1989, however, the Minnesota Legislature enacted legislation directing the then State Department

of Education to adopt a statewide graduation standard requiring students to demonstrate that they have mastered certain skills and have acquired sufficient knowledge about specific subjects. The enactment, known colloquially as Minnesota's graduation rule, contained the following provisions:

- Implementation of the new graduation rule would start with students entering the ninth grade in the 1996-97 school year (i.e., those scheduled to graduate from high school in the year 2000).
- The State Board of Education could not prescribe the delivery system, form of instruction, or a single statewide form of assessment that local sites must use to meet the requirements contained in the rule.
- The content of the graduation rule would differentiate between minimum competencies and rigorous standards.
- Assessments to measure the knowledge required by all students for graduation would be developed according to the most current version of professional standards for educational testing.
- The State Board of Education would periodically review and report on the assessment process and student achievement with the expectation of raising the standards and expanding the high school graduation requirements.
- When fully implemented, the requirements for high school graduation in Minnesota, including both basic requirements and the required profile of learning, would include a broad range of academic experience and accomplishment necessary to achieve the goal of preparing students to function effectively as purposeful thinkers, effective communicators, self-directed learners, productive group participants, and responsible citizens.

Development of Standards

Minnesota adopted an intricate process for writing its basic requirements and high-level content standards. Initially, the State Department of Education sponsored a series of town meetings across the state to give parents, teachers, and other community members an opportunity to identify what they believed students should know when they graduate from high school. These meetings resulted in approximately 160 statements describing what students should learn. These statements were condensed into five comprehensive goals, which guided the development of Minnesota's basic requirements and the 10 elements included in the profile of learning.

The process of writing the high-level content standards known as the profile of learning began in January 1994. A group of teachers, chosen from pilot sites and representing professional organizations across the state, met periodically in St. Paul for the next six months to develop content standards in each of 15 broad areas or elements.

During the first two months of the process, teachers met by content area to write descriptions of the knowledge and skills required by the elements in their disciplines. The teachers were encouraged to write "big overarching statements" concerning required learning for as many elements as necessary to cover their disciplines. There were, however, two stipulations—the required knowledge and skills had to represent the heart of the discipline and the discipline had to accept responsibility for instruction and assessment associated with the required learning. During this preliminary stage, teachers wrote 141 statements that were reviewed by a group of people representing postsecondary education, business, and community interests.

During the second stage, which lasted from April to May 1994, the teachers used the statements to construct detailed content standards. Statements were collapsed and combined and each became the first summary sentence of an individual content standard. The result was the creation of 60 content standards, with four being added later in the process.

In July 1994 a team of administrators and curriculum specialists from throughout the state met to review the standards and draft a proposal for graduation requirements based on the profile of learning. To solicit feedback, the department issued the first draft of the profile of learning and accompanying graduation requirements and requested feedback from school districts throughout the state, from representatives of the state's educational organizations, and from the general public. A second series of town meetings were held, and, based on the testimony, two more drafts were written.

While the department engaged in the process of reviewing and revising the content standards and proposed graduation requirements, groups of teachers working in 14 pilot sites across the state began the process of writing test specifications for the base requirements and assessment packages. These test specifications included performance assessments drawn from the 64 standards outlined in the profile of learning. Basic tests in reading and math were administered to students in 24 pilot sites during the 1995-96 school year and served as models for other schools. Schools that did not adopt the state-developed assessments had to create their own alternative set of assessments.

In order to ensure that school administrators and teachers were well-versed in the graduation rule, the department assigned a coordinator to each of the state's 11 regions. The coordinator was responsible for providing training and disseminating information to teachers and staff in local schools. In addition, the department allocated an assessment trainer to each of the 24 pilot sites experimenting with the draft assessments. The trainer was to help facilitate the implementation of the assessments.

Costs

The development and implementation of the new graduation standards was funded by \$18 million in

legislative appropriations over four years. The money covered the costs of developing the standards and funded a commission that was responsible for estimating the cost of implementing the new requirements statewide.

South Carolina

During the 1970s, the South Carolina Department of Education instituted minimum competency levels for students in kindergarten through grade 12. These reforms focused on improving students' basic skills and ensuring that student achievement reached minimum levels. By the early 1990s, many teachers, parents, and business leaders believed South Carolina students were ready for greater challenges. When Barbara Stock Nielsen was elected South Carolina's State Superintendent of Education in 1991, she set goals of raising academic standards and shifting the schools' focus to high-level skills. To facilitate these goals, she launched a multiyear effort to develop and adopt statewide curriculum frameworks—documents that communicate the core academic knowledge and skills all students are expected to learn.

Development of Standards

South Carolina adopted a clustered approach to the development of curriculum frameworks. Based on nominations provided by professional associations representing teachers and curriculum experts, the State Superintendent of Education appointed a curriculum framework writing team to draft a curriculum framework in an assigned subject area. The writing team consisted of 10 to 20 individuals, all of whom had taught, lectured, written, or practiced in their respective disciplines and were knowledgeable in the most current thinking on learning and teaching in their curriculum field. Staff from the South Carolina Department of Education provided support for each writing team and took care of logistics and the gathering of information. Each of the writing teams was also assisted by a professional writer who helped draft the documents.

The writing teams met regularly to build consensus about the direction of and the major components of their draft frameworks. This phase continued from 6 to 24 months, depending on the degree of consensus that existed within a particular group.

When a draft framework was completed, the writing team submitted it to the State Superintendent who forwarded it to the South Carolina Curriculum Review Panel. This panel consisted of 11 members appointed by the State Board of Education. Candidates for the Curriculum Review Panel had to have taught, lectured, written, or practiced in one of the academic areas slated for a curriculum framework or in a related education field. At least three members had to be full-time classroom teachers, and all members had to submit a statement declaring that they have no association with curriculum material providers and have no other conflicts of interest. The Curriculum Review Panel members could not be

current members of a curriculum framework writing team or employees of the South Carolina Department of Education. The panel's role in the curriculum process was to oversee a field review, make revisions, and recommend adoption of the curriculum framework to the State Board of Education. This was accomplished by the panel appointing a five-member subcommittee to conduct a framework field review.

The subcommittee was to allow at least 60 days for public comment, with all comments required to be submitted in writing. Based on public input, the subcommittee revised the field review draft in collaboration with members of the framework writing team. The subcommittee consisted of at least two panel members and other specialists in the curriculum area under review. Again, no State Department of Education employee or person with a commercial interest in particular curriculum materials could serve on the subcommittee. The subcommittee was responsible for sending the draft framework to district superintendents, principals, teachers, parents, students, business leaders, civic groups, colleges and universities, and other individuals who requested copies. Principals were asked to facilitate a school level review of each framework with teachers and parents and to summarize their input. After the subcommittee finished its work, the Curriculum Review Panel would recommend state approval of the revised curriculum framework. A framework was considered final when the state board voted to adopt it. South Carolina's initial curriculum frameworks covered mathematics, the visual and performing arts, and foreign languages. The second round included frameworks covering standards in English language arts, science, and health and safety. The final round was reserved for social studies and physical education.

Approximately 40,000 copies of the first three frameworks—those for mathematics, foreign languages, and visual and performing arts—were distributed to the public. Approximately 3,200 responses were returned to the Curriculum Review Panel. The public's comments were then summarized and incorporated into the frameworks.

In the second stage of the review process, the Curriculum Review Panel conducted a series of public input sessions to give citizens a final opportunity to express their opinions. Six such sessions were held for each framework at locations throughout the state. However, generally fewer than 100 people attended these sessions. With few new comments to be incorporated, the frameworks were finalized quickly, and two years after the process was initiated, the frameworks were approved by the State Superintendent of Education and formally adopted by the State Board of Education.

Costs

Funding for the development of South Carolina's curriculum frameworks originally came from the State Department of Education's regular operating budget. A department spokesman stated: "We believe that

curriculum revision is part of the Department's charge, so we did not get a new allocation of money from the legislature to do this."

Since the effort began in 1991, an average of three writing teams have worked at one time, with each team's expenses amounting to about \$30,000 per year. This includes travel and lodging, resource materials, consultants, pay for substitute teachers, and a professional writer for each team. Printing costs and costs associated with Department of Education staff support are not included in these figures.

North Dakota

With seemingly minimal statutory guidance and a constitutional reference to the need for "a high degree of intelligence, patriotism, integrity and morality," North Dakota has attempted to develop its own standards governing what a student should know and be able to do.

Curriculum Guidebooks

Prior to the 1990s, the Department of Public Instruction developed and made available to local districts *Curriculum Guidebooks*. The *Guidebooks* were written specifically for each subject area and included extensive detail regarding the development of a subject area's curriculum. Over time, the *Guidebooks* fell out of favor. Some local districts found the level of detail to be burdensome. Others believed that the state was too involved in that which had been a local concern—curriculum design. The department determined that the *Guidebooks* should be replaced with smaller, leaner documents, which only outlined general areas of competence.

Curriculum Frameworks

In 1993 the department released volumes 1 and 2 of the *North Dakota Curriculum Frameworks*. These *Frameworks* marked a dramatic change in the development of content guides. Both smaller in size and considerably more general than the preceding *Guidebooks*, the *Frameworks* offered a practical solution to the need for content guidance. What they did not include, however, were performance indicators. This shortcoming, coupled with the national impetus toward more clearly defined content standards, prompted the department to move toward a new type of document.

Content Standards

Following on its previous efforts with *Curriculum Guidebooks* and *Curriculum Frameworks*, the department developed content standards, first in the area of English language arts and then in the area of mathematics. Content standards governing science, social studies, and health are presently underway.

Content standards consist of five parts—standards, benchmarks, specific knowledge items, performance activities examples, and performance standards. A standard is a single, concise statement that identifies what

students should know and be able to do. An English language arts standard requires students to “gather and organize information.”

Benchmarks are a translation of standards. They identify what a student should know and be able to do at a specific developmental level. North Dakota has selected grades 4, 8, and 12 as its benchmark levels. If the standard requires students to gather and organize information, the accompanying benchmark would require students to “use organizational strategies and appropriate reference tools.”

Specific knowledge items offer examples, and frequently lists, to clarify and embellish the intent of the standards and benchmarks. If a standard requires students to gather and organize information, its accompanying specific knowledge items would include “sequence patterns, lists, problem/solution patterns, and story maps.”

Performance activities offer additional assistance to users by illustrating the standards, benchmarks, and specific knowledge items in terms of tangible, real-life scenarios. For the standard being illustrated, the performance activities might include “requiring students to use a variety of reference tools to research the history of a particular era and to use information gathered from the various research materials to create a timeline depicting the main events.”

Performance standards take a content standard and translate it into terms that classify how well a student meets a content standard. They set a measurement scale for the assessment of students. The scale is based not on an A to F grading, but rather on levels such as novice, partially proficient, proficient, and advanced.

Process for Content Development

The department has been pursuing the development and revision of content standards in English language arts, mathematics, science, health, social studies, the arts, physical education, and world languages. Its effort begins with the Standards, Assessments, Learning, and Teaching (SALT) team. The team is comprised of department and field staff, appointed by the Superintendent of Public Instruction. The team’s goal is to create content standards based on best practices. The team’s activities and recommendations are reported to the Superintendent of Public Instruction for final approval.

The SALT team is advised by the State Curriculum Council. This council consists of representatives from approximately 40 curriculum specialist organizations. The SALT team is also assisted by writing teams whose members represent school districts across the state. The writing team members actually develop the components of the final content standards document. Their efforts are guided by working protocols that involve reviews of other state and national standards, the generation of state priorities, the drafting of the content standards, the development of supporting documents, the development of possible assessment tools, and the generation of professional development guides.

All state content standards are reviewed by the SALT team and ultimately by the Superintendent. Once approved by the Superintendent, the content standards are distributed to local school districts for their voluntary use.

Committee Conclusion

The committee concluded that, in theory, the development of content standards should involve the best and the brightest teachers in the state and that, in theory, the development of content standards should take place at the local level, rather than being state-driven. The committee found that the two theoretical beliefs were not congruent. Because of size, limited economics, and limited personnel, not all school districts would be able to develop their own standards.

The committee also found that one consequence to be anticipated from the establishment of statewide content standards would be the subsequent establishment of statewide assessment standards. The committee was not certain to what degree the establishment of such assessment standards would or could affect accountability at all levels of the educational process. The committee makes no recommendation regarding the desirability of requiring that a core curriculum be taught from kindergarten through grade 12.

Miscellaneous Reports

Receipt of County Plan Assigning the Duties of County Superintendent of Schools

The North Dakota Century Code provides that a board of county commissioners may eliminate the position of county superintendent of schools and reassign the duties of the county superintendent to one or more qualified persons. The statute requires that the assignment be set forth in a written plan, that the plan be approved by a majority of school board presidents whose districts include land in the county, and that the plan be filed with the Legislative Council. As of September 1998, 19 of the 53 counties employed a part-time county superintendent of schools, and 12 counties participated in the multicounty employment of a county superintendent. The remaining 22 counties no longer employed a county superintendent of schools. Contrary to statute, however, only 13 of those counties had filed a plan with the Legislative Council. Even among those that reassigned the duties and filed a plan, there were incomplete or inappropriate assignments of duties.

This has presented a problem for the Department of Public Instruction staff because they do not know which county official should receive correspondence applicable to the office of county superintendent or which county official or individual should perform the statutory duties of a county superintendent. Department of Public Instruction staff, however, indicated that their concerns would be addressed by the stricter assignment provisions included within the bill to rewrite portions of Title 15, as recommended by the committee.

Home Education of Children With Autism

North Dakota Century Code Section 15-34.1-01 requires the attendance at school of every educable child between the ages of 7 and 16. Section 15-34.1-03 establishes various exceptions to the compulsory attendance requirements, one of which is for children receiving home education. That exception is not, however, extended to children with developmental disabilities. Children with developmental disabilities, generally, have substantial functional limitations, and the law was enacted to ensure that such children would not be "closeted" or denied adequate and appropriate stimulation and instruction.

During the 1997 legislative session, the Legislative Assembly considered the case of one North Dakota family who wanted to provide home education for their autistic child. The Legislative Assembly subsequently enacted Sections 15-34.1-12 and 15-34.1-12.1, which allow that family, and others similarly situated, to provide home education. As a safeguard, the sections also require the preparation and filing of progress reports by a licensed psychologist, an occupational therapist, a speech pathologist, and a certificated teacher.

Because the concept was introduced rather late in the session, the Legislative Assembly provided that the two sections would remain effective only until June 30, 1999. This provided an opportunity for the Superintendent of Public Instruction to evaluate the efforts of the family for whom the legislation was crafted and to determine whether or not the legislation should be extended or made permanent.

The Superintendent of Public Instruction maintains that specialized expertise generally is required to assist children with autism in educational endeavors. The Superintendent also maintains that most families do not have the necessary expertise or the desire to provide the intensity of instruction required by children with any kind of development disability. Consequently, the Superintendent concluded that this is not an area in which the state should expect a tremendous increase in participants. However, the state should, through local school districts, support the provision of services to each student in the most appropriate manner.

Leadership in Educational Administration Development Consortium - Training Programs for Teachers and Administrators

Subsequent to the 1997 legislative session, the leadership in educational administration development (LEAD) consortium and the teacher learning centers agreed to work cooperatively in the development of training programs for teachers and administrators. Their joint goal was the creation of programs that would serve as models for professional development and increase student learning by increasing the effectiveness of teachers and administrators.

The guiding principles agreed to by both the LEAD consortium and the teacher learning centers required

that the joint projects benefit both groups and be supported by the North Dakota Education Association and the North Dakota Council of Educational Leaders. The projects undertaken were to be refined in two or three schools before being made available more broadly and the project activities were to be of high quality. Both the LEAD consortium and the teacher learning centers agreed that participation should be voluntary. However, they determined that in a given school, participation must include the principal and a significant number of the teaching staff.

Applications for pilot schools were solicited in April and May, 1998. The Fargo, Devils Lake, and Carrington School Districts were chosen as pilot sites. Approximately 80 teachers and four administrators will be involved in newly developed programs that emphasize peer coaching and mentor training.

The cooperative effort is designed not to subvert or replace the present teacher supervision and evaluation process but rather to help good teachers become better teachers and to assist struggling teachers. The groups anticipate an ongoing review at the pilot stage and eventual employment of a train-the-trainer approach, in which staff members from pilot schools would work with other schools seeking to adopt the model. While early results will be measured by the end of the first pilot year in June 1999, conclusive results will not be available until peer coaching and mentoring have been utilized by schools for several years.

Coordinating Statewide Access to Work Force Training Programs

The mission of the State Board for Vocational and Technical Education is to cooperate with other state agencies and private organizations to provide work force training programs in a manner that allows statewide access. This mission is being pursued both through technological intervention and through partnering activities. Public sector partners include the institutions of higher education, Job Service North Dakota, the Department of Economic Development and Finance, the Department of Public Instruction, and the Workforce Development Council. Private sector partners include entities such as the North Dakota Home Builders Association, the Association of Heavy Equipment Dealers, the North Dakota Implement Dealers, and the North Dakota Home Building and Trades Association.

Work force training is perceived to be a long-term commitment. It begins at kindergarten and progresses through grade 12 and into both undergraduate and graduate programs. It is geared toward serving the individual and toward meeting critical skilled labor needs in virtually every area.

Attempts are being made to constantly monitor both short-term and long-term work force needs and to improve the dialogue between a variety of public and private sector service providers.

ELECTRIC UTILITIES COMMITTEE

The Electric Utilities Committee was created by House Bill No. 1237 (1997) to study the impact of competition on the generation, transmission, and distribution of electric energy within this state. House Bill No. 1237 (1997) is codified as North Dakota Century Code (NDCC) Sections 54-35-18 through 54-35-18.2. Section 54-35-18 states that the Legislative Assembly finds that the economy of North Dakota depends on the availability of reliable, low-cost electric energy and that there is a national trend toward competition in the generation, transmission, and distribution of electric energy and that the Legislative Assembly acknowledges that this competition has both potential benefits and adverse impacts on the state's electric suppliers as well as on their shareholders and customers and citizens of this state.

Section 54-35-18.1 outlines the composition of the committee and directs the committee to study the impact of competition on the generation, transmission, and distribution of electric energy within this state and on this state's electric suppliers. Electric suppliers include public utilities, rural electric cooperatives, municipal electric utilities, and power marketers.

Section 54-35-18.2 outlines the study areas that the committee is to address in carrying out its statutory responsibilities. This section provides that the committee is to study the state's electric industry competition and electric suppliers and financial issues; legal issues; social issues; issues related to system planning, operation, and reliability; and identify and review potential market structures. Also, although many states are studying the restructuring of their electric industries, this section requires the committee to review two areas unique to North Dakota that other states may not have addressed: (1) to what extent power produced by the Garrison Dam should be taxed by the state, and (2) the source and cost of power supply to the state's Indian reservations.

Committee members were Representatives Al Carlson (Chairman), Robert Huether, and Matthew M. Klein and Senators Randel Christmann, Pete Naaden, and Larry J. Robinson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

ELECTRIC INDUSTRY RESTRUCTURING

Background

House Bill No. 1237 (1997) reflected the Legislative Assembly's concern that the electric industry is changing rapidly and that if competition is to be introduced into North Dakota, it should be done in a fair and equitable manner. Nationally, builders of new technology generating plants, the natural gas industry, and states with

high electric rates or excess generating capacity are promoting electric industry restructuring. Arguments put forward for restructuring or implementing competition in the electric industry include greater customer choice, the possibility that open competition may lower costs, generating efficiency may be encouraged through competition, and capital is allocated by the marketplace. However, risks and challenges of retail competition include maintaining reliability of supply, pricing outcomes in which some customers may benefit at the expense of others, and allocating stranded costs. The impetus for electric industry restructuring has also come from large industrial and commercial energy users that are opposed to subsidizing residential electricity users. For example, some industrial users are paying 150 percent of the actual cost of providing energy to those users, while residential customers are only paying 60 to 70 percent of the actual cost of providing energy to them.

The committee learned that competition is growing because of an awareness that generation, unlike transmission, does not have to be a monopoly business; a belief that market forces can produce lower electricity prices than can the oversight of regulators; enactment of the Public Utilities Regulatory Policy Act which showed that nonutility generators can often compete successfully with utilities; and enactment of the Energy Policy Act of 1992, which allowed independent power producers to enter the power market without onerous regulation. Also, the committee learned competition is growing because of changes in technology and fuel prices that make power from many new generating plants cheaper than power from existing plants and adoption of the Federal Energy Regulatory Commission's open access rules in 1996, Federal Energy Regulatory Commission Order Nos. 888 and 889. The committee learned that these open access rules have created a vigorous competitive market for wholesale electricity, and this has stimulated demand for retail competition.

Traditional Rationale for Regulation

Under the current industry structure, electricity is provided to retail customers by utilities that have geographic monopolies on the provision of electric service within their service territories. Customers within a utility's service territory must purchase all of their electric services from that utility. These services include generation, transmission, distribution, customer service, meter reading, demand-side management, and aggregation and ancillary services.

Generally, three major types of electric utilities exist. These are investor-owned utilities, municipal and other government-owned utilities, and rural electric cooperatives. States regulate investor-owned utilities regarding their profits, operating practices, and pricing to end-use retail customers, while the Federal Energy Regulatory Commission (FERC) governs the pricing of wholesale

bulk power sales and transmission services. Although House Bill No. 1237 (1997) directs the committee to study the impact of competition on the generation, transmission, and distribution of electric energy, nationwide the restructuring debate is over whether and how to separate the generation of electricity from other electric services in order to allow retail customers to shop for the electricity supplier of their choice.

In North Dakota, regulation of electric utilities engaged in the generation and distribution of light, heat, or power is performed by the state's Public Service Commission. North Dakota Century Code Section 49-02-03 grants to the Public Service Commission the power to supervise and establish rates. This section provides:

The commission shall supervise the rates of all public utilities. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities. Whenever the commission, after hearing, shall find any existing rates, tariffs, joint rates, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this title, the commission by order shall fix reasonable rates, joint rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

Concerning electric utility franchises, NDCC Section 49-03-01 provides that an electric public utility must obtain a certificate of public convenience and necessity from the Public Service Commission before constructing, operating, or extending a plant or system. Similarly, the state's Territorial Integrity Act, Sections 49-03-01.1 through 49-03-01.5, requires an electric public utility to obtain a certificate of public convenience and necessity before constructing, operating, or extending a public utility plant or system beyond or outside of the corporate limits of any municipality. However, Section 49-03-01.3 exempts electric public utilities from the requirement that they obtain a certificate of public convenience and necessity for an extension of electric distribution lines within the corporate limits of a municipality in which it has lawfully commenced operations provided that the extension does not interfere with existing services provided by rural electric cooperatives or another electric public utility within the municipality and that any duplication of services is not deemed unreasonable by the Public Service Commission.

As described above, traditionally, an electricity customer must purchase all of its electric services from the utility serving that customer's service territory, including the three primary services—generation, transmission, and distribution. Generation refers to the actual creation of electricity, which may be generated using a

number of methods and fuel such as nuclear, coal, oil, natural gas, hydro, or wind. Transmission refers to the delivery of electricity over distances at high-voltage from a generation facility through a transmission network usually to one or more distribution substations, where the electricity is stepped down for distribution to residential, commercial, and industrial customers. For the retail customer, the costs for these functions are bundled into retail rates, along with the cost of distribution. Distribution involves the retail sale of electricity directly to consumers.

Other functions traditionally provided by vertically integrated utilities include customer service, billing, meter reading, demand-side management, research and development, and aggregation and ancillary services. Aggregation is the development and management of both a power portfolio, combining power from a variety of sources in order to match the demand for power with adequate power supply and a portfolio of customers with combined demands in order to economically serve those customers. Ancillary services are those services necessary to effect a transfer of electricity between a seller and a buyer and to coordinate generation, transmission, and distribution functions to maintain power quality and system stability.

Under the current industry structure, the utility serving a service territory provides all of these services and functions, selling them as a single bundle. Nationwide, the restructuring debate centers on whether or how the generation function should be separated from the bundle, allowing retail customers to choose their electricity supplier. If generation is unbundled from transmission and distribution, under this scenario, these services may remain regulated functions.

The Regulatory Compact

The provision of electric service has traditionally been considered to exhibit the characteristics of a natural monopoly. According to economic theory, a natural monopoly exists in a market if one service provider in the market can serve customers more efficiently than many competing service providers. A common explanation for electricity provision as a natural monopoly is that allowing competitors to string duplicate transmission and distribution lines and construct excess generation capacity would waste resources and increase electric rates for customers. Generally, the characteristics of a natural monopoly include a high, upfront capital investment in technology; limited storability of a provided service or goods; limited transportability, requiring operations near the end users; and cost advantages of large and integrated systems as a result of better utilization of existing capacity or economies of scale and scope.

In markets exhibiting the characteristics of a natural monopoly, government intervention in the form of regulation over a single firm is considered necessary to provide the market discipline competition cannot provide. In

exchange for this monopoly, each utility is required to serve all customers within its service territory and to provide quality service at just and reasonable rates. The utility is permitted to recover reasonable and prudent expenses associated with its provision of service plus a reasonable rate of return on its investment made to serve customers. This exchange is known as the regulatory compact.

Under the regulatory compact, the traditional method of rate determination has been rate of return regulation. This type of regulation is designed to ensure that utilities offer their services at prices that are based on the cost of the services, rather than on the value customers place on those services. In traditional rate of return regulation, the regulating entity determines the revenue requirement (the reasonable and prudent cost of providing utility service), allocates the requirement among customer classes, and translates the allocated revenue requirement into rates.

Traditional rate of return regulation has been criticized for allowing a utility and its shareholders to pass on all of the utility's costs and risks to ratepayers and because the utility faces minimal risks, the utility has little or no incentive to increase its operating efficiency or to minimize its expenses. One critic has stated that rate of return regulation fails to penalize inefficient producers or reward efficient ones.

As an alternative to traditional rate of return regulation, some commentators have advocated and some states have implemented various forms of incentive regulation, including flexible regulation, targeted incentive plans, external performance indexing, price and revenue caps, and performance-based regulation. However, these forms of incentive-based regulation also have their critics. Performance-based regulation opponents have argued that this type of regulation may result in the selection of inappropriate performance benchmarks; the incorporation of too many, or contradictory, societal or regulatory goals into the performance-based regulation plan; result in unreasonable returns to shareholders; or exacerbate the information asymmetry between utilities and regulators.

Federal Actions to Promote Competition

In 1978 Congress enacted the Public Utility Regulatory Policy Act. The goals of the Public Utility Regulatory Policy Act were to make the United States self-sufficient in energy, increase energy efficiency, and encourage the use of renewable alternative fuels. The Act intended to achieve these goals by abandoning the use of natural gas to make electricity, mandating conservation of oil, and encouraging industry to cogenerate electricity using waste heat. The Act required utilities to purchase bulk power produced from cogeneration facilities to ensure that it was financially attractive. However, states were allowed to determine the avoided costs and quantity of such power. Some states capped the price at the utility's

avoided costs (the amount of money that an electric utility would need to spend for the next increment of electric generation that it instead buys from a cogenerator) and limited the obligation to purchase to the capacity of the utility. Other states allowed prices above the utility's avoided costs and ordered purchases of additional generation whether needed or not.

In 1992 Congress enacted the Energy Policy Act to encourage the development of a competitive, national, wholesale electricity market with open access to transmission facilities owned by utilities to both new wholesale buyers and new generators of power. In addition, the Act reduced the regulatory requirements for new non-utility generators and independent power producers. The Federal Energy Regulatory Commission initiated rulemaking to encourage competition for generation at the wholesale level by assuring that bulk power could be transmitted on existing lines at cost-based prices. Under this legislation and rulemaking, generators of electricity, whether utilities or private producers, could market power from underutilized facilities across state lines to other utilities.

Finally, the Federal Energy Regulatory Commission has taken a number of steps to encourage competition in the wholesale market. These actions include authorizing market-based rates, issuing Section 211 wheeling orders, ordering open access transmission tariffs, and issuing the open access transmission rule (FERC Order No. 888). Market-based rates are those set by willing buyers and sellers of power. This method may be used instead of the more traditional method of ratesetting by regulators pursuant to administrative hearings, with rates based on the cost of producing power. On April 24, 1996, the Federal Energy Regulatory Commission issued Order Nos. 888 and 889, which essentially require all utilities that own, control, or operate transmission lines to file nondiscriminatory open access transmission tariffs that offer competitors transmission service comparable to the service that the utility provides itself. In addition, the Federal Energy Regulatory Commission Order No. 888 recognizes the right of utilities to recover legitimate, prudent, and verifiable costs stranded by opening up the wholesale electricity market, i.e., stranded costs. Finally, the Federal Energy Regulatory Commission Order No. 888 requires public utilities to functionally unbundle their power and services for wholesale power transactions by requiring the internal separation of transmission from generation marketing services.

Electric Industry Restructuring Initiatives in Other States

California

In 1996 the California Legislature enacted a major restructuring bill that called for customer choice no later than January 1, 1998, created an independent system operator, established a power exchange, and funded

stranded cost recovery through bonds. Provisions of the California legislation include:

- Customer choice commencing no later than January 1, 1998. The California Public Utilities Commission will establish a phase-in schedule that is equitable for all customer classes which must be completed for all customers by January 1, 2002.
- An immediate rate reduction, through use of a bond financing mechanism, of not less than 10 percent for residential and small commercial customers. Additionally, rate savings for these customer classes are expected to be no less than 20 percent by April 1, 2002. Up to \$10 billion in rate reduction bonds will be issued in order to achieve the immediate rate reduction and will spread recovery of a portion of competition transition charge for these customers over 10 years.
- A limited transition period, ending December 31, 2001, during which utilities have an opportunity to recover stranded investment through a nonby-passable competition transition charge levied on the usage of electric power. Recovery is limited to certain categories and types of costs and to only that portion that can be recovered under a rate freeze during the transition period.
- A "firewall" to shield residential and small commercial customers from paying for any competition transition charge exemptions granted to industrial users for economic development or retention purposes.
- An independent system operator and a power exchange subject to the jurisdiction of a five-member oversight board appointed by the Governor and the legislature. Publicly owned utilities and investor-owned utilities are required to give control of their transmission facilities to the independent system operator.
- A requirement that utilities continue funding energy conservation and low-income assistance programs through 2001 and that ratepayers pay for that portion recoverable under the rate freeze. Assistance programs must be funded at levels not less than those authorized for 1996. Funding for energy efficiency and conservation must at least equal \$228 million per year through 2001; during the same period, \$62.5 million must be provided for research, development, and demonstration projects to advance science or technology that would not otherwise be adequately provided for in a competitive market. The amount of \$540 million is provided for renewable resource technologies in this time period.
- A requirement that all electric sellers, marketers, and aggregators register with the California Public Utilities Commission and provide consumers with adequate and reliable

information regarding supplier options. Contract rescission provisions and "antislamming" or "grid-napping" protections are also included in the legislation.

Maine

Legislation enacted by the Maine Legislature in 1997 established retail competition for the purchase and sale of electricity beginning March 1, 2000. The legislation permits electric utilities a reasonable opportunity to recover verifiable and unmitigable stranded costs and also establishes a standard-offer service for customers who do not seek or take power in the competitive marketplace. The law sets a 33 percent market-share cap for Central Maine Power Company and Bangor Hydro-Electric Company and preserves low-income assistance programs funded through transmission and distribution rates. It establishes a 30 percent renewal-resource portfolio requirement for competitive electricity providers and a program for renewable research development funded through voluntary contributions. Finally, it requires the Maine Public Utilities Commission to develop a consumer education program.

Montana

During the 1997 legislative session, the Montana Legislature enacted Senate Bill No. 390, the Montana Electric Utility Industry Restructuring and Consumer Choice Act. This Act established restructuring requirements for Montana's electric utility industry. Pilot programs began July 1, 1998, and a report on those programs is due by July 1, 2000. All utility customers must have a choice in their electricity supplier before July 1, 2002. All utilities must submit transition plans. Certain stranded costs laid out in transition plans will be reviewed and will be paid for by transition bonds. Beginning January 1, 1999, 2.4 percent of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless otherwise modified, this funding level remains in effect until July 1, 2003. The recovery for these programs is authorized through a universal systems benefits charge assessed at each customer meter. One feature of the bill that is relevant to electric industry restructuring in North Dakota is how the bill deals with rural electric cooperatives. Section 20 of the bill provides that rural electric cooperatives have the choice of opting in or out of offering their customers choice. If a cooperative opts in, it must certify to the Montana Public Service Commission that it has adopted a transition plan consistent with the provisions of the Act, but essentially the same as the plans of investor-owned utilities. If a cooperative opts out, the cooperative is precluded from accessing the distribution system and, thus, customers of other utilities that have opened their system up without a preexisting contract. A cooperative must participate in

the universal systems benefits program whether it opts in or out.

Oklahoma

Senate Bill No. 500, signed by the Governor of Oklahoma on April 25, 1997, created the Electric Restructuring Act of 1997 and stated electric utility industry restructuring goals for that state. The Act establishes customer choice by July 1, 2002. Before that date a series of studies will be conducted on various aspects of restructuring. These studies include:

- Formation of an independent system operator for Oklahoma or the region that must have begun by July 1, 1997, and reported by February 1, 1998.
- A study of technical issues, such as reliability, safety, and transmission, which must report findings by December 31, 1998.
- A study of financial issues such as rates, charges, and electric service provider financial obligations. This study must commence on January 1, 1999, and report findings by December 31, 1999.
- A study of consumer issues that must begin by July 1, 1999, and report findings by August 31, 2000.

In addition, the Oklahoma Tax Commission is conducting a study to assess the effect of restructuring on state, county, and local tax revenue and examining the feasibility of establishing a consumption-based tax to provide at least the existing level of revenue. This study must provide findings by December 31, 1998. The commission is prohibited from adopting any rules or issuing orders without prior authorization from the Oklahoma Legislature or the Joint Electric Utility Task Force.

New Hampshire

The relevant provisions of the New Hampshire restructuring legislation are:

- The New Hampshire Public Utilities Commission must have issued a final restructuring order by June 30, 1997. Utilities must have offered retail access by January 1, 1998. The New Hampshire Public Utilities Commission may delay this date by up to six months without legislative approval.
- Generation must at least be functionally separated from transmission and distribution functions. The Public Utilities Commission may require that distribution and electricity supply services be provided by separate utility affiliates. However, utilities may own small-scale generation facilities as a means of minimizing transmission and distribution costs. While divestiture is not required, utilities must mitigate their stranded costs, with the sale of surplus assets identified as one form of mitigation.
- In the implementation of full-fledged retail competition, utilities are allowed recovery of net,

nonmitigable environmental costs and costs of legally mandated purchase power contracts. They are allowed to seek recovery of generation-related assets.

- The Act allows the Public Utilities Commission to establish a stranded cost recovery charge, with the burden of proof for recovery on the utility. It also allows the Public Utilities Commission to establish interim charges effective for two years from the date that utilities file plans to comply with the Act. The Act states that entry and exit fees are not preferred recovery mechanisms.

Pennsylvania

House Bill No. 1509, enacted by the Pennsylvania General Assembly in 1996, addressed electric industry restructuring in Pennsylvania. The major provisions are:

- By January 1, 1999, utilities must offer retail access to one-third of their peak load for each customer class; two-thirds by January 1, 2000; and all by January 1, 2001. Utilities must provide this opportunity on a first-come, first-served basis except as directed by the Pennsylvania Public Utilities Commission. The Pennsylvania Public Utilities Commission may delay implementation of the initial phase by up to one year.
- The Act requires unbundling of the generation, transmission, and distribution functions. Generation will be deregulated while transmission and distribution will continue to be regulated as natural monopolies. Divestiture is permitted but not required.
- Utilities are statutorily entitled to recover their nuclear decommissioning costs; contracts for power purchased from nonutility generators, and prudently incurred costs associated with buydowns and buyouts of these contracts; and regulatory assets. The Pennsylvania Public Utilities Commission may allow recovery of generation-related costs in addition to those listed above. Utilities must mitigate costs to the extent practicable through such measures as accelerated depreciation and minimize rates while maintaining safe and efficient operations.
- The Act establishes a competition transition charge applied to any customer using the transmission or distribution system. The competition transition charge may not shift costs between or within customer classes. Customers that install onsite generation and significantly reduce their purchases through transmission and distribution systems must pay a fully allocated competition transition charge.
- The Act establishes a cap on total rates for utility company customers for the shorter of 4.5 years or until the utility finishes collecting its stranded costs through transition charges and all

customers can choose suppliers. The generation component of rates plus transition charges may not exceed current Public Utilities Commission-approved generation costs for the shorter of nine years or until the utility finishes collecting its stranded costs through transition charges and all customers can choose suppliers. Limited exceptions to these caps exist, for example, if they preclude a utility from earning its Public Utilities Commission-authorized rate of return on its investment.

- The Public Utilities Commission may issue a qualified rate order to allow issuance of transition bonds. Bonds may have a maturity of up to 10 years. Proceeds of the bonds must be used to reduce stranded costs and other transition costs. The competition transition charge must be reduced to the extent stranded costs have been refinanced. Savings and interest costs must be passed on directly to customers through rate reductions.
- The Act requires continuation of gross receipts and other state utility taxes with a formula to maintain revenue neutrality through 2003. The gross receipts tax applies to nonutility electric suppliers.

Rhode Island

The 1996 Rhode Island electric restructuring initiative, codified as Rhode Island General Laws § 39-1-27 et seq., provides:

- As of July 1, 1997, utilities must offer retail access to all new commercial and industrial customers, all existing manufacturing customers with average annual demand of 1,500 kilowatts or more, and all accounts of the state government, subject to an overall cap of 10 percent of the utility's total sales.
- As of January 1, 1998, utilities must offer retail access to all existing manufacturing customers with average annual demand of 200 kilowatts or more and all accounts of municipal governments. Utilities are not required to provide retail access to customers accounting for more than 20 percent of their total sales under this and the preceding provision.
- As of July 1, 1998, utilities must offer retail access to all of their remaining customers. This deadline is moved up if retail access is available to 40 percent or more of total sales in New England. The Rhode Island Public Utilities Commission may delay this deadline by up to six months to permit extension of retail access on reasonable terms.
- The Act requires unbundling of generation, transmission, and distribution functions. Generation will be deregulated, while transmission and

distribution will continue to be regulated by the federal Energy Regulatory Commission and Rhode Island Public Utilities Commission, respectively. Any utility recovering a stranded cost through the transition charge must determine the market value of its fossil fuel and hydro-generating assets by the sale or spinoff of these facilities. The market value is then deducted from the utility's stranded costs. Utilities must also attempt to sell their portion of their purchase power contracts that exceed market rates to reduce their stranded costs.

- Stranded costs include nuclear decommissioning costs and nuclear operation and maintenance costs that would continue if the plant were shut down; above-market costs of purchase power contracts and the reasonable costs of buying out or buying down these contracts; regulatory assets; and the net unrecovered capital costs of all of the generating plants owned by the utility or its wholesale power distributor as of December 31, 1995, whether or not plants are operating.
- The Act establishes a transition charge applied to any customer using the transmission or distribution system. A nonutility electric supplier may pay part or all of its customer's transition charge. The charge is set at 2.8 cents per kilowatt hour for the period between July 1, 1997, and December 31, 2000. The charge is subject to adjustment to account for the disposition, pursuant to the Act, of nonnuclear generating assets by wholesale power suppliers. From January 1, 2001, the Public Utilities Commission sets the charge. After January 1, 2010, there is no allowance for costs associated with regulatory assets and unamortized capital investments in generating plants.
- Rate increases generally must hold to the rate of inflation from January 1, 1997, through December 31, 1998. These increases do not apply to low-income customers. Utilities must file performance-based rate plans with the Public Utilities Commission.
- The Act establishes a commission that was required to submit a plan to the General Assembly by January 1, 1997, on assessing and taxing utilities and nonregulated power producers.

TESTIMONY AND COMMITTEE ACTIVITIES **The Regulated Electric Industry in North Dakota**

The regulated electric industry in North Dakota consists of Montana Dakota Utilities Company, Northern States Power Company, and Otter Tail Power Company. Montana Dakota Utilities Company provides electric service in Bismarck, Dickinson, Williston, and

Jamestown, along with numerous smaller cities in western North Dakota. Montana Dakota Utilities Company has 68,607 electric customers. Northern States Power Company provides electric service in Minot, Fargo, and Grand Forks and has 80,684 electric customers. Otter Tail Power Company provides electric service in Jamestown, Devils Lake, Wahpeton, and many other smaller cities throughout central and eastern North Dakota. Otter Tail Power Company has 56,276 electric customers. The Public Service Commission does not regulate rural electric cooperatives or municipal utilities.

Federal Restructuring Initiatives

The committee monitored electric industry restructuring activities at the federal level throughout the interim. Nine bills relating to electric industry restructuring have been introduced in the 105th Congress. The committee learned that key issues that must be addressed in any federal legislation are linking repeal of the Public Utility Holding Company Act, the Public Utility Regulatory Policy Act, and retail choice in federal legislation; the conflict between state's rights in promoting interstate commerce; the issue of public power; the issue of stranded costs; the issue of how social benefits such as low-income programs, conservation programs, and renewable requirements are integrated into restructuring issues; competition issues such as mergers and antitrust; and reliability concerns.

H.R. 388 - This bill, known as the Ratepayer Protection Act, would repeal the qualifying facility mandatory purchase provisions of the Public Utility Regulatory Policies Act of 1978, would be effective as of the date of the bill's introduction, and would not impact existing contracts.

H.R. 655 - This bill, known as the Electric Consumer's Power to Choose Act of 1997, would provide for retail choice no later than December 15, 2000, address the issue of stranded costs, would suspend the Public Utility Holding Company Act of 1935 and the Public Utility Regulatory Policies Act of 1978 when customer choice becomes effective but would not abrogate existing mandatory purchase contracts. Concerning state jurisdiction, states would maintain some authority over every retail transaction so that they may continue to fund public service programs and provide for the recovery of retail stranded costs.

H.R. 1230 - This bill, known as the Consumers Electric Power Act of 1997, would guarantee every customer the right to choose their electricity service provider by January 1, 1999; ensure that electric service providers are allowed access to compete on a level playing field; preserve and strengthen state authority with regard to universal service for consumers, universal access for providers, conservation programs, and future economic development programs; outline the performance objectives of competitive transmission and distribution

systems; prospectively repeal the Public Utility Holding Company Act of 1935 and the Public Utility Regulatory Policies Act of 1978 after competition is affirmatively achieved; and reject stranded cost recovery—the bill would ban exit fees, subsidies, or other penalties on exercising the right of choice.

H.R. 1359 - This bill would protect the environment and low-income families as a result of electric utility deregulation. The bill would amend the Public Utility Regulatory Policies Act of 1978 to create a joint federal-state board to administer, with Department of Energy oversight, a national program to provide matching grants to state and local programs promoting energy conservation, renewable energy resources such as wind and solar power, and universal electricity service for low-income, rural, and other consumers for whom basic electricity service might be compromised by deregulation. The national program would be funded by a transmission access charge paid by all electricity suppliers.

H.R. 1960 - This bill, known as the Electric Power Competition and Consumer Choice Act of 1997, would require each state to initiate a retail competition rule-making proceeding. The bill would leave decisions on stranded cost recovery to the state with the restriction that such recovery be limited to legitimate, verifiable, and nonmitigable stranded costs for which there is a reasonable expectation of recovery. The bill would repeal the Public Utility Holding Company Act of 1935 and the mandatory power purchase provisions of the Public Utility Regulatory Policies Act of 1978 for utilities in those states that elect full retail competition and protects certain public benefit programs, such as those relating to renewables, energy efficiency, worker retraining, and low-income consumers. Concerning retail supply reciprocity, the bill would prevent utilities from providing electricity services in states that open up to competition unless such services can legally be offered on a competitive basis in the utility's home markets. The bill would give the Federal Energy Regulatory Commission and the states enhanced authority to oversee utility mergers and acquisitions, curb excessive utility market power and guard against anticompetitive practices, to review utility interaffiliate transactions to protect consumers from cross-subsidization or self-dealing, and to obtain full access to electric utility books and records. The bill would impose Federal Energy Regulatory Commission Order Nos. 888 and 889 as well as any future open-access rules on nonjurisdiction transmission owners and the Federal Power Marketing Administration. The bill would direct the Federal Energy Regulatory Commission to establish regional transmission markets to assure functionally efficient and nondiscriminatory electricity transmission and prevent pancaking of transmission rates and would direct the President or the President's designee to issue rules to prevent utilities from gaining any competitive advantage from ownership

or control of dirtier power plants that are not subject to the Environmental Protection Agency's new generation source pollution standards. The bill would give the Federal Trade Commission authority to issue rules to ensure electricity consumers receive fair and full disclosures regarding the prices, generation sources, emissions, and other information regarding the electricity they purchase and establish an electric reliability council to serve as an industry self-regulatory organization, overseen by the Federal Energy Regulatory Commission, to assure reliability. Finally, the bill would create a federal-state board to review universal service requirements in a restructured electricity industry and promote increased reliance on environmentally-sustainable, renewable energy technologies by creating a renewable energy credit trading system managed by the Department of Energy that would require all generators of electricity to submit credits increasing from 3 percent to 10 percent of total sales between the date of enactment and 2010.

S. 237 - This bill, known as the Electric Consumers Protection Act of 1997, would provide for mandatory retail customer choice beginning on December 15, 2003. The bill would allow for the recovery of stranded investment and facilities that become uneconomic as a result of the transition to retail competition and provides that a utility seeking stranded cost recovery must ask the jurisdictional state regulatory authority to calculate the amount of stranded costs. If the state authority agrees to do so, it may do so in one of two ways. The state authority may determine the level of the utility's legitimate, prudently incurred and verifiable investments in generating assets and related regulatory assets that cannot be mitigated or require the utility to divest itself of all its generating facilities and then subtract the revenue received from the book value of the assets sold. If the state authority does not calculate the stranded costs, the Federal Energy Regulatory Commission must require the utility to sell its generating facilities in order to calculate stranded costs. Concerning universal service, state regulators may impose an obligation on retail suppliers to sell power to or purchase power on behalf of customers that do not have sufficient access to competing retail suppliers. Concerning renewable energy requirements, for each retail supplier, five percent of generation beginning in 2003, nine percent beginning in 2008, and 12 percent beginning in 2013 must be obtained from renewable sources. These requirements expire in 2019, and utilities would be allowed to include hydroelectric power among the required forms of renewable energy. Concerning regional transmission systems, the Federal Energy Regulatory Commission would be required to establish transmission regions and designate an independent system operator to operate all transmission facilities in each region beginning December 15, 2003. States in each region would be allowed to form a regional transmission oversight board to oversee the independent system operator, regional boards would have the same

authority the Federal Energy Regulatory Commission currently exercises over transmission pursuant to the Federal Power Act, and where such boards are not formed, the Federal Energy Regulatory Commission would retain its existing authority. Federal Energy Regulatory Commission authority over utility mergers would be extended to electric utility mergers with natural gas companies. The commission would be required to take into account the impact of a merger on competitive wholesale and retail electric generation markets. Utilities owning nuclear power plants prior to the date of enactment would be entitled to recover costs to fund decommissioning of the plants from their customers. Beginning December 15, 2003, the Tennessee Valley Authority would be allowed to sell retail and wholesale electric energy outside of its service territory and its retail and wholesale customers could buy energy from other sellers. The bill would repeal the Public Utility Holding Company Act of 1935 one year from enactment, while retaining certain consumer safeguards. The bill would repeal the mandatory purchase obligation provisions of the Public Utility Regulatory Policies Act for facilities beginning commercial operation after December 15, 2003, unless the power purchase contract relating to the facility was in effect on that date and requires the Environmental Protection Agency to submit a study to Congress by January 1, 2000, which examines the implications of wholesale and retail electric competition on the emission of pollutants and recommends any changes in law needed to protect public health and the environment.

S. 621 - This bill, known as the Public Utility Holding Company Act of 1997, would repeal the Public Utility Holding Company Act of 1935; allow holding companies to diversify into utility or nonutility business ventures and permit ownership of utility companies in more than one state; provide state and federal regulators with the necessary authority to examine books and records and conduct audits of public utility holding companies and their subsidiaries; and transfer ratemaking functions from the Securities and Exchange Commission to the Federal Energy Regulatory Commission and the states, thus eliminating the regulatory gap created by the United States Supreme Court's 1992 *Ohio Power* decision.

S. 687 - This bill, known as the Electric System Public Benefit Protection Act, would direct the Secretary of Energy to establish a national electric system public benefits board to administer a public benefits fund to enable and encourage state programs for renewable energy technologies, energy efficiency, low-income assistance, and universal access. The fund would be supported by a broad-based, competitively neutral, systems benefits charge to be imposed by the Federal Energy Regulatory Commission as a wires charge on all interconnected generation for sale on the electricity market, and the bill provides that revenues from the fund would be used to match funds raised by the states. The bill would establish a renewables portfolio standard for all nonhydroelectric electricity generation companies of

2.5 percent in 2000 and 20 percent in 2020 and each year thereafter, and provides that the Federal Energy Regulatory Commission would administer a renewable energy trading program. The bill would repeal the mandatory purchase obligation provisions of the Public Utility Regulatory Policies Act of 1978 effective January 1, 2000. The bill would direct the Environmental Protection Agency to adopt a final regulation establishing a schedule of limits on the amounts of each pollutant that may be emitted by nonnuclear electric generation facilities with a capacity of fifteen megawatts or more beginning in calendar year 2000. The schedule of limits prescribed by the legislation is intended to significantly reduce emissions of sulfur dioxide and carbon nitrogen oxide.

S. 722 - This bill, known as the Electric Utility Restructuring Empowerment and Competitiveness Act, would reject federal retail competition mandates by reserving to the states all authority over retail electric matters. The bill prospectively exempts the sale of electricity for resale from Federal Energy Regulatory Commission rate regulation and provides that the Federal Energy Regulatory Commission would continue to regulate transmission in interstate commerce while state public utility commissions would continue to regulate retail distribution services and sales. The bill would expand Federal Energy Regulatory Commission authority to require wholesale open access by nonpublic utilities, including federal power marketing agencies, the Tennessee Valley Authority, municipalities, and cooperatives. The bill would repeal the mandatory purchase obligation provisions of the Public Utility Regulatory Policies Act of 1978. The bill incorporates the text of S. 621, the bill repealing the Public Utility Holding Company Act of 1935 and transferring certain regulatory functions from the Securities and Exchange Commission to the Federal Energy Regulatory Commission and the various state public utility regulatory commissions. Finally, the bill would direct the inspector general of the Treasury Department to report to Congress on whether and how tax code incentives received by all utilities should be reviewed in order to foster a competitive retail electricity market in the future.

Electric Utility Taxation in Other States

In addition to monitoring state electric utility restructuring initiatives and reviewing federal electric industry restructuring activities, the committee examined electric utility taxation activities in other states. The committee received testimony that experience has shown that those states that enacted electric utility restructuring initiatives without first addressing the tax implications have encountered problems. The committee received testimony that any tax system should be competitively neutral, that all providers of electricity in the state should be taxed on an equal basis, and that the tax system must avoid nexus problems that may arise when taxing

new market entrants and out-of-state providers of electricity. The committee received testimony that the tax system should be revenue neutral to the state when it is first established and provide a stable revenue source to the state in the future. The committee also received testimony that the tax system should be relatively easy to understand and to administer.

The committee received testimony from a representative of the Environment, Energy, and Transportation Program of the National Conference of State Legislatures that tax matters identified in other states include the nexus issue, identification of programs depending upon utility tax revenues, revenue neutrality, and the impact on taxpayers. Nexus means whether an electricity provider has a significant enough relationship with a state to be subject to taxation by that state. The committee learned that Montana, Nevada, Oklahoma, and Virginia are studying taxation of electric utilities while Maine and California enacted restructuring legislation without addressing the tax issue. Pennsylvania, Rhode Island, New Hampshire, Illinois, Connecticut, Massachusetts, and Arizona have addressed taxes while New Jersey, Vermont, Missouri, and Iowa addressed the issue before restructuring their state's electric utility industry.

While New Jersey has not yet restructured its electric industry, it has addressed electric utility taxes by eliminating the gross receipts and franchise taxes on electric utilities and replacing them with a corporate business tax. Also, sales and use taxes are applied to the retail sale of electricity and natural gas. Local governments are guaranteed an annual state distribution of at least \$730 million to replace any lost revenues and an in-state presence is required of all electricity providers to satisfy the nexus requirement.

Although Iowa has not passed restructuring legislation, it has addressed tax issues of a restructured system. The Iowa tax system is intended to raise the same amount of revenue from the same types of utilities, distribute the same amount of revenue to each local taxing jurisdiction, and remove any competitive tax disadvantage for Iowa-based utilities as compared to out-of-state utilities and power marketers. The Iowa tax legislation imposes an electricity generation tax of .0006 cents per kilowatt hour; an electricity transmission tax based on pole miles; an electricity delivery tax based on kilowatt hours delivered to consumers within each Iowa service area; a natural gas delivery tax based on 100,000 British thermal units of natural gas delivered to consumers within each service area; and a statewide utility property tax.

In 1997 Illinois passed restructuring legislation and addressed the tax issue as part of the restructuring package. Under Illinois House Bill No. 362 an electricity use tax is imposed on the privilege of using electricity purchased for use and consumption, but not for resale.

Rhode Island passed restructuring legislation in 1996. Although gross receipts taxes on power plants were already revenue neutral, the Rhode Island legislation subjected electric generation from existing plants to the state inventory tax, while exempting new power plants.

New Hampshire has repealed its franchise tax on electric utilities and replaced it with a tax on electricity consumption and also imposed a new real estate tax.

Pennsylvania enacted restructuring legislation in 1996. Pennsylvania House Bill No. 1509 extended the gross receipts tax to nonutility providers and municipal companies and rural cooperatives for sales outside established service territories. The Pennsylvania legislation contains a revenue neutral reconciliation formula and addresses the nexus issue by requiring all electricity providers to be licensed by the state. Finally, there is no shifting of tax burdens among customer classes.

Connecticut enacted restructuring legislation in April 1998. Concerning taxation, the goal of the Connecticut legislation was revenue neutrality and it shifted the gross earnings tax from generation and increased the gross earnings tax on transmission and distribution. To address the nexus issue, it defined doing business in the state as including engaging in or conducting business in the state. Also, generation, transmission, and distribution of electricity are included as tangible personal property for the purposes of the state sales tax and the legislation provided for partial reimbursement for lost property tax and loss of value resulting from restructuring.

Massachusetts enacted restructuring legislation in 1997. Concerning taxation, utilities are responsible for making transition payments to any municipality in which a generation facility is located. The production of electricity is not considered manufacturing and is therefore subject to taxation.

Arizona legislation requires an electricity supplier to obtain a certificate from the Arizona Corporation Commission which subjects the supplier to transaction privilege taxes, affiliated excise taxes, and a model city tax code. Counties currently having an excise tax can levy a use tax on electricity customers using or consuming electricity purchased from an electricity supplier. Finally, the Arizona legislation expands the utilities classification of the transaction privilege tax.

Vermont, in its electricity restructuring legislation, froze property tax values at their April 1, 1997, level until January 1, 2000. The legislation is designed to keep property tax values even in a time of declining hydro plant values.

Electric Industry Taxation Task Force

The Electric Utilities Committee authorized the formation of an Electric Industry Taxation Task Force to determine areas of common agreement and consider possible changes to current electric utility taxation. The task force included representatives of the state's investor-owned utilities, rural electric cooperatives, municipal electric

utilities, and power marketers. The task force met three times, and a data subcommittee formed to compile industry data met three times. The task force reported on its activities and presented statistical information it compiled at the final meeting of the Electric Utilities Committee. The task force reported information concerning generation, transmission, customer or retail sales, and taxes paid.

The task force presented information concerning electric generation plants by type of facility, capacity, and ownership interest. North Dakota has 3,863 megawatts of baseload coal fired capacity. The baseload coal-fired capacity consists of Units 1 and 2 of the Antelope Valley Station, which is owned by Basin Electric Power Cooperative; Units 1 and 2 of the Coal Creek Station, which is 56 percent owned by Cooperative Power Association and 44 percent owned by United Power Association; Coyote Station, which is 25 percent owned by Montana Dakota Utilities Company, 35 percent owned by Otter Tail Power Company, 30 percent owned by the Northern Municipal Power Agency, and 10 percent owned by Northwestern Public Service; Units 1 and 2 of the Leland Olds Station, which is owned by Basin Electric Power Cooperative; Milton R. Young Station Unit 1, which is owned by Minnkota Power Cooperative; Milton R. Young Station Unit 2, which is owned by Square Butte Electric Cooperative; R. M. Heskett Station, which is owned by Montana Dakota Utilities Company; and the UPA Stanton Plant, which is owned by United Power Association.

The five units at Garrison Dam provide 494 megawatts of baseload hydropower. The Garrison Dam units are operated by the Western Area Power Administration.

North Dakota has a capacity of 77 megawatts of standby peaking power. Thus, the total capacity of power plants in North Dakota is 4,434 megawatts.

For 1995-97 Antelope Valley Station generated an annual average of \$2,726,350 in coal conversion taxes; Coal Creek Station generated an annual average of \$3,311,207; Coyote Station generated an annual average of \$1,192,531; Leland Olds Station generated an annual average of \$1,785,450; Milton R. Young Station generated an annual average of \$2,088,987; and the Stanton UPA Station generated an annual average of \$487,991. Based upon these figures, North Dakota power plants generate an average of \$11,591,528 in coal conversion taxes per year. The conversion tax is in lieu of property taxes on the plants, but not on the land which remains subject to property taxes. This tax is one-quarter mill times 60 percent of installed capacity times the number of hours in the taxable period, and one-quarter mill per kilowatt hour of electricity produced for sale.

The R. M. Heskett coal-fired generation facility, with rated capacity of 86 megawatts, is not subject to the coal conversion tax, but is centrally assessed as part of the public utility property taxes paid by Montana Dakota Utilities Company. The estimated average yearly tax

attributable to the R. M. Heskett plant for 1995-97 is \$404,964. The standby or peaking facilities owned by the investor-owned utilities are also subject to the public utility property tax, which totals approximately \$110,000 per year. Neither the federal government nor the municipal utilities pay property taxes on their generation facilities.

North Dakota has over 12,000 miles of transmission lines, including over 10,000 miles that are owned by rural electric cooperatives and investor-owned utilities, and 2,000 miles owned by the Western Area Power Administration. The state's generation and transmission cooperatives own 4,189.2 miles of transmission lines, the state's distribution cooperatives own 1,137.6 miles of transmission lines, the state's investor-owned utilities own 4,833.6 miles of transmission lines, and the Western Area Power Administration operates 2,056.2 miles of transmission lines. The state's generation and transmission cooperatives pay an average of \$410,395 in transmission line taxes per year. This tax is only assessed on transmission lines of 230 kilovolts or more, owned by rural electric utilities. The tax is assessed at the rate of \$225 per mile. For investor-owned utilities, transmission lines are included as part of their public utility property taxes and as a federal agency, Western Area Power Administration transmission lines are not subject to North Dakota taxes.

The task force also reported data on retail electric sales for each North Dakota utility by residential or farm or other classification. The other classification includes small and large commercial and industrial customers, irrigation, and sales to public authorities. For 1995 through 1997 the state's cooperatives averaged 96,568 residential or farm customers and 1,587,695 megawatts of electricity sold. There were 15,549 customers classified as other with 1,768,818 megawatts of electricity sold. The total average number of customers for this period for the state's cooperatives was 112,117, and they used a yearly average of 3,356,514 megawatts of electricity.

The state's investor-owned utilities served an average of 173,986 residential or farm customers during this period who used a yearly average of 1,735,523 megawatts of electricity. The investor-owned utilities served 32,022 customers classified as other who used a yearly average of 2,677,210 megawatts of electricity during this period. The total number of customers for the state's investor-owned utilities averaged 206,008, and the total megawatt sales of electricity averaged 4,412,733.

The state's municipal electric systems reported 9,035 residential or farm customers who used 129,206 megawatts of electricity in 1997. The municipal electric utility systems reported 1,064 customers classified as other who used 122,444 megawatts of electricity in 1997. Thus, the total figures for 1997 for the state's municipal

electric utilities was 10,899 customers who used 251,650 megawatts of electricity.

The task force also compiled and reported on taxes that relate primarily to the distribution of electricity. North Dakota's distribution and generation and transmission cooperatives paid \$5,720,961 in gross receipts taxes in 1995, \$6,084,681 in 1996, and \$5,878,495 in 1997, or an annual average of \$5,894,712. The gross receipts tax is in lieu of a personal property tax and is a two percent tax on all cooperative revenue excluding only the sale of capital assets and revenue attributable to electric generation plants subject to the coal conversion tax.

Two distribution cooperatives are subject to an electric utility city privilege tax. The electric utility city privilege taxes paid by these distribution cooperatives totaled \$3,751 in 1995, \$4,093 in 1996, and \$4,597 in 1997, or an annual average of \$4,147 per year. The city privilege tax is authorized by state law to be imposed by cities on cooperatives in addition to the gross receipts tax. It is an ad valorem tax on cooperative electric distribution facilities within a municipality. The amount of the tax must be reduced by the amount of gross receipts tax that is allocated to the city.

The state's investor-owned utilities paid \$5,621,666 in public utility property taxes in 1995, \$5,825,978 in 1996, and \$6,104,646 in 1997, or an annual average of \$5,850,765. These figures exclude the portion attributable to real estate. The task force also reported on electric utility real estate taxes paid by company for 1995, 1996, and 1997. The state received an average of \$472,239 per year for those taxes during this period.

Concerning income taxes paid by the state's investor-owned utilities, the state's investor-owned utilities paid \$2,692,517 in 1995; \$2,697,279 in 1996; and \$2,158,826 in 1997; or a yearly average of \$2,516,207 during this period. Although the state's investor-owned utilities are subject to state income tax, the state's rural electric cooperatives, as nonprofit entities, are generally not subject to income taxation. However, several of the generation and transmission cooperatives are subject to income taxation.

Municipal electric utilities make payments in lieu of taxes to their city general funds from the revenues of their utility operations. The state has 12 municipal electric utilities: Cavalier, Grafton, Hillsboro, Hope, Lakota, Maddock, Northwood, Park River, Riverdale, Sharon, Stanton, and Valley City. The municipal electric utilities paid \$1,510,700 in lieu of taxes in 1995, \$1,564,051 in 1996, and \$1,667,471 in 1997, or an annual average of \$1,580,741.

In summary, the task force reported that the state receives an average of \$11,591,528 in coal conversion taxes, \$5,850,764 in public utility property taxes, \$472,239 in real estate taxes, \$5,894,712 in gross receipts taxes, \$4,147,000 in city privilege taxes, \$2,516,207 in income taxes, and \$1,580,741 in

payments in lieu of taxes or an annual average of \$28,320,733 per year.

Representatives of the state's rural electric cooperatives proposed a distribution tax per megawatt of \$1.43 to be levied in lieu of current property-based taxes. Under the proposal, a tax of \$1.43 per megawatt or \$.00143 per kilowatt hour would be levied on retail electricity distributed in North Dakota, whether by an investor-owned utility, a rural electric cooperative, or a municipal electric utility. The tax would be paid by the distribution utility, and in the event of retail wheeling, would be a nonbypassable tariff. The distribution tax would be in lieu of current distribution taxes paid by the investor-owned utilities and the rural electric cooperatives. For the rural electric cooperatives, the proposal includes the elimination of the two percent gross receipts tax and the city privilege tax. Current taxes on high-voltage transmission lines and the land taxes would remain the same. For the state's investor-owned utilities, the proposal would include the elimination of the public utility property tax to be replaced by the distribution tax. In addition, investor-owned utilities would be assessed the high-voltage transmission line tax and the land tax on the same basis as the rural electric cooperatives, and would pay a property tax or other tax on generating facilities. For the state's municipal electric utilities, the proposal would be a new tax, but the proponents anticipated that the revenue generated by the tax would be returned to the county or municipality from which the taxes were assessed. The \$1.43 per megawatt was determined by reviewing three years of data on megawatt sales and taxes paid by the state's investor-owned utilities and rural electric cooperatives. The investor-owned utility property tax figures were adjusted to reflect the addition of a high-voltage transmission line tax and to discount taxes on land and generation facilities. The proponents testified that the adjusted investor-owned utility taxes are directly comparable to the rural electric cooperatives two percent gross receipts tax and the city privilege tax which are both in lieu of a personal property tax. The investor-owned utility and rural electric cooperative distribution taxes were combined and divided by the total investor-owned utility and rural electric cooperative retail electric sales to arrive at the rate that would replace the taxes eliminated. This rate is \$1.427 or \$1.43 per megawatt. Proponents of the \$1.43 per megawatt tax in lieu of the current distribution taxes reported that the tax would result in an increase of \$652,859 to the distribution cooperatives, a decrease of \$1,751,903 to the generation and transmission cooperatives, and an increase of \$1,125,928 to the state's investor-owned utilities for a net increase of \$26,884 over current distribution taxes. The tax would result in a decrease of \$1,407,065 for the state's municipal electric utilities.

Representatives of the state's investor-owned utilities proposed a flat rate consumption tax on all electric sales on a per kilowatt hour or megawatt basis. Under the

proposal, all existing taxes would be designated in lieu of the new consumption tax and a sunset clause would be imposed to ensure that the Legislative Assembly addresses the issue at a future date. The net effect would be that no current taxpayer would pay more taxes than are currently being paid; however, out-of-state power marketers, because they do not pay any of the current state taxes, would be captured by the consumption tax. This concept is similar to legislation enacted by the Legislative Assembly in 1997 which was designed to address out-of-state coal shipments to the state's generating plants.

Territorial Integrity Act

Background

In conducting its study of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the committee reviewed the history and operation of the Territorial Integrity Act. This law was enacted by the Legislative Assembly in 1965 and is codified as NDCC Sections 49-03-01 through 49-03-01.5. These sections provide:

49-03-01. Certificate of public convenience and necessity - Secured by electric public utility. No electric public utility henceforth shall begin construction or operation of a public utility plant or system, or of an extension of a plant or system, except as provided below, without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which it has lawfully commenced operations. If any electric public utility in constructing or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.

49-03-01.1. Limitation on electric transmission and distribution lines, extensions and service by electric public utilities. No electric public utility henceforth shall begin in the construction or operation of a public utility plant or system or extension thereof without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation, nor shall such public utility henceforth extend its electric transmission or

distribution lines beyond or outside of the corporate limits of any municipality, nor shall it serve any customer where the place to be served is not located within the corporate limits of a municipality, unless and until, after application, such electric public utility has obtained an order from the commission authorizing such extension and service and a certificate that public convenience and necessity require that permission be given to extend such lines and to serve such customer.

49-03-01.3. Exclusions from limitations on electric distribution lines, extension and service and on issuance of certificates of public convenience and necessity. Sections 49-03-01 through 49-03-01.5 shall not be construed to require any such electric public utility to secure such order or certificate for an extension of its electric distribution lines within the corporate limits of any municipality within which it has lawfully commenced operations; provided, however, that such extension or extensions shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the commission.

Sections 49-03-01 through 49-03-01.5 shall not be construed to require an electric public utility to discontinue service to customers thereof whose places receiving service are located outside the corporate limits of a municipality on July 1, 1965; provided, however, that within ninety days after July 1, 1965, any electric public utility furnishing service to customers whose places receiving service are located outside the corporate limits of a municipality shall file with the commission a complete map or maps of its electric distribution system showing all places in North Dakota which are located outside the corporate limits of a municipality and which are receiving its service as of July 1, 1965. After ninety days from July 1, 1965, unless a customer whose place being served is located outside the corporate limits of a municipality is shown on said map or maps, it shall be conclusively presumed that such customer was not being served on July 1, 1965, and cannot be served until after compliance with the provisions of section 49-03-01.1.

49-03-01.4. Enforcement of act. If any electric public utility violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order

restraining and enjoining said electric public utility from constructing or extending its interfering lines, plant or system. In addition to the restraint imposed, the commission shall prescribe such terms and conditions as it shall deem reasonable and proper.

Provided, further, that nothing herein contained shall be construed to prohibit or limit any person, who has been injured in his business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

49-03-01.5. Definitions. As used in sections 49-03-01 through 49-03-01.5:

1. "Electric public utility" shall mean a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
2. "Person" shall include an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
3. "Rural electric cooperative" shall include any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.

It should be noted that as enacted, the Territorial Integrity Act included a section that provided that the "public service commission of the state of North Dakota shall not issue its order or its certificate of public convenience and necessity to any electric public utility to extend its electric distribution lines beyond the corporate limits of a municipality or to serve a customer whose place to be served is located outside the corporate limits of a municipality unless the electric cooperative corporation with lines or facilities nearest the place where service is required shall consent in writing to such extension by such electric public utility, or unless, upon hearing before the commission, called upon notice, shall be shown that the service required cannot be provided by an electric cooperative corporation. Such certificate shall not be necessary if the public service commission approves an agreement between a public utility and a rural electric cooperative serving the area which includes the station to be served in which agreement designates said station to be in an area to be served by the public utility." However, in *Montana-Dakota Utilities Co. v. Johanneson*, 153 N.W.2d 414 (N.D. 1967), this section was declared to be an unconstitutional delegation of legislative authority.

Although the legislative history of the Territorial Integrity Act is extensive, the rationale for its enactment was summarized in *Capital Electric Cooperative Inc. v. Public*

Service Commission, 534 N.W.2d 587 (N.D. 1995). In this case, it was noted that “the Act was adopted at the request of the North Dakota Association of Rural Electric Cooperatives to provide ‘territorial protection’ for rural electric cooperatives and to prevent public utilities from ‘pirating’ rural areas,” and the “primary purpose of the Act was to minimize conflicts between suppliers of electricity and wasteful duplication of investment in capital-intensive utility facilities.”

Under the Act, a public utility may not begin the construction or extension of a public utility plant or system until a certificate of public convenience and necessity is obtained for the construction or extension. A public utility also may not extend transmission or distribution lines beyond the corporate limits of a municipality or serve any customer outside a municipality, unless an order and a certificate of public convenience and necessity is first gained. In addition, the Supreme Court established a requirement in *Capital Electric* that a request by a new customer for electric service from a public utility must be made before the Public Service Commission may consider whether to issue a certificate of public convenience and necessity to the utility.

While the Act did not require the public utility companies to discontinue service to customers who were being served outside municipalities before the effective date of the Act, they were required to file maps within 90 days showing all such customers, or it was conclusively presumed that the customers were not being served. In this event, the customers could not be served unless authorized by the commission in accordance with those provisions of the Act relating to extensions of service.

Public utilities were allowed to make extensions of service in municipalities in which they had lawfully commenced operations without obtaining a certificate if the extension would not interfere with services already provided by a cooperative or another public utility, or result in an unreasonable duplication of services.

Certain limitations were placed on the issuance of orders and certificates of public convenience and necessity by the Public Service Commission, in that such orders and certificates were not to be issued to any private utility to allow an extension of distribution lines outside a municipality or allow the service of a new customer outside the municipality, unless the nearest cooperative had consented to the service in writing, or unless it was shown upon hearing that the cooperative could not supply the service. Certificates were not necessary for the extension of facilities if a “consent” agreement was entered into between the cooperative and the public utility as to service areas, and the agreement was approved by the Public Service Commission.

Thus, the Act basically allowed cooperatives to extend service in rural areas and public utilities to extend service in municipal areas without first obtaining a certificate of public convenience and necessity from the Public Service Commission—the theory being that the delineation of service areas would allow each type of enterprise

to expand within its own sphere without conflict with each other. Problems arose, however, as the public utility companies believed that by being confined to municipal areas except as provided in the Act, they were being denied a fair share of the business arising in the rural “growth” areas. As noted above, this objection to the effect of the Territorial Integrity Act culminated in *Montana-Dakota Utilities Co. v. Johanneson*, which squarely attacked its constitutionality. In *Johanneson*, the public utility companies took the position that the law was an unconstitutional classification for several reasons. They contended that cooperatives were given a monopoly in rural areas and were allowed to operate without Public Service Commission regulation, while the public utilities were regulated in every respect by that agency. Further, they claimed that cooperatives could infringe on the existing service areas of public utility companies in rural localities and that new customers could be gained in municipal areas only if there was no interference with cooperative services already provided in the municipality. Finally, they asserted that cooperatives had a right to complain against public utilities’ actions, but the utilities had no such right as against actions of the cooperatives. Thus, they maintained that the Territorial Integrity Act was unfair, arbitrary, and unreasonable, and the Act discriminated against the public utility companies and the public generally.

The North Dakota Supreme Court in *Johanneson* upheld the constitutionality of the Act in all but one respect. It was held that the Act did amount to a classification in that public utilities and cooperatives were treated dissimilarly, but that the classification was not objectionable, as it was based on legally justifiable distinctions. While public utilities were denied the right under the Act to complain of improper actions by cooperatives, the right remained to bring an action in the courts of the state for redress of any injury that might be suffered. Thus, the court reasoned, the public utilities did have an adequate remedy and were not prejudiced.

However, the court found otherwise with regard to Section 3 of the Act which conditioned the issuance of certificates of public convenience and necessity on the written consent of the nearest cooperative, or upon a finding that a cooperative could not provide the service. Here, the court found that it was “. . . the cooperative, and not the public service commission . . . that determines whether a certificate of public convenience and necessity shall be granted to a public utility in the area outside the limits of the municipality” and that “[n]o guidelines are set out in the law to be followed by the cooperative in making such determination, and no safeguards are provided against arbitrary action” Thus, the court held that where “. . . the Act attempts to delegate, to either the Public Service Commission or the cooperative, powers and functions which determine such policy and which fix the principles which are to control, the Act is unconstitutional.” Likewise, the court found that the portion of the Act that permitted supplying of service

without certificates if a "consent" agreement was entered into by the cooperative and public utility as to service areas also was unconstitutional, as again the cooperative was permitted to determine whether a certificate should be granted.

The impact of *Johannesson* immediately became evident. Because the provisions of the Territorial Integrity Act allowing for "consent" agreements in lieu of certificates of public convenience and necessity were declared unconstitutional, it was apparent that the caseload of the commission and the issuance of certificates would increase substantially. In anticipation of this increase and to reduce the delay caused by the notices and hearings necessary for the issuance of certificates, the Public Service Commission requested an opinion of the Attorney General as to whether conditional certificates could be issued without the usual full-scale hearing and determination. The Attorney General, in an opinion dated October 30, 1967, found that the issuing of conditional certificates without hearing was proper, provided that the controversy was fully submitted to the commission by an interested party in such a manner so that a decision could be made, and that the parties waived the notice and hearing required in the issuance of a certificate of public convenience and necessity. Thus, the issuing of temporary certificates under certain conditions was upheld.

Although the primary purpose of the Act was to keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity, a continuous series of disputes, as discussed in *Tri-County Electric Cooperative v. Elkin*, 224 N.W.2d 785 (N.D. 1974), has arisen between rural electric cooperatives and stockholder-owned utilities. The court noted that typically, these suits arise from disputes as to which supplier of electricity is entitled to serve a customer in a rural area near a municipality where the investor-owned utility holds a franchise. The court further noted that when Section 3 was declared unconstitutional, the legislative directions to the Public Service Commission were eliminated and no criteria upon which the commission could make its decisions remained. However, this deficiency was remedied by the court in *Application of Otter Tail Power Co.*, 169 N.W.2d 415, 418 (N.D. 1969), in which the court established that in addition to customer preference, factors to be considered in determining whether an application for a certificate of public convenience and necessity should be granted include "the location of the lines of the supplier; the reliability of the service which will be rendered by them; which of the proposed suppliers will be able to serve the area more economically and still earn an adequate return on its investment; and which supplier is best qualified to furnish electric service to the site designated in the application and which also can best develop electric service in the area in which such site is located without wasteful duplication of investment service."

Thus, customer preference is not a controlling factor but only one of a number of factors that must be considered for a certificate of public convenience and necessity to be granted.

The court has established a requirement that a new customer's request for service by an electric public utility is necessary to invoke the Public Service Commission's jurisdiction to consider the public utility's application for a certificate of public convenience and necessity to extend service to an area outside the corporate limits of a municipality. *Capital Electric Cooperative Inc. v. Public Service Commission*, 534 N.W.2d 587, 592 (N.D. 1995)

Testimony

Representatives of Montana Dakota Utilities Company testified that the Territorial Integrity Act is outdated and patently unfair in fostering effective electric competition in North Dakota. They argued that it is a barrier to giving customers throughout the state the ability to make economic energy choices and as such should be repealed and fair play rules substituted in its place for all competitors. Also, they testified that if rural electric cooperatives wish to pursue loads in urban areas, in direct competition with public utilities, then it follows that the rural electric cooperatives engaging in such activity should no longer qualify for subsidies such as favorable financing arrangements with the federal government, exemption from state and federal income taxes, preferential access to low-priced federal power, and potential for debt forgiveness by the Rural Utilities Service, and should be subject to the same regulatory oversight as public utilities.

The committee received testimony that if a rural electric cooperative wishes to continue to enjoy its preferential treatment and operate its system within the spirit and intent of the Rural Electrification Act, it should be prohibited, by statute, from serving newly annexed areas of a city and as such, the cooperative would be ineligible to apply for a city franchise to serve new loads in the annexed area, but the city could give the rural electric cooperative a limited franchise to continue to serve customers it is serving, upon the effective date of annexation. The committee received testimony that rural electric cooperatives should not have the benefits of low-cost federal financing, tax benefits, and lack of state regulation, while competing with public utilities for the same customers. Opponents of the Territorial Integrity Act testified that cooperatives be required to exercise a choice, to serve in a urban area, with the loss of preferential treatment at least for the increment of loads served in the urban area, or exclusively operate, except on an incidental basis, in rural areas, as originally contemplated by the drafters of the Rural Electrification Act.

The committee received testimony from a representative of Otter Tail Power Company that the Territorial Integrity Act is not accomplishing what its stated objectives are—to efficiently allocate scarce resources and to

minimize disputes between electric suppliers—because the Act leads to a wasteful duplication of electrical facilities and increases, rather than minimizes, the likelihood of disputes between electric suppliers.

Representatives of the state's rural electric cooperatives responded that the Territorial Integrity Act is working well and is serving the purposes for which it was enacted. The committee received testimony that the state's investor-owned utilities have exclusive territories within the state's municipalities that the rural electric cooperatives cannot penetrate and that the Act avoids the costly duplication of utility infrastructure. Representatives of the rural electric cooperatives responded that the Territorial Integrity Act provides for consumer choice, but this private choice must also be in the public interest. They noted that there is substantial undeveloped land within the service territories of the investor-owned utilities while there is an outmigration of population in the rural areas and a corresponding decline in electrical usage. They testified that if it were not for some larger industrial and commercial loads, and some growth around cities in areas that were previously rural, rural electric cooperatives would have experienced a substantial decline in their sales, and it makes no sense to expand investor-owned utility territorial growth at the expense of the rural electric cooperatives that have made a huge investment to serve rural North Dakota. Representatives of the rural electric cooperatives responded to the charge that investor-owned utilities are competitively disadvantaged by the Territorial Integrity Act by testifying that since enactment of the territorial integrity law, investor-owned utilities have continued to grow in customers and revenue and that investor-owned utilities have not lost market share to rural electric cooperatives.

Representatives of the rural electric cooperatives also argued that the Territorial Integrity Act is not responsible for rural electric cooperative expansion into urban areas;

that rural electric cooperatives can continue to serve their traditional service areas even when these areas become urbanized; that the growth of the local rural electric cooperative around Fargo is overstated; and that rural electric cooperatives are not precluded from competition because they have obtained Rural Utilities Service—formally Rural Electrification Administration—loans.

Year 2000 Problem

The committee also monitored the year 2000 (Y2K) computer problem as it affects the state's electric utility industry. The committee received testimony from the Public Service Commission that the commission is taking appropriate steps to address the Y2K problem. The commission is monitoring the efforts of the Midcontinent Area Power Pool Y2K Task Force. The task force was formed in February 1998 to coordinate Y2K efforts with the Midcontinent Area Power Pool members and other National Electricity Reliability Council regions. The intent is to facilitate a sharing of information so that work is not duplicated and opportunities to correct problems are not missed. The commission is surveying all regulated electric, gas, and telephone utilities in order to aid the commission is assessing current levels of awareness along with planning and preparation efforts.

Recommendation

The committee recommends House Bill No. 1036 to give the Public Service Commission authority to request from any North Dakota electric, gas, telephone, or pipeline public utility and generation and transmission rural electric distribution cooperative status reports, contingency plans, and information on steps taken by that utility or cooperative to ensure that the state's utilities are addressing the year 2000 computer problem in a timely manner. The bill is effective through July 31, 2001, and contains an emergency clause.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. 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 and health and retiree health plans of public employees. 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. A copy of the committee's report must accompany any measure or amendment affecting a public employees retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides that any 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, Section 54-52.1-08.2 requires the committee to approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements, and Section 18-11-15 requires the committee to receive notice from a firefighters' relief association concerning service benefits paid under a special schedule.

The Legislative Council assigned to the committee a study of public employee health insurance benefits and to receive a report from the Office of Management and Budget and the Public Employees Retirement System concerning pension portability.

Committee members were Representatives Francis J. Wald (Chairman), James O. Coats, Glen Froseth, Leland Sabby, and Allan Stenehjerm and Senators Karen K. Krebsbach, Ed Kringstad, Elroy N. Lindaas, and Carolyn Nelson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN PROPOSALS

The committee established April 1, 1998, as the deadline for submission of retirement, health, and retiree health proposals. The deadline provided the committee and the consulting actuary of each affected retirement, health, or retiree health program sufficient time to discuss and evaluate the proposals. The committee allowed only legislators and those agencies entitled to the bill introduction privilege to submit retirement, health, and retiree health proposals for consideration.

The committee reviewed each submitted proposal and solicited testimony from proponents; retirement and health program administrators; interest groups; and other interested persons.

Under NDCC Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program.

The committee referred every proposal submitted to it to the affected retirement or insurance program and requested the program to authorize the preparation of actuarial reports. The Public Employees Retirement System used the actuarial services of The Segal Company in evaluating proposals that affected retirement programs, and the actuarial services of Deloitte & Touche, LLP, in evaluating proposals that affected the public employees health insurance program. The Teachers' Fund for Retirement Board used the actuarial services of Watson Wyatt and Company in evaluating proposals that affected the Teachers' Fund for Retirement.

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 and health insurance program administrators, interest groups, 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, unfavorable recommendation, or no recommendation.

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 1999 Legislative Assembly.

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 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 was established with the enactment of Chapter 15-39.1. The plan is managed by the board of trustees of the Teachers' Fund for Retirement.

The Teachers' Fund for Retirement became effective July 1, 1971. The Teachers' Fund for Retirement is administered by a board of trustees. A separate state investment board is responsible for the investment of the trust assets, although the Teachers' Fund for Retirement Board establishes the asset allocation policy. The

Retirement and Investment Office is the administrative agency for the Teachers' Fund for Retirement. The Teachers' Fund for Retirement is a qualified governmental defined benefit retirement plan. For governmental accounting standards board purposes, it is a cost-sharing multiple employer public employee retirement system.

All certified teachers of any public school in North Dakota participate in the Teachers' Fund for Retirement. This includes teachers, supervisors, principals, and administrators. Noncertified employees such as teacher's aides, janitors, secretaries, and drivers are not allowed to participate in the Teachers' Fund for Retirement. Eligible employees become members at their date of employment.

All active members contribute 7.75 percent of their salary per year. The employer may "pick up" the member's assessments under the provisions of Internal Revenue Code Section 414(h). The member's total earnings are used for salary purposes, including overtime, and included nontaxable wages under an Internal Revenue Code Section 125 plan, but excluding certain extraordinary compensation, such as fringe benefits or unused sick and vacation leave.

The district or other employer which employs a member contributes 7.75 percent of the member's salary. Employees receive credit for service while a member. A member may also purchase credit for certain periods, such as time spent teaching at a public school in another state or by paying the actuarially determined cost of the additional service. Special rules and limits govern the purchase of additional service.

Members are eligible for a normal service retirement benefit at age 65 with credit for five years of service, or when the sum of the member's age and service is at least 85—the Rule of 85. The monthly retirement benefit is 1.75 percent of final average compensation, defined as the average of the member's highest three-plan year salaries with monthly benefits based on one-twelfth of this amount, times years of service. Benefits are paid as a monthly life annuity, with guarantee that if the payments made do not exceed the member's assessments plus interest, determined as of the date of retirement, the balance will be paid in a lump sum to the member's beneficiary.

A member may retire early after reaching age 55 with credit for five years of service. In this event, the monthly benefit is 1.75 percent of final average compensation times years of service, multiplied by a factor which reduces the benefit six percent for each year the employee's retirement age is earlier than 65.

Members are eligible for disability retirement benefits provided the member has credit for at least one year of service. The monthly disability retirement benefit is 1.75 percent of final average compensation times years of service with a minimum 20 years of service. The disability benefit commences immediately upon the member's retirement. The benefits cease upon recovery

or reemployment. Disability benefits are payable as a monthly life annuity with a guarantee, at the member's death, the sum of the member's assessments plus interest as of the date of retirement will be paid in a lump sum to the member's beneficiary. All alternative forms of payment are also permitted in the case of disability retirement. Disability benefits are converted to normal retirement benefits when the member reaches normal retirement age or age 65, whichever is earlier. Members with at least five years of service who do not withdraw their contributions from the fund are eligible for deferred termination benefits. The deferred termination benefit is a monthly benefit of 1.75 percent of final average compensation times years of service. Both final average compensation and service are determined at the time the member leaves active employment. Benefits may commence unreduced at age 65 or when the Rule of 85 is met. Reduced benefits may commence at or after age 55 if the member is not eligible for an unreduced benefit. The form of payment is the same as for normal retirement.

All members leaving covered employment with less than five years of service are eligible to withdraw or receive a refund benefit. Optionally, vested members, those with five or more years of service, may withdraw their assessments plus interest in lieu of the deferred benefits otherwise due. The member who withdraws receives a lump sum payment of that person's employee assessments, plus the interest credited on those contributions. Interest is credited at six percent.

To receive a death benefit, death must have occurred while the member was an active or inactive, nonretired member. Upon the death of a nonvested member, a refund of the member's assessments and interest is paid. Upon the death of a vested member, the beneficiary may elect the refund benefit; payment for 60 months of the normal retirement benefit, based on final average compensation and service determined at the date of death; or a life annuity of the normal retirement benefit, based on final average compensation and service as of the date of death, but without applying any reduction for the member's age at death.

There are optional forms of payment available on an actuarial equivalent basis. These include a life annuity payable while either the participant or the participant's beneficiary is alive, "popping-up" to the original life annuity if the beneficiary predeceases the member; a life annuity payable to the member while both the member and beneficiary are alive, reducing to 50 percent of this amount if the member predeceases the beneficiary, and "popping-up" to the original life annuity if the beneficiary predeceases the member; a life annuity payable to the member, with a guarantee that, should the member die before receiving 60 payments, the payments will be continued to a beneficiary for the balance of the five-year period; a life annuity payable to the member with a guarantee that, should the member die prior to receiving 120 payments, the payments will be continued to a

beneficiary for the balance of the 10-year period; or a nonlevel annuity payable to the member, designed to provide a level total income when combined with the member's Social Security benefit. From time to time, the Teachers' Fund for Retirement statutes have been amended to grant certain postretirement benefit increases. However, the Teachers' Fund for Retirement has no automatic cost of living increase features.

Since 1991 there have been several plan changes in the Teachers' Fund for Retirement. Effective July 1, 1991, the benefit multiplier was increased from 1.275 percent to 1.39 percent for all future retirees. The Legislative Assembly also provided a postretirement benefit increase for all annuitants receiving a monthly benefit on June 30, 1991. The monthly increase was the greater of a 10 percent increase or a level increase based on years of service and retirement date of \$3 per year of service for retirements before 1980, \$2 per year of service for retirements from 1980 to 1983, and \$1 per year of service for retirements from 1984 through June 30, 1991. The minimum increase was \$5 per month, and the maximum increase was \$75 per month.

In 1993 the benefit multiplier was increased from 1.39 percent to 1.55 percent for all future retirees. The Legislative Assembly also provided a postretirement benefit increase for all annuitants receiving a monthly benefit on June 30, 1993. The monthly increase was the greater of a 10 percent increase or a level increase based on years of service and retirement date of \$3 per year of service for retirements before 1980, \$2.50 per year of service for retirements from 1980 to 1983, and \$1 per year of service for retirements from 1984 through June 30, 1991. The minimum increase at this time was \$5 per month and the maximum increase was \$100 per month. The minimum retirement benefit was increased to \$10 times years of service up to 25, plus \$15 times years of service greater than 25. Previously, it had been \$6 up to 25 years of service plus \$7.50 over 25 years of service. The disability benefit was also changed at this time to 1.55 percent of final average compensation times years of service using a minimum of 20 years of service. In 1997 the benefit multiplier was increased from 1.55 percent to 1.75 percent for all future retirees, the member assessment rate and employer contribution rate were increased from 6.75 percent to 7.75 percent, and a \$30 per month benefit improvement was granted to all retirees and beneficiaries.

The latest available report of the consulting actuary was dated July 1, 1998. The consulting actuary reported that the primary purposes of the valuation report are to determine the adequacy of the current employer contribution rate, to describe the current financial condition of the Teachers' Fund for Retirement, and to analyze changes in the fund's condition. Concerning the financing objectives of the Teachers' Fund for Retirement Board of Trustees, the consulting actuary reported that the member and employer contribution rates are

intended to be sufficient to pay the fund's normal cost and to amortize the fund's unfunded actuarial accrued liability in level payments over a period of 20 years from the valuation date. The funding period is set by the board of trustees, and is considered reasonable by the actuary.

As of July 1, 1998, the employer contribution rate needed in order to meet these goals was 4.78 percent. This is less than the 7.75 percent rate currently required by law, so the current contribution rate is adequate. The margin between the rate mandated by law and the rate necessary to fund the unfunded actuarial accrued liability in 20 years is 2.97 percentage points. This margin increased from 1.38 percentage points on July 1, 1997, mainly because the actual investment return rate was greater than the assumed rate of eight percent. If a 7.75 percent contribution rate remains in place, and all actuarial assumptions are exactly realized, then the unfunded actuarial accrued liability will be completely amortized in 6.9 years from July 1, 1998. The funded ratio, the ratio of the actuarial value of assets to the actuarial accrued liability, increased from July 1, 1997. The funded ratio as of July 1, 1997, was 84.3 percent, while it was 89.8 percent as of July 1, 1998. This increase is mainly due to favorable investment performance.

Because of continued strong investment performance, during the plan year ending June 30, 1998, the margin increased from 1.38 percent, as of July 1, 1997, to 2.97 percent. The unfunded actuarial accrued liability decreased from \$153.6 million to \$105.1 million, and the funding period decreased from 12.3 years to 6.9 years. The funded ratio, the actuarial value of assets divided by the actuarial accrued liability, increased from 84.3 percent to 89.8 percent.

The fund's actuarial return was 12.6 percent, compared to the 8 percent investment return assumption. This is a smoothed return, the dollar-weighted market return was 13.2 percent. This decreased the unfunded actuarial accrued liability by over \$37 million and increased the margin by 117 basis points. Other factors tending to increase the margin were the effect of using an "open" 20-year amortization period, employer contributions received at 7.75 percent rather than the previous year's 20-year rate, growth in payroll, and other liability factors, such as salary increases and demographic assumptions. The consulting actuary reported that overall the Teachers' Fund for Retirement remains in a strong actuarial position. If the funded position were measured using the market value of assets, rather than the five-year smoothed value, the Teachers' Fund for Retirement would have assets in excess of its actuarial accrued liability. The consulting actuary reported that even if the fund experiences realized and unrealized losses of \$100 million in 1998-99, reversing the gains of the last fiscal year, because of the five-year smoothing approach to computing actuarial assets, and because of the large

gains recognized in the last several years, the fund's actuarial return next year would still exceed the eight percent investment return assumption.

The fund had 15,781 total members on July 1, 1998. The total payroll was \$298.4 million. The assets at market value were \$1,133,500,000 with an actuarial value of \$928 million.

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. 54

Sponsor: Senator Carolyn Nelson

Proposal: Allows a retired member to return to teaching for up to one year without losing any benefits if at least 50 percent of the salary earned by that person is placed in a school district's educational foundation or a private educational foundation.

Actuarial Analysis: The consulting actuary believes that depending on the number of retired members who would take advantage of this provision, the proposal may have a measurable actuarial impact on the Teachers' Fund for Retirement. There is some potential for increased costs, because a member with long service who is already eligible for an unreduced benefit could continue to receive the same total income, between 50 percent of that person's regular pay and retirement benefit, while having the other 50 percent of pay going to the foundation. This could encourage employees to retire earlier than they would have otherwise. This could result in a reduction of the Teachers' Fund for Retirement margin, the amount of which would depend heavily on the number of members who utilize the provision. However, the consulting actuary noted that, the provision in the bill making it effective for only two years is intended to allow the Teachers' Fund for Retirement Board of Trustees to determine how many members are utilizing the provision and what the cost impact is.

Also, in a technical comment, the consulting actuary noted that the proposal could endanger the qualified status of the plan. Under qualified retirement plans, benefits are not taxable until they are received. If the plan loses its qualified status, accrued vested benefits become immediately taxable.

Committee Report: Favorable recommendation.

Bill No. 88

Sponsor: Board of Trustees

Proposal: Increases the benefit multiplier from 1.75 to 1.85 percent; provides a postretirement benefit increase of \$50 per month.

The committee amended the proposal at the request of the board to increase the benefit multiplier from 1.85 to 1.88 percent and to provide a postretirement benefit increase equal to an amount calculated by taking \$2 per month multiplied by the member's number of years of

service credit plus \$1 per month multiplied by the number of years since the member's retirement.

Actuarial Analysis: The reported actuarial cost of the proposal is 2.20 percent of total covered compensation. The reported actuarial cost of the proposal, as amended, is 2.87 percent of total covered compensation. Thus, if both Bill No. 88 and Bill No. 89 are enacted, the remaining margin in the Teachers' Fund for Retirement will be .05 percent ($2.97 - (2.87 + .05) = .05$).

Committee Report: Favorable recommendation.

Bill No. 89

Sponsor: Board of Trustees

Proposal: Changes the definition of beneficiary for purposes of the Teachers' Fund for Retirement to the person designated in writing by the member except that in the absence of such designation, if the member is married, the member's spouse must be the primary beneficiary, however, if the member is married, and if the member wishes to name an alternate beneficiary, the member's spouse must consent in writing to the member's designation; deletes the provision that salary received by a member in lieu of previously employer-provided fringe benefits must have been under an agreement between the member and participating employer that was entered into within 60 months before retirement to be excluded from salary; reduces the vesting period from five years to three years; provides that retirement benefit payments must be made over a period of time that does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary; provides that early retirement benefits must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age 65 or the age at which current service plus age equals 85; provides that before payment of a benefit claim, the member's surviving spouse, if any, must consent in writing to the member's choice of benefit payment option for any benefit payments commencing after June 30, 1999; requires a teacher to provide proof of eligibility under rules adopted by the board in order to purchase additional credit; deletes the requirement that a teacher must have completed five years of creditable service in this state before becoming eligible to purchase credit for years of teaching at an out-of-state school; deletes the requirement that service credit for a legislative session must be purchased within one year after the adjournment of that legislative session; deletes the requirement that service credit for a teacher who was elected president of a professional educational organization recognized by the board and who serves in a full-time capacity in lieu of teaching must be purchased within one year after the teacher leaves the position; allows a teacher who has at least five years of teaching service credit in the fund to purchase up to five years of credit not based on service for use toward retirement eligibility and benefits; and repeals NDCC Section

15-39.1-12.1, which provides for partial service retirements under the Teachers' Fund for Retirement.

Actuarial Analysis: The reported actuarial cost of the proposal is .05 percent of total covered compensation. Thus, if both Bill No. 89 and Bill No. 88 are enacted, the remaining margin in the Teachers' Fund for Retirement will be .05 percent ($2.97 - (.05 + 2.87) = .05$).

Committee Report: Favorable recommendation.

Bill No. 90

Sponsor: Board of Trustees

Proposal: Provides that persons receiving monthly benefits from the Teachers' Fund for Retirement are entitled to receive a monthly credit toward hospital and medical benefits coverage of \$2.50 multiplied by the person's years of service; the program is funded by a state contribution equal to one percent of the salaries and wages of each teacher employed in the state, and the bill contains an appropriation of \$6 million from the general fund to fund the teachers' retiree health benefits program.

Actuarial Analysis: The consulting actuary reported that the portion of all retirees and beneficiaries who choose to participate is called the utilization percentage. This is a key assumption in deciding whether the proposed one percent of salary contribution rate would be sufficient to support the program. Not all retirees would participate in the uniform group insurance program, even given the availability of a subsidy. Some are already receiving health insurance from the school district from which they retired; some will choose to purchase health insurance from other providers, such as the American Association of Retired Persons; some will have health insurance provided through a spouse or from other employment; and some will simply choose to rely on Medicare. According to the Teachers' Fund for Retirement membership survey, approximately 30 percent of retirees surveyed said they would be unlikely to participate in the uniform group insurance program, even if a monthly health care credit of \$2 per year of service is provided. The table below shows the contribution rate required given various credit amounts and utilization rates. Contribution rates for credit amounts and utilization rates other than the ones shown can be calculated by a straight-line interpolation between the rates shown. The consulting actuary assumed a 60 percent utilization rate, based on early information on utilization under the program established for members of the Public Employees Retirement System. However, the consulting actuary learned that the Public Employees Retirement System is experiencing significantly higher utilization, especially among longer-service retirees who have larger benefits. Therefore, the Public Employees Retirement System weighted utilization rate is much greater than 60 percent. The Public Employees Retirement System currently assumes that the probability of utilization is a function of the member's service from a

utilization rate of 50 percent at five years of service to 100 percent at 25 years of service. Thus, given the evidence of the Teachers' Fund for Retirement survey, the initial utilization rate might be close to 70 percent. Future utilization, though, would probably increase as current active members who are not already wedded to a particular insurance program join the ranks of the retired. Thus, the consulting actuary reported that it would be prudent for the Legislative Assembly to determine the initial credit level based on a 100 percent utilization level. This would allow the Legislative Assembly to increase the credit if actual utilization is lower. The consulting actuary reported that this is preferable to setting the initial credit level at \$2.50 and then discovering that actual utilization is at 75 or 80 percent, requiring an increase in the contribution rate or a decrease in the credit. Using a 100 percent utilization level, only a credit of \$1.50 per year of service can be provided by a one percent contribution rate. It would require a 1.55 percent contribution rate to support the \$2.50 credit with 100 percent utilization. The first year's payment, assuming the \$2.50 multiplier with 75 percent utilization, would be about \$2.9 million, and the first year's contributions would total approximately \$3.1 million. However, if utilization were heavier, for example 85 percent, the credits paid would be about \$3.3 million, more than the contributions collected.

Cost for Teachers' Retiree Health Fund Under Various Alternatives As of July 1, 1998					
Utilization Rate	Cost As Percent of Teachers' Salaries Monthly Credit Per Year of Service				
	\$1.00	\$1.50	\$2.00	\$2.50	\$3.00
50%	0.31%	0.47%	0.62%	0.78%	0.93%
60%	0.38%	0.56%	0.74%	0.93%	1.12%
75%	0.47%	0.70%	0.93%	1.16%	1.40%
100%	0.62%	0.93%	1.24%	1.55%	1.86%

Note: Contribution rates are equal to normal cost plus a 40-year amortization of unfunded actuarial accrued liability.

Committee Report: No recommendation.

Public Employees Retirement System

The Public Employees Retirement System is governed by NDCC Chapter 54-52 and includes the Public Employees Retirement System main system, judges' retirement system, and National Guard retirement system; Highway Patrolmen's retirement system; and retiree health benefits fund. The plan is supervised by the Retirement 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 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 on the execution of an agreement with the Retirement Board. The Retirement Board also administers the uniform group insurance, life insurance, flexible benefits, deferred compensation, and Chapter 27-17 judges' retirement programs. The NDCC Chapter 27-17 judges' retirement program is being phased out of existence except to the extent its continuance is necessary to make payments to retired judges and their surviving spouses and future payments to judges serving on July 1, 1973, and their surviving spouses as required by law.

Members of the main system and judges are eligible for a normal service retirement benefit at age 65 or when age plus service is equal to at least 85—the Rule of 85. Members of the National Guard retirement system are eligible for a normal service retirement at age 55 and five consecutive years of service. The retirement benefit for members of the main system is 1.77 percent of final average salary multiplied by years of service. The retirement benefit for members of the judges' retirement system is 3.5 percent of final average salary for the first 10 years of service, 2.8 percent for the next 10 years of service, and 1.25 percent for service in excess of 20 years. The retirement benefit for members of the National Guard retirement system is 1.77 percent of final average salary multiplied by years of service. Members of the main system and judges' retirement system are eligible for an early service retirement at age 55 with five years of service and members of the National Guard retirement system are eligible for an early service retirement at age 50 with five years of service. The retirement benefit for members who elect early service retirement is the normal service retirement benefit; however, a benefit that begins before age 65, or Rule of 85, if earlier, is reduced by one-half of one percent for each month before age 65. The early service retirement benefit for members of the National Guard retirement system is the normal service retirement benefit; however, a benefit that begins before age 55 is reduced by one-half of one percent for each month before age 55. Members with six months of service who are unable to engage in any substantial gainful activity are eligible for a disability benefit of 25 percent of the member's final average salary at disability with a minimum of \$100 per month. Members are eligible for deferred vested retirement at five years of service. For members of the main system and judges' retirement system, the deferred vested retirement benefit is the normal service retirement benefit payable at age 65 or the Rule of 85, if earlier. Reduced early retirement benefits may be elected upon attainment of age 55. The deferred vested retirement benefit for members of the National Guard retirement system is the normal service retirement benefit payable at age 55. Reduced early retirement benefits may be elected upon attainment of age 50.

The surviving spouse of a deceased member who had accumulated at least five years of service is entitled to elect one of three forms of preretirement death

benefits. The preretirement death benefit may be a lump sum payment of accumulated contributions; the member's accrued benefit payable for 60 months; or 50 percent of the member's accrued benefit, not reduced on account of age, payable for the spouse's lifetime. If a member dies in active service after normal retirement age, the benefit is the amount that would have been paid to the surviving spouse if the member had retired and had elected a 100 percent joint and survivor annuity. If the deceased member had accumulated less than five years of service, or if there is no surviving spouse, a death benefit equal to the member's accumulated contributions is paid in a lump sum.

In lieu of a monthly retirement benefit, terminating vested members may elect to receive their accumulated member contributions with interest. Terminating nonvested members receive a refund of their accumulated employee contributions. The standard form of payment is a monthly benefit for life with a refund of the remaining balance, if any, of accumulated member contributions. Optional forms of payment are a 50 percent joint and survivor annuity; 100 percent joint and survivor annuity, with "popup" feature; five-year certain and life annuity; 10-year certain and life annuity; or a level Social Security income annuity. The monthly benefit amount is adjusted under the optional forms of payment so the total value of benefits is actuarially equivalent. Final average salary is the average of the highest salary received by a member for any 36 months employed during the last 120 months of employment.

Except for the employer contribution rate for the National Guard, contribution rates are specified by statute. The contribution rate for members of the main system is 4 percent, and the employer contribution is 4.12 percent. The contribution rate for members of the judges' retirement system is 5 percent, and the employer contribution is 14.52 percent. The contribution rate for members of the National Guard retirement system is 4 percent, and the employer contribution is 8.33 percent. For many employees, no deduction is made from pay for the employee's share. This is a result of 1983 legislation that provided for a phased-in "pickup" of the employee contribution in lieu of a salary increase at that time.

In 1989 the Legislative Assembly established a retiree health insurance credit 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 the Highway Patrolmen's retirement system receiving retirement benefits or surviving spouses of those retired members who had accumulated at least 10 years of service. The employer contribution under the Public Employees Retirement System was reduced from 5.12 percent to 4.12 percent, under the judges' retirement system from 15.52 percent to 14.52 percent, and under the Highway Patrolmen's retirement system from 17.70 percent to 16.70 percent or one percent of

the monthly salaries or wages of participating members, including participating Supreme Court and district court judges, and those moneys were redirected to the retiree health insurance credit fund.

The latest available report of the consulting actuary is dated July 1, 1998. According to the report, on that date the combined net assets of the Public Employees Retirement System and Highway Patrolmen's retirement system were \$1,034,038,611 at market value. The combined actuarial value of these funds was \$829,437,505. Of the combined valuation assets, \$801,290,448 is allocated to the Public Employees Retirement System main system, including the judges' retirement system and the National Guard retirement system, and \$28,147,057 is allocated to the Highway Patrolmen's retirement fund. The actuarial value as a percent of market value is 80.21 percent. Total active membership was 16,035 (15,954 persons other than judges or members of the National Guard retirement system, 49 judges, and 32 members of the National Guard retirement system). The report indicated that an employer contribution of 2.51 percent of payroll is necessary to meet the normal cost associated with nonjudge members. This means statutory contributions exceed the actuarial requirements of the Public Employees Retirement System, and the margin available in the main system is 1.61 percent of payroll.

The report for the judges' retirement system indicated that an employer contribution of 7.35 percent of payroll is required to fund the system. The statutory employer contribution rate is 14.52 percent of salary. This results in an actuarial margin of 7.17 percent of payroll.

The report for the National Guard retirement system indicated that an employer contribution of 3.44 percent of payroll is required to fund the system. The contribution rate set by the Retirement Board is 8.33 percent of salary. This results in an actuarial margin of 4.89 percent of salary.

Members of the Highway Patrolmen's retirement system are eligible for a normal service retirement at age 55 with at least 10 years of eligible employment or with age plus service equal to at least 80—the Rule of 80. The normal service retirement benefit is 3.25 percent of final average salary for the first 25 years of service and 1.75 percent for service in excess of 25 years. Members are eligible for an early service retirement at age 50 with 10 years of eligible employment. The early service retirement benefit is the normal service retirement benefit; however, a benefit that begins before age 55 or the Rule of 80, if earlier, is reduced by one-half of one percent for each month before age 55. Members are eligible for a disability benefit at six months of service and an inability to engage in substantial gainful activity. The disability benefit is 70 percent of the member's final average salary at disability less workers' compensation, with a minimum of \$100 per month. Members are eligible for deferred retirement benefits

upon 10 years of eligible employment. The deferred retirement benefit is the normal service retirement benefit payable at age 55 or the Rule of 80, if earlier. Vested benefits are indexed at a rate set by the retirement board based upon the increase in final average salary from date of termination to benefit commencement date. Reduced early retirement benefits may be elected upon attainment of age 50.

Preretirement death benefits are available to a surviving spouse of a deceased member who had accumulated at least 10 years of service in one of three forms, a lump sum payment of accumulated contributions; monthly payment of the member's accrued benefit for 60 months; or 50 percent of the member's accrued benefit, not reduced on account of age, for the spouse's lifetime. If the deceased member had accumulated less than 10 years of service or if there is no surviving spouse, then a death benefit equal to the member's accumulated contribution is paid in a lump sum.

The normal form of benefit is a monthly benefit for life with 50 percent of the benefit continuing for the life of the surviving spouse, if any. Optional forms of payment are a 100 percent joint and survivor annuity, five-year certain and life annuity, or 10-year certain and life annuity. The monthly benefit amount is adjusted under the optional forms of payment so the total value of benefits is actuarial equivalent.

Final average salary is the highest salary received by the member for any 36 consecutive months employed during the last 120 months of employment and the member's contribution is 10.3 percent of monthly salary. The state contributes 16.7 percent of the monthly salary for each participating member.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement fund is dated July 1, 1998. According to the report, on that date the Highway Patrolmen's retirement fund had net assets with an actuarial value of \$28,147,057 and a market value of \$35,090,219. Total active membership was 121, and an employer contribution of 11.99 percent of payroll was necessary to meet the normal cost of the Highway Patrolmen's retirement fund. The statutory contribution rate is 16.70 percent of payroll. Thus, the actuarial margin is 4.71 percent of payroll.

The latest available report of the consulting actuary for the retiree health insurance credit fund is dated July 1, 1998. According to the report, on that date the fund had net assets with an actuarial value of \$16,273,221 and a market value of \$20,281,319. Thus, the actuarial value as a percentage of market value is 80.24 percent. Total active membership was 16,156 (6,602 men and 9,554 women). An employer contribution of 1.02 percent of payroll is required to fund the plan. The statutory contribution rate is 1.00 percent of payroll. This results in an actuarial margin of -.02 percent of payroll. The current benefit amount is \$4.50 times years of service.

The following is a summary of the proposals affecting the Public Employees Retirement System over which the committee took jurisdiction and the committee's action on each proposal:

**Public Employees Retirement System Main System
Bill No. 60**

Sponsor: Representative Francis J. Wald

Proposal: Establishes a defined contribution retirement plan for nonclassified state employees; provides that participating members would direct the investment of their accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the Public Employees Retirement System Board; provides that a participating member is immediately 100 percent vested in that member's contributions and vests in 50 percent of the employer's contributions upon completion of two years of service, 75 percent of the employer's contributions upon completion of three years of service, and 100 percent of the employer's contributions upon completion of four years of service.

The committee amended the proposal at the request of the sponsor to remove the general fund appropriation for the purpose of administering the Act.

Actuarial Analysis: The consulting actuary estimated costs under two scenarios, whether five percent of eligible employees elect to participate in the new plan or 30 percent of eligible employees elect to participate in the new plan. The consulting actuary assumed that of the total elections, 43 percent would be over age 40 and 57 percent under age 40, similar to the election results for the recently implemented newly defined contribution plan for the state of Michigan. Based on the July 1, 1998, valuation results, which show the market value of assets equal to 138 percent for the main system and 141 percent for the National Guard retirement system of actuarial accrued liabilities, the consulting actuary assumed that the transfer on behalf of each employee would be 138 percent and 141 percent, respectively, of the value of the employee's accrued benefit. The consulting actuary noted that if the Public Employees Retirement System Board elected to use a different measurement of funding surplus, e.g., the actuarial value instead of market value of assets, the results would differ. Using the market value of assets provides a more conservative estimate of the possible cost impact of the proposal. The actuarial cost impact of the proposed changes to the Public Employees Retirement System and the National Guard retirement system is summarized in the following tables:

Main System	If 5% Elect	If 30% Elect
Number of employees	161	967
Assets transferred	\$2.9 million	\$17.6 million
Pension liability released	\$3.5 million	\$21.1 million
Reduction in actuarial required contribution rate	0.02%	0.12%

National Guard	If 5% Elect	If 30% Elect
Number of employees	2	10
Assets transferred	\$62,000	\$68,000
Pension liability released	\$80,000	\$353,000
Reduction in actuarial required contribution rate	0.72%	2.08%

Committee Report: No recommendation.

Bill No. 80

Sponsor: Representative William E. Kretschmar

Proposal: Provides that payments for overtime must be included as wages and salaries for purposes of calculating benefits under the Public Employees Retirement System.

Actuarial Analysis: The reported actuarial cost impact of the proposal is .12 percent of payroll, \$600,000 for fiscal year 1999. The proposal would not affect the benefits paid under the retiree health insurance credit fund, but spreading the cost over the larger payroll would reduce the actuarial contribution requirement by 0.01 percent, from 1.02 percent to 1.01 percent. The consulting actuary noted in a technical comment that the proposal creates an opportunity for employees to elect to work larger amounts of overtime during the final average salary determination period as a means of increasing retirement benefits. This backloading of benefit accruals at the end of a working career does not allow adequate actuarial funding of the member's retirement benefit. Also, the bill creates new cash flow and based upon the overtime rate of \$346 per person for those state employees in Central Personnel, the anticipated overtime pay for the entire system would be \$5,363,000. This translates into an annual contribution of \$214,520 for employees, \$220,956 for employers, and \$53,630 for the retiree health insurance credit fund for a total of \$489,106.

Committee Report: Unfavorable recommendation.

Bill No. 101

Sponsor: Retirement Board

Proposal: Includes vested employer contributions for purposes of determining a member's "account balance"; reduces the vesting requirement from five years to three years for nonjudge members of the Public Employees Retirement System main system; increases the benefit multiplier from 1.77 to 1.90 percent; provides that the fund may accept rollovers from other qualified plans for the purchase of additional service credit; provides a postretirement adjustment of nine percent of the present benefit; provides a disability adjustment of nine percent of the present benefit; provides a prior service adjustment of nine percent of the present benefit; provides that a nonjudge member's account balance includes vested employer contributions equal to the member's contributions to the deferred compensation plan of \$25 or one percent of the member's monthly

salary for months 1 through 12 of service credit, \$25 or two percent of the member's monthly salary for months 13 through 24 of service credit, \$25 or three percent of the member's monthly salary for months 25 through 36 of service credit, and \$25 or four percent of the member's monthly salary for service exceeding 36 months with a minimum contribution of \$25 and a maximum vested employer contribution of four percent of the member's monthly salary.

The committee amended the proposal at the request of the retirement board to reduce the increase in the benefit multiplier from 1.90 percent to 1.89 percent, reduce the postretirement adjustment from 9 percent to 8 percent of the present benefit, reduce the disability adjustment from 9 percent to 8 percent of the present benefit, and reduce the prior service retiree adjustment from 9 percent to 8 percent of the present benefit.

Actuarial Analysis: The reported actuarial cost impact of the original proposal is 1.64 percent of covered payroll for the Public Employees Retirement System main system, 1.41 percent of covered payroll for the National Guard retirement system, and less than 0.01 percent for the retiree health insurance credit fund.

The actuarial cost impact of the original proposal is summarized in the following table:

Proposed Change	Change As a Percent of Covered Payroll	
	Main	National Guard
Three-year vesting and retirement eligibility	Less than 0.01%	Less than 0.01 %
1.9% multiplier	1.07%	1.12%
9% retiree increase	0.39%	0.14%
Rollover to purchase service credit	0.00%	0.00%
9% prior service increase	Less than 0.01%	N/A
Section 457 matching benefit	0.20%	0.16%
Total estimated cost	1.64%	1.41%

The reported actuarial cost impact of the proposal, as amended, is 1.58 percent of covered payroll for the Public Employees Retirement System main system, 1.32 percent of covered payroll for the National Guard retirement system, and less than 0.01 percent for the retiree health insurance credit fund. The actuarial cost impact of the proposal, as amended, is summarized in the following table:

Proposed Change	Change As a Percent of Covered Payroll	
	Main	National Guard
Three-year vesting and retirement eligibility	Less than 0.01%	Less than 0.01%
1.89% multiplier	0.99%	1.03%
8% retiree increase	0.35%	0.11%
Rollover to purchase service credit	0.00%	0.00%
8% prior service increase	Less than 0.01%	N/A
Section 457 matching benefit	0.25%	0.19%
Total estimated cost	1.58%	1.32%

Thus, if this bill is enacted, the remaining margin in the Public Employees Retirement System main system will be .03 percent ($1.61 - 1.58 = .03$), and the remaining margin in the National Guard retirement system will be 3.57 percent ($4.89 - 1.32 = 3.57$).

Committee Report: Favorable recommendation.

Bill No. 102

Sponsor: Retirement Board

Proposal: Provides that participants in the judges' retirement system are entitled to receive a two percent postretirement adjustment in their present monthly benefit and allows the board to suspend the increase for an upcoming year if it determines that the increase is not actuarially prudent; provides that disability retirement benefits for Supreme and district court judges are 70 percent of final average salary reduced by the member's primary Social Security benefits and by any workers' compensation benefits; provides that a surviving spouse of a Supreme or district court judge may select a lump sum payment of the member's retirement account as of the date of death or payments as calculated for the deceased member as if the member were of normal retirement age at the date of death, payable until the spouse dies.

Actuarial Analysis: The reported actuarial cost impact of the proposal is 6.55 percent of covered payroll. The following table summarizes the actuarial cost impact of the proposed changes:

Plan Provision	Cost As a Percentage of Payroll	Additional Cost As a Percentage of Payroll
Current plan	7.35%	N/A
Disability benefit	7.56%	0.21%
Preretirement death benefit	8.58%	1.23%
Automatic 2% COLA	12.18%	4.83%
All improvements	13.9%	6.55%

Thus, if this bill is enacted, the remaining margin in the judges' retirement system will be .62 percent ($7.17 - 6.55 = .62$).

Committee Report: Favorable recommendation.

Bill No. 122

Sponsor: Representative Francis J. Wald

Proposal: Reduces the vesting period from five years to three years for nonjudge members of the Public Employees Retirement System; provides that except for Supreme and district court judges, a member's account balance includes 75 percent of vested employer contributions if the member has less than three years of service and 100 percent of vested employer contributions if the member has three years or more of service.

Actuarial Analysis: The consulting actuary reported that the cost impact of changing the vesting and benefit eligibility requirement from five years to three years is minimal. The consulting actuary assumed that the allocation of vested employer contributions to member account balances would serve to increase the lump sum payment available to a spouse or beneficiary upon the death of a member; increase the account balance available to a member upon termination of employment, including current inactive vested members for whom the system has retained account balances; and increase any residual payment that may be due in the event the account balance exceeds payments to a retired member or the member's spouse or beneficiary. Currently, the employer's actuarial contribution requirements are 2.51 percent for the main system and 4.89 percent for the National Guard retirement system. The additional member account balance would increase the contribution for the main system by 2.33 percent of payroll, \$9 million for fiscal year 1999, and for the National Guard retirement system by 5.84 percent, \$1 million for fiscal year 1999. The cost impact of the proposed changes on the retiree health insurance credit fund would be less than 0.01 percent.

Committee Report: Unfavorable recommendation.

Highway Patrolmen's Retirement System

Bill No. 103

Sponsor: Retirement Board

Proposal: Increases the benefit multiplier from 3.25 to 3.40 percent of final average salary for the first 25 years of service; provides a postretirement increase in the benefit multiplier from 3.25 to 3.40 percent of final average salary.

Actuarial Analysis: The reported actuarial cost impact of the proposal is 2.86 percent of covered payroll. The statutory contribution rate is 16.70 percent of payroll, and the cost of the current plan is 11.99 percent of payroll. Thus, if the proposal is enacted, the remaining margin in the Highway Patrolmen's retirement system will be 1.85 percent ($16.70 - 11.99 = 4.71$; $4.71 - 2.86 = 1.85$). The consulting actuary noted that the Highway Patrolmen's retirement system currently

provides that, if a contributor has less than 10 years of service at termination of employment, a refund is payable on the application of the contributor, or automatically in January of the following calendar year. The proposed legislation would allow refunds to be made within 30 days following termination of employment rather than the January following termination of employment. To the extent that the trust fund earns investment income in excess of any interest paid on the contributions refunded, there would be a slight cost to the system for paying refunds earlier than the current legislation provides. Alternatively, if the interest paid on contributions refunded exceeds the investment income of the trust fund, there will be a savings to the system for earlier refunds of contributions. However, given the size of the Highway Patrol group, the consulting actuary anticipated the savings or cost of this provision to be minimal. The following table summarizes the actuarial cost impact of the proposed change:

Plan Provision	Cost As a Percentage of Payroll	Additional Cost As a Percentage of Payroll
Current plan	11.99%	N/A
Benefit multiplier	14.85%	2.86%

Committee Report: Favorable recommendation.

Uniform Group Insurance Program

Bill No. 104

Sponsor: Retirement Board

Proposal: Provides that the rate for a non-Medicare retiree single plan is 150 percent of the active member's single plan rate; provides that the rate for a non-Medicare retiree family plan of two people is twice the non-Medicare retiree single plan rate; and provides that the rate for a non-Medicare retiree family plan of three or more persons is two and one-half times the non-Medicare retiree single plan rate for purposes of determining health insurance premiums for retired public employees not eligible for Medicare.

Actuarial Analysis: The actuarial consultant reported that the proposed methodology ties the determination of the rates to that of the active employees. The actuarial costs of the retiree group not eligible for Medicare are approximately 150 percent of the active group. Therefore, a strong case can be made for indexing the rates as proposed. In addition, the tying of rates to the active group will provide for rate stability since the active pool is much larger and more credible than the non-Medicare retiree pool. As a result, the rates for this retiree subgroup will follow the trends of the larger active group and will not be subject to potentially large swings in rates due to the small size of the enrolled population.

Committee Report: Favorable recommendation.

Bill No. 114**Sponsor:** Senator Tim Mathern**Proposal:** Allows any person who is without health insurance coverage to participate in the uniform group insurance program subject to minimum requirements established by the Public Employees Retirement System Board.**Actuarial Analysis:** The actuarial consultant reported that based upon the assumption that the Health Insurance Portability and Accountability Act accessibility requirements do not apply to the groups contemplated by the proposal, the proposed legislation would not have a negative impact on the Public Employees Retirement System uniform group health insurance program. However, if the state, the retirement board, or the United States Department of Labor were to take the position that the Health Insurance Portability and Accountability Act requirements do apply to the uniform group insurance program, the proposed legislation would have a negative impact on the program's financial status.**Committee Report:** Unfavorable recommendation.**Other Retirement Plans and Proposals**

The committee considered several proposals dealing with changes to other retirement plans, including the Old-Age and Survivor Insurance System and alternate firefighters relief association plans. In addition, the committee reviewed the Uniform Management of Public Employee Retirement Systems Act.

Old-Age and Survivor Insurance System (OASIS)**Bill No. 53****Sponsor:** Representative Francis J. Wald**Proposal:** Allows employers to pay Public Employees Retirement System employee contributions from the old-age and survivor insurance levy authorized by NDCC Section 57-15-28.1(5).**Actuarial Analysis:** The proposal has no actuarial cost impact on the Public Employees Retirement System.**Committee Report:** Favorable recommendation.**Bill No. 58****Sponsor:** Job Service North Dakota**Proposal:** Increases primary insurance benefits under the Old-Age and Survivor Insurance System fund by \$66.66 per month, an increase of \$50 per month for beneficiaries, and repeals the old-age and survivor insurance tax trigger.**Actuarial Analysis:** Job Service North Dakota reported that the fund has sufficient assets to pay for the proposed increase and similar future increases through the end of the program.**Committee Report:** Favorable recommendation.**Alternate Firefighters Relief Association Plans****Bill No. 29****Sponsor:** Representative David Drovdal**Proposal:** Allows cities with volunteer firefighter departments to form firefighters relief associations.**Actuarial Analysis:** The proposal has no actuarial cost impact.**Committee Report:** Favorable recommendation.**Bill No. 87****Sponsor:** Senator Tony Grindberg**Proposal:** Provides that a firefighters relief association may adopt an alternate pension plan for its members with a normal retirement age of 55 years, a service benefit of 2.33 percent of a first-class firefighter's salary at the time of the member's retirement multiplied by the number of years of service employment up to a maximum of 30 years, deferred vesting after 10 years, vesting of 10 years, and postretirement adjustments provided on an actuarially sound basis. The committee amended the proposal at the request of the sponsor to add an emergency clause.**Actuarial Analysis:** The consulting actuary for the Fargo Firefighters Relief Association retirement plan reported that the margin of the fund is sufficient to fund the proposed benefit enhancements.**Committee Report:** Favorable recommendation.**Uniform Management of Public Employee Retirement Systems Act (UMPERSA)****Bill No. 49****Sponsor:** Commission on Uniform State Laws**Proposal:** Adopts the Uniform Management of Public Employee Retirement Systems Act.**Actuarial Analysis:** The consulting actuary for the Teachers' Fund for Retirement reported that the fund may have a significant increase in administrative expenses to comply with the additional disclosures mandated by the bill. The consulting actuary for the Public Employees Retirement System reported that the bill would have no actuarial cost impact on the Public Employees Retirement System, Highway Patrolmen's retirement system, or the retiree health insurance credit fund.**Committee Report:** No recommendation.**APPROVAL OF PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD TERMINOLOGY TO COMPLY WITH FEDERAL REQUIREMENTS AND NOTIFICATION OF IMPLEMENTATION OF ALTERNATE SCHEDULE OF BENEFITS BY A FIREFIGHTERS RELIEF ASSOCIATION**

The committee received a report from representatives of the Public Employees Retirement System Board that no action on the part of the committee was required

pursuant to NDCC Section 54-52.1-08.2 that requires the committee to approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements. The committee was not notified by any firefighters relief association pursuant to Section 18-11-15(5) that requires the Employee Benefits Programs Committee to be notified by a firefighters relief association if it implements an alternate schedule of monthly service pension benefits for members of the association.

PENSION PORTABILITY REPORT

Section 18 of 1997 Session Laws Chapter 15 requires the Office of Management and Budget and the Public Employees Retirement System to report to the interim Employee Benefits Programs Committee on pension portability. This section provides that the report should focus on issues of pension portability and how to balance the needs of long- and short-term employees within defined benefit or defined contribution plan concepts.

The committee received the report on February 2, 1998. Representatives of the Office of Management and Budget and the Public Employees Retirement System Board reported that in response to the study resolution they began work in June 1997. The study consisted of three main phases, data collection and literature search, analysis, and final consideration and report writing. The first phase involved collecting information and data. Specifically, a literature search of the issues relating to portability within the context of a defined benefit and defined contribution system was conducted. In addition, a review of the experiences and reports from other states relating their considerations or studies was also collected. The third work effort in this phase was to review the data available in the Public Employees Retirement System and Office of Management and Budget data bases. To facilitate analysis, the two data bases were merged and the various pay grades and job classes were examined in terms of length of service to determine if any major variances existed. The data bases also were examined to determine information on the average years of service at retirement and to determine the characteristics of terminating employees. This phase began in June 1997 and was completed in August 1997.

The second phase was the analysis of the data. This was done by Office of Management and Budget and Public Employees Retirement System staffs, as well as the Public Employees Retirement System benefits committee. Using this forum provided maximum involvement by all the members of the Public Employees Retirement System. The committee held three meetings to discuss the information and data in detail. These meetings were held on September 29, October 21, and November 13, 1997. This phase was completed in November 1997. The third phase was the final

considerations and analysis of the Office of Management and Budget and Public Employees Retirement System, as well as report writing. This phase began in December 1997 and was completed in January 1998.

The pension portability study reviewed the history of the Public Employees Retirement System, economic benefits provided by the Public Employees Retirement System, and other public retirement plans. Next, the report reviewed design and supplemental plan activities in other states. In conducting their analysis of issues and options, the Office of Management and Budget and the Public Employees Retirement System retirement board reviewed current issues, identified and analyzed portability options, and reviewed the advantages and disadvantages of selected portability options. The issues reviewed included the prevalence of defined benefit and defined contributions plans, a comparison of defined benefit and defined contribution plans, mobility, portability, a demographic review of state employees, and conversion issues. In identifying and analyzing portability options, the report reviewed the attributes of a defined contribution plan, the issue of reduced vesting, the issue of salary indexing, automatic vesting in the employer contribution, incentive matching of the employer contribution, rollover provisions, cooperative agreements, purchase provisions, pretax purchase of service provisions, and early retirement reduction provisions. In studying the advantages and disadvantages of selected portability options, the report reviewed issues such as conversion to a defined contribution plan, reduced vesting, incentive matching of employer contributions, rollover provisions, and pretax purchase provisions.

In summary, the Office of Management and Budget and Public Employees Retirement System reported that historical data indicates that the Public Employees Retirement System has provided a stable contribution structure for the state of North Dakota since its inception, similar to a defined contribution plan. After review, it was noted the goals of the Public Employees Retirement System provide a sound base for a retirement plan. The Public Employees Retirement System planning mix is the existing defined benefit plan, the defined contribution plan (Section 457 plan) and, finally, Social Security. The report indicated that continuing to retain a retirement planning mix of both defined benefit and defined contribution traits was beneficial to the membership as it provides an opportunity to utilize both types of systems in their retirement planning and provides a sound foundation on which to accomplish this goal.

A review of the Public Employees Retirement System plan design history showed it has been beneficial to the membership and employers, in that it has been possible to enact benefit enhancements that have resulted in a 70 percent increase for the active and retired employees with no increase in employer contributions. This has maintained a stable funding structure for the employer

and met the needs of both the active and retired employees.

It was noted one of the most important ingredients to an effective retirement plan is stability of the plan over a long period of time. The Public Employees Retirement System provides this stability within its existing structure. Any change would have a significant impact on that stability and potentially negatively affect the membership's retirement planning. It was felt the existing defined benefit plan provides economic benefits not only to the members but also to the state of North Dakota. The report noted that a defined contribution plan may not provide the full economic benefits the existing system does.

It was noted that the Public Employees Retirement System already provides for portability within its existing plan in several ways. These include portability of benefits by having one of the lowest vesting structures in the country in that members vest in five years. Further, it was noted that members vest in the disability benefit in only six months. It was also noted that the Public Employees Retirement System provides for partial asset portability. Finally, it was noted that the Public Employees Retirement System provides for service portability between all state employers, 180 political subdivisions, and coordinates with the 300 employer groups of the Teachers' Fund for Retirement. It was also noted that the Public Employees Retirement System has special portability provisions for the Teachers' Insurance and Annuity Association of America-College Retirement Equities Fund (TIAA-CREF) which allows transfers of not only the employee contribution but also the employer contribution. In recognition of these factors, it was determined that the Public Employees Retirement System provides a significant level of portability within its existing benefit structure.

The report reviewed information on the prevalence of defined contribution and defined benefit plans. Concerning private defined contribution plans, it was noted the number of plans increased by 34 percent from 1985 to 1992; the total number of participants increased by 23 percent while the average number of participants per plan decreased by over 10 percent. For private sector defined benefit plans, the total number of plans decreased by 50 percent; however, the total number of participants stayed the same which caused the average number of participants per plan to increase by 91 percent. However, it was determined that defined benefit plans for major employers have in fact increased in the past 10 years. Therefore, it was reported that it appears that the defined benefit plan remains the dominant type of plan among large employers. The Office of Management and Budget and the Public Employees Retirement System also reviewed the prevalence of defined benefit plans and defined contribution plans for public sector employers. This review showed that 91 percent of public sector employer plans are defined

benefit plans while nine percent are defined contribution plans. The report noted there is no unfunded liability to be eliminated in the Public Employees Retirement System.

The report also reviewed data concerning short-term employees and employees who left the system with 10 or more years of service. This information revealed that 58 percent of those who left active employment cashed out of the retirement plan and forfeited the employer contribution. Seventy-six percent of these people had less than five years of employment. The report noted that if the Public Employees Retirement System were a defined contribution plan some of these members would have earned the right to take some, or all, of the employer contribution.

The Office of Management and Budget and Public Employees Retirement System staffs reviewed Public Employees Retirement System data concerning how members utilize the portability of assets provision relating to the employee contribution. It was discovered that of those people with five years or less of service, who terminate employment and cash out, 86 percent took the cash and only 14 percent did a plan-to-plan rollover into another qualified retirement plan. This indicates that allowing people to receive the employer contribution may not result in adequate retirement planning since many take the cash and do not provide for any ongoing retirement.

The Office of Management and Budget and Public Employees Retirement System staffs reviewed a second set of data that merged the Public Employees Retirement System data base and the Central Personnel Division data base to review job classes and pay grades. The result indicated there were no large group discrepancies.

The Office of Management and Budget and Public Employees Retirement System staffs reviewed a sample benefit accrual formula and noted that any change from a defined benefit to a defined contribution system may require an increase in state contributions to maintain the existing benefit level for long-term active employees. Since the state retirement contribution benefit levels are low compared to many other defined contribution plans, this could have a fiscal effect on the state of North Dakota.

The Office of Management and Budget and Public Employees Retirement System staffs reviewed survey data from the membership which indicated that the level of understanding of the membership relating to the various investment categories and investment classes was limited and, therefore, the membership's ability to effectively develop an asset allocation strategy would be limited unless a significant investment was made in education of all the members. This would require an incremental cost to the state. It was also noted that the average asset allocation many of the members would put into place would have a mix of fixed income and

equities and produce an overall rate of return of approximately 8.9 percent. However, the actual mix selected by individual members varies considerably, with almost 19 percent of the members putting almost 100 percent in fixed income, and a little over 20 percent putting 100 percent in equities. These differing asset allocations would produce dramatically different retirement benefits for members.

The report states that if the Public Employees Retirement System defined benefit system were converted to a defined contribution system, several issues would need to be technically analyzed, financially assessed, and resolved. These include the effect on the existing state investment structure, assessment of the comparability of benefits, membership considerations, membership investment expertise, retiree health program and other Public Employees Retirement System programs, disability benefits, surviving spouse benefits, investment expenses, Rule of 85 benefits, retiree ad hoc adjustment methodology, and legal considerations.

The report also notes that a defined contribution plan eliminates the financial risk of investment returns for employers and transfers that risk to members and that the existing method of providing ad hoc adjustments to retirees would need to be changed.

Office of Management and Budget and Public Employees Retirement System staffs concluded there are certain concepts that improve portability and balance the needs of long- and short-term employees which would increase overall retirement savings which merit further consideration and review. Office of Management and Budget and Public Employees Retirement System staffs identified these concepts but reported that before any final decision could be made on whether they should be included in the existing defined benefit system, these concepts should undergo a full actuarial review by the Public Employees Retirement System consultant and a review by the membership to determine their interest in including these provisions. Therefore, to further study these concepts, the Public Employees Retirement System Board prepared and submitted to the Employee Benefits Programs Committee a bill concerning portability concepts, Bill No. 101. It was noted that the submission of a bill would result in the necessary actuarial review and provide full opportunity for the members to review these concepts further. Concepts identified for further study included reducing the vesting schedule to three years, incentive matching of the employer contribution, including additional rollover provisions in the plan, and allowing for pretax purchase of service credit. It was noted that adding the above provisions would address the issue of portability for the Public Employees Retirement System defined benefit plan.

Finally, it was also concluded by Public Employees Retirement System and Office of Management and Budget staffs that retirees should receive an increase in benefits equal to the amount of providing the above portability provisions for the active members. This was

suggested to maintain equity between the active members and the retirees relating to the use of the margin.

PUBLIC EMPLOYEE HEALTH INSURANCE BENEFITS STUDY

Section 19 of 1997 Session Laws Chapter 15 directed the Legislative Council to consider studying public employee health insurance benefits during the 1997-98 interim. This section was prioritized by the Legislative Council and assigned to the Employee Benefits Programs Committee for study.

Uniform Group Insurance Program

Health insurance benefits are offered to public employees under the provisions of a uniform group insurance program established by the 1971 Legislative Assembly and codified as NDCC Chapter 54-52.1. Previously, the Legislative Assembly had passed 1963 Senate Bill No. 176 (formerly codified as Chapter 52-12) which authorized any department, board, or agency of the state to act on its own behalf or in conjunction with other agencies to enter into a group hospitalization and medical care plan and group life insurance plan for state employees. The agencies were required to pay \$5 per month for each participating employee's insurance premiums, and employees were required to pay the balance of the insurance premiums. An employee could elect to participate in a single plan or a family plan. The 1971 legislation establishing the uniform group insurance program repealed Chapter 52-12.

North Dakota Century Code Section 54-52.1-02 provides that the purpose of the uniform group insurance program is to promote the economy and efficiency of employment in the state's service, reduce personnel turnover, and offer an incentive to high-grade men and women to enter and remain in the service of state employment. This section provides hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage to a uniform group of eligible and retired employees. Eligible employees include permanent employees who are employed by a governmental unit, including members of the Legislative Assembly; judges of the Supreme Court; paid members of state or political subdivision boards, commissions, or associations; full-time employees of political subdivisions; elected state officers; and disabled permanent employees who are receiving compensation from the North Dakota workers' compensation fund. A permanent employee is one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least 17.5 hours per week and at least five months each year.

North Dakota Century Code Section 54-52.1-04 requires the Public Employees Retirement System Board to receive bids for the provision of hospital benefits coverage, medical benefits coverage, and life insurance

benefits coverage for a specified term, and to accept the bid of and contract with the carrier that in the judgment of the board best serves the interests of the state and its eligible employees. This section allows the board to utilize the services of consultants on a contract basis in order that the bids received can be uniformly compared and properly evaluated. In determining which bid, if any, will best serve the interests of eligible employees in the state, the board must give adequate consideration to the economy to be effected; the ease of administration; the adequacy of the coverages; the financial position of the carrier, with special emphasis as to its solvency; and the reputation of the carrier and any other information as is available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services. Each uniform group insurance contract entered by the board is required by Section 54-52.1-05 to include as many optional coverages as deemed feasible and advantageous by the board, a detailed statement of benefits offered, including maximum limitations and exclusions, and other provisions the board deems necessary or desirable.

North Dakota Century Code Section 54-52.1-03 provides that a retiree who has accepted a retirement allowance from the Public Employees Retirement System, the Highway Patrolmen's retirement system, the TIAA-CREF for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by Job Service North Dakota under Section 52-11-01, the judges' retirement system established under Chapter 27-17, or the Teachers' Fund for Retirement may elect to participate in the uniform group without meeting minimum requirements at age 65, when the member's spouse reaches age 65, upon receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this section, the retiree or surviving spouse must meet minimum requirements as established by the board. The retiree or surviving spouse must pay directly to the board the premiums in effect for the coverage then being provided.

Except for employees receiving retirement benefits, upon termination of employment an employee may not continue as a member of the uniform group. However, members or former members of the Legislative Assembly or that person's surviving spouse may elect to continue membership in the uniform group after either termination of eligible employment as a member of the Legislative Assembly or termination of other eligible employment or, for a surviving spouse, upon the death of the member or former member of the Legislative Assembly. The member or former member of the Legislative Assembly or that person's surviving spouse must pay the premium in effect for the coverage provided directly to the retirement board.

North Dakota Century Code Section 54-52.1-06 requires each department, board, or agency to pay to the

board each month from its funds appropriated for payroll and salary amounts a state contribution in the amount as determined by the primary carrier of the group contract for the full single rate monthly premium for each of its eligible employees enrolled in the uniform group insurance program and the full rate monthly premium in an amount equal to that contributed under the alternate family contract, including major medical coverage, for hospital and medical benefits coverage for spouses and dependent children of its eligible employees enrolled in the uniform group insurance program. The board is then required to pay the necessary and proper premium amount for the uniform group insurance program to the carrier or carriers on a monthly basis. The combined health insurance premium for the 1997-99 biennium is \$301.

North Dakota Century Code Sections 54-52.1-03.1 and 54-52.1-03.4 govern the participation by political subdivisions, employees of certain political subdivisions, and temporary employees in the uniform group insurance program. Section 54-52.1-03.1 provides that a political subdivision may extend the benefits of the uniform group insurance program to its permanent employees, subject to minimum requirements established by the retirement board and a minimum period of participation of 16 months. If the political subdivision withdraws from participation in the uniform group insurance program before completing 16 months of participation, the political subdivision must make a payment to the board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the political subdivision's employees as determined under rules adopted by the board. This section also provides that the political subdivision may determine the amount of the employer's monthly contribution toward the total monthly premium amount required of each eligible participating employee.

North Dakota Century Code Section 54-52.1-03.4 provides that an employee of a county, city, school district, district health unit, or park district that is not participating in the uniform group insurance program pursuant to Section 54-52.1-03.1 and who is not eligible for any other employee group health plan may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements established by the retirement board. The board may use risk-adjusted premiums for individual insurance contracts to implement the provisions of this section. An employee participating in the uniform group insurance program under this section is required to pay monthly to the retirement board the premiums in effect for the coverage being provided.

Also, temporary employees may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under medical underwriting requirements of the program.

Temporary employees utilizing this provision are required to pay monthly to the board the premiums in effect for the coverage being provided. This section prohibits political subdivisions, departments, boards, or agencies from making a contribution for coverage under this section.

North Dakota Century Code Section 54-52.1-04.3 requires the retirement board to establish under a self-insurance plan a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the uniform group insurance program. Under this provision, the board is required to determine the amount necessary to provide a balance in the contingency reserve fund equal to three and one-half months of claims paid based on the average monthly claims paid during the 12-month period immediately preceding March 1 of each year. The board is authorized to arrange for the services of an actuarial consultant to assist the board in making this determination. All moneys in the contingency reserve fund are appropriated for the payment of claims and other costs of the uniform group insurance program during periods of adverse claims or cost fluctuations.

Under NDCC Sections 54-52.1-04.7, 54-52.1-04.8, and 54-52.1-04.9, the retirement board is authorized to establish a dental plan, a vision plan, a long-term care plan, and an employee assistance program and after June 30, 1999, is required to establish an employee assistance program available to persons in the medical and hospital benefits coverage group.

All funds necessary to pay the consulting fees and health insurance benefits related to the uniform group insurance program are appropriated from insurance premiums received by the board pursuant to NDCC Section 54-52.1-06.1.

Testimony

The committee received testimony from representatives of the Public Employees Retirement System comparing the basic, preferred provider organization, and exclusive provider organization plans. The North Dakota health program is fully insured with Blue Cross Blue Shield of North Dakota. It is a triple-option plan consisting of a basic plan, preferred provider organization plan, and exclusive provider organization plan. Basic and preferred provider organization coverages are paid on a fee-for-service methodology while exclusive provider organization benefits are paid on capitation and target rate methodology. The deductible for nonphysician services for an individual plan is \$150 under the basic and preferred provider organization plans and \$100 under the exclusive provider organization plan. The deductible for nonphysician services for a family plan is \$450 for the basic and preferred provider organization plans and \$300 for the exclusive provider organization plan. Copayments are generally less under the preferred provider organization and exclusive provider

organization plans. The coinsurance maximum for the basic plan is 20 percent while it is 10 percent for the preferred provider organization and exclusive provider organization plans. The total out-of-pocket dollar amount per benefit period is \$1,350 for the single basic plan, \$750 for the single preferred provider organization plan, and \$650 for the exclusive provider organization plan. The total out-of-pocket dollar amount per benefit period for the family basic plan is \$2,850, \$1,650 for the preferred provider organization plan, and \$1,400 for the exclusive provider organization plan.

The committee learned that inpatient claims, outpatient claims, and other claims were lower among members of the exclusive provider organization plan than the preferred provider organization plan. Representatives of the Public Employees Retirement System reported that the estimated membership for exclusive provider organizations in July 1997 was 4,440 members of AmeriCare in Fargo, 4,269 at Grand Forks clinic, 636 at the Medical Arts clinic in Minot, 138 at the Craven-Hagen clinic in Williston, and 2,254 at Medcenter One in Bismarck for a total exclusive provider organization enrollment 11,937 or 24 percent of the total Public Employees Retirement System membership. This compares to 13.4 percent in 1994, 18.6 percent in 1995, and 21.4 percent in 1996.

The billed health insurance premium for 1997-99 is \$139.69 for a single plan and \$345.32 for a family plan for a combined rate of \$301. This compares to a combined rate of \$265 for 1995-97 and \$254 for 1993-95.

Representatives of the Public Employees Retirement System reported that the projected premium for 1997 based upon the medical care consumer price index for an average United States city was \$364 while the actual premium is \$301. The committee learned that the average rate of increase was 13.5 percent from 1980 through 1989 while the average rate of increase has been 2.7 percent since 1990. This average increase has been below the medical consumer price index.

The committee also reviewed a comparison of the cost of health insurance to the state among the 50 states. North Dakota ranked 46 in 1993, and 48 in 1994 and 1995.

The committee reviewed claims versus premiums paid for 1995 and 1996. The loss ratio was 86.9 percent for higher education in 1995 and 91 percent in 1996, 91.8 percent for state agencies in 1995 and 94.6 percent in 1996, and 98.9 percent for political subdivisions in 1995 and 100.9 percent in 1996.

The committee also reviewed the requirements for political subdivisions to join the uniform group health insurance program. The Public Employees Retirement System Board requires 45 to 60 days to enroll a group. All full-time employees must have a 31-day open enrollment period to apply for health insurance coverage. "Full-time" is defined as any employee who works at least 17 and one-half hours per week, five months per

year in a fully funded position not of limited duration. All employees who meet this definition must be offered the opportunity to join the plan. Full-time employees have 31 days from the date of hire in which to enroll without any of the restrictions. If they waive coverage, they may enroll without restriction if they qualify for any of the special enrollment periods or they may enroll during the annual open enrollment but may be subject to a 12-month waiting period for preexisting conditions. Part-time and temporary employees have 31 days from their date of hire in which to enroll in the plan without any restrictions. If they waive coverage, they may enroll without restriction if they qualify for any of the special enrollments periods or they may enroll during the annual open enrollment but may be subject to the 12-month waiting period for preexisting conditions. The North Dakota Public Employees Retirement System bills these employees directly. Paid members of political subdivision boards, commissions, or associations are eligible to participate in the group health plan. The employer contribution may be nothing, or the employer contribution may be less than or equal to, but may not exceed the contribution the employer does pay for eligible employees. Employees declining participation must complete a waiver of health coverage application. There is no minimum number of participants required for an employer group to enroll in the plan. There is no minimum employer contribution required; however, any employer contribution must be applied to all eligible employees in the same manner. The only exception to this requirement is that the employer may prorate the premium contribution based on the number of hours worked. There may not be any monetary compensation for an employee who chooses not to enroll in the plan. Also, there can be no other group health plan offered in conjunction with the Dakota plan; however, supplemental plans such as dental or vision plans may be offered. Only active employees are allowed on the monthly group billing. The Public Employees Retirement System will accept the administration of all current and subsequent Comprehensive Omnibus Budget Reconciliation Act of 1986 contracts. However, any retirees previously allowed to remain on the active group billing must find other coverage. The participation agreement contains a five-year participation clause. Should a political subdivision decide to terminate the agreement prior to the end of that timeframe, an assessment will be made to determine if the claims for the group exceeded premiums and administration fees. If this is the case, the political subdivision will be responsible for refunding the difference to the Public Employees Retirement System.

The committee also received information comparing the uniform group health insurance program with other Blue Cross Blue Shield health insurance plans. The committee learned that the average employer cost for the North Dakota Employees Retirement System was \$97.54 per member from July 1996 through June 1997.

This compares with an average of \$104.17 per member for other Blue Cross Blue Shield employer groups or 6.8 percent less than other employer groups.

The committee reviewed whether general fund savings may be realized if members of the uniform group insurance program were permitted to participate in health maintenance organizations where such organizations are available. Representatives of the Public Employees Retirement System reported that the board has reviewed this issue from time to time and has concluded that to allow a health maintenance organization to participate directly in the group insurance plan would raise the issue of adverse selection and potentially increase the cost to the uniform group's insurance program. The retirement board's consulting actuary for the uniform group health insurance program reported that it had reviewed the issue of participation of health maintenance organizations in the Public Employees Retirement System plan and identified their options and implications to the Public Employees Retirement System health plan. The consulting actuary studied several options, from allowing any willing health maintenance organization to participate through health maintenance organizations acting as subcontractors to the primary carrier, which is Blue Cross Blue Shield at the present time. This study showed that the most optimum level of participation would be to have health maintenance organizations act as subcontractors.

The committee also received information on the expected premiums for the group insurance plan for state active employees for the next biennium. The current state rate is \$301 per month and the expected rate for the 1999-2001 biennium is \$359 per month, an increase of approximately 19.3 percent or \$58 per contract. The cost to fund the present plan for the next biennium, including the projected increase, is \$15,845,000, of which \$9,982,000 is general fund moneys. The rate increase is due to medical trends, less reserves, and funds being carried forward. Representatives of the Public Employees Retirement System noted that although the percent of increase for health insurance premiums is large, the percentage of total appropriations for the cost of health insurance has been decreasing. It has decreased from 2.57 percent of appropriations in 1989-91 to 2.07 percent in 1997-99. However, representatives of the Public Employees Retirement System also reported that they are concerned that the 19 percent increase may not be large enough to fully fund the plan design for the entire biennium. If recent trends continue, benefit reductions will be required even with the requested increase.

Conclusion

The committee makes no recommendation concerning the public employee health insurance benefits study.

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 (NDCC) Section 54-35-02.7, which statutorily created the committee. The committee is responsible for legislative overview of the Garrison Diversion Unit Project and related matters and for any necessary discussions with adjacent states on water-related topics.

Under NDCC Section 54-35-02.7, the committee consists 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.

In addition to its statutory responsibilities, the Legislative Council assigned to the committee Senate Concurrent Resolution No. 4041, which directed a study of the establishment of watershed districts to manage water based on watershed boundaries.

Committee members were Representatives Pam Gulleson (Chairman), Merle Boucher, John Dorso, Eugene Nicholas, Alice Olson, and Mike Timm and Senators Aaron Krauter, Tim Mathern, Gary J. Nelson, David E. Nething, John T. Traynor, and Terry M. Wanzek. Senator William G. Goetz, prior to his resignation on July 10, 1997, and Representative Tom D. Freier, prior to his resignation on April 6, 1998, were members of the committee.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

HISTORY OF THE PROJECT

Pick-Sloan Plan

The Garrison Diversion Unit is one of the principal developments of the Pick-Sloan Missouri River Basin program, a multipurpose program authorized by the federal 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 the state 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. The building of Garrison Dam changed the diversion point of the Missouri-Souris Unit from Fort Peck Dam to Garrison Reservoir (Lake Sakakawea). 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).

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 provided for irrigation service to 250,000 acres in the state. This plan involved the construction of major supply works to transfer water from the Missouri River to the Souris, James, and Sheyenne Rivers 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 to enhance 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 would be situated so that water could 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 slowed or halted construction on the project in recent years, including:

1. Canadian concerns that the Garrison Diversion Unit 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 Canadian interests under the Boundary Waters Treaty of 1909 was achieved. The United States government responded by stating its recognition of its obligations under the Boundary Waters Treaty and by adopting a policy that no construction affecting Canada would be undertaken until it was clear that these obligations would be met.

During 1974 several binational meetings of officials were held to discuss and clarify 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 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 representatives of Canada and the United States announced 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

The water and energy appropriations bill signed on July 16, 1984, contained an agreement to establish a commission to review the Garrison Diversion Unit.

The Secretary of the Interior appointed a 12-member Garrison Diversion Unit Commission to review the Garrison Diversion Unit in North Dakota. The commission was directed to examine, review, evaluate, and make recommendations regarding the existing water needs of the state 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 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 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. The commission recommended that the Sykeston Canal be constructed as the functional replacement for the Lonetree Dam. While the Lonetree Dam and Reservoir would remain an authorized feature of the plan, construction of that dam would be deferred pending appropriation of funds by Congress and a determination by the Secretary of the Interior that consultations with Canada were satisfactorily concluded. The commission recommended that the Garrison Diversion Unit be configured to provide irrigation service to 130,940 acres in the Missouri and James River Basins instead of the initial 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 Olson and Governor-elect 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 cities benefited.

Garrison Diversion Unit Reformulation

Following the issuance of the commission's final report, Congress enacted the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99-294; 100 Stat. 433). This legislation was supported by representatives of the state, 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 the state's water rights claims to the Missouri River.
4. Nonreimbursement of features constructed before 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; and
 - 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 of water to Fargo and Grand Forks was authorized. All water entering the Hudson Bay drainage system 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 Unit

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 for the planning and construction of water supply facilities for municipal, rural, and industrial use throughout the state.

On July 18, 1986, the Garrison Diversion Conservancy District and the State Water Commission entered an agreement for the joint exercise of governmental powers. The agreement allows the district to use the expertise of the commission in developing and implementing the water supply program. In addition, the district was to enter an agreement with the Secretary of the Interior which 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 an agreement that designates the district to act on behalf of the state 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. The agreement defines the responsibilities of the United States and the district under the agreement and contains 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.

PROJECT UPDATE

The committee received updates concerning the Garrison Diversion Unit Project from representatives of the Garrison Diversion Conservancy District, State Water Commission, the United States Bureau of Reclamation, and the United States Fish and Wildlife Service.

Appropriations

Since 1966, Congress has allocated \$678,848,485 for the Garrison Diversion Unit Project. Of this total, \$612,173,949 are federal funds and \$66,674,536 are nonfederal funds. The budget request for fiscal year 1999 is \$24,114,000 in federal funds and \$3,650,000 in nonfederal funds for a total of \$27,764,000. Because the total estimated cost of the project is \$1,599,427,406, the balance to complete after fiscal year 1999 is \$892,814,921 of which \$888,211,491 is federal funds.

Congress appropriated \$28.9 million for the Garrison Diversion Unit Project in 1998. Included in this figure was \$3.5 million for operation and maintenance of Indian municipal, rural, and industrial water supply projects located on the state's Indian reservations. Thus, the total appropriation for the Garrison Diversion Unit Project for 1998 was approximately \$25.4 million. Of the

\$24,114,000 requested in federal funds for fiscal year 1999, \$20,563,000 is for Garrison Diversion Unit construction, \$463,000 for Jamestown Dam construction, and \$3,088,000 for Indian municipal, rural, and industrial water supply projects and operation and maintenance of these projects.

Of the \$20,563,000 allocated for Garrison Diversion Unit construction for fiscal year 1999, \$2,900,000 is allocated for water and energy management development that will continue the award of construction contracts for the development of Indian irrigation facilities; \$8,490,000 is for oversight of preconstruction and construction activities on approved state municipal, rural, and industrial water system projects; \$2,500,000 is to continue minimum maintenance to assure reliability of completed facilities still in construction status and minimum maintenance of the supply system required to maintain freshening flows; \$5,625,000 is to continue work on Arrowood, Audubon, and Kraft Slough National Wildlife Refuges, management funds for wildlife lands, and for the nonfederal contribution to the wetlands trust fund; \$800,000 for deferred construction related to beach belting on the McClusky Canal; \$148,000 for ongoing activities associated with the accessibility program including site evaluations, transition plans, and retrofitting of substandard existing facilities; and \$100,000 for continued construction of recreation facilities.

Of the \$463,000 allocated for work on the Jamestown Dam, \$87,000 is for continuance of the Pick-Sloan cost allocation study at Jamestown and the ongoing collection of streamflow records on the James River; \$371,000 for day-to-day operation of Jamestown Dam for flood control operations and for continued delivery of project water to downstream users; and \$5,000 for examination of existing structures at Jamestown Dam and Reservoir.

Of the \$3,088,000 allocated for Indian municipal, rural, and industrial water supply programs, \$2,923,000 is to continue contracts with Indian tribes to carry out operation, maintenance, and replacement activities for water treatment and distribution facilities, and technical assistance and oversight to the tribes by the Bureau of Reclamation for the operation, maintenance, and replacement of their water supply and distribution systems in accordance with United States trust responsibilities; and \$165,000 is allocated for cleaning and repair of distribution systems through a cooperative agreement with the state's Indian tribes.

Of the \$200 million authorized for the Garrison municipal, rural, and industrial water supply program, approximately \$146 million has been received since 1986. The State Water Commission has developed a five-year fiscal year 1999 through fiscal year 2003 allocation schedule of remaining Garrison municipal, rural, and industrial water supply grant funds. This schedule includes \$10,928,000 for the Benson Rural Water Project; \$1 million for the Northwest Area Water Supply Project - Rugby phase; \$24,851,000 for the Northwest Area Water Supply Project - Minot phase; \$2,920,000 for

the Pierce County Rural Water Project; \$13,210,000 for the Ransom-Sargent Rural Water Project; and \$800,000 for municipal, rural, and industrial water supply program administration. The nonfederal cost share of these projects is \$28,756,000.

The Southwest Pipeline Project has supplied water to Dickinson since October 15, 1991. The pipeline is currently servicing 17 communities and 1,200 rural hookups in North Dakota. The committee learned that the city of Lemmon, South Dakota, has voted to join the Southwest Pipeline Project and under an agreement will be required to pay an additional \$4 to \$5 million to reimburse the project for needed capacity in order to supply water to northwestern South Dakota. However, the committee learned that future financing of the Southwest Pipeline Project is in doubt. Of the \$200 million in Garrison municipal, rural, and industrial water supply funds available under the Garrison Diversion Unit Reformulation Act of 1986, \$71 million has been allocated to the Southwest Pipeline Project and this sum has been exhausted. Bonding was used for the first time in 1997 to finance construction of project facilities. Bonds were issued in two series and combined with a United States Department of Agriculture grant to finance approximately \$12 million in construction in the project's Bucyrus service area. This included 1997 construction of main transmission facilities to the cities of Reeder and Hettinger as well as the Bucyrus Reservoir. In 1998 construction of the Jung Lake Reservoir, Jung Lake pump station, and rural water connections to 240 hookups completed the service area. To finance this construction, the State Water Commission issued North Dakota State Water Development Series A revenue bonds totaling \$6.83 million in 1997. Series B bonds totaling \$3.4 million were sold in 1998 to the United States Department of Agriculture's Rural Development Agency and used in conjunction with a rural development grant for \$2.6 million to fund the remainder of the Bucyrus service area. The revenue bonds are being financed from water user payments. Although bonding has been used to leverage water repayments to the extent possible, the committee learned that until passage of the Dakota Water Resources Act and its additional authorization for Garrison municipal, rural, and industrial water supply projects, the financial future of the Southwest Pipeline Project is questionable.

Bureau of Reclamation Activities

Representatives of the Bureau of Reclamation reported on bureau activities. The Bureau of Reclamation finalized and distributed Phase 1, Part A, of the Red River Valley water needs assessment in April 1998. The Red River Valley water needs assessment was an analysis of present and future municipal, rural, and industrial water needs in the Red River Valley. The bureau completed the draft report of Phase 1, Part B, of the Red River Valley water needs assessment in

August 1998. This report was an analysis of the in-stream flow requirements for fish, riparian vegetation, and recreation in the Sheyenne and Red Rivers. The study was undertaken in response to comments received on Phase 1, Part A. The draft report is being reviewed by a technical steering team composed of representatives from the State Water Commission, the State Department of Health, the environmental community, the city of Grand Forks, the city of Fargo, the city of Moorhead, and rural water systems in the Red River Valley as well as bureau representatives. Phase 2 of the Red River Valley water needs assessment will be an analysis of water development and management alternatives to meet the projected needs identified in Phase 1, Parts A and B. The technical steering team is involved in developing alternatives and alternative components. Work is continuing on approximately 23 components that may help alleviate water supply shortages during critical drought periods. Components include water supply augmentation from the Missouri River, enlargement of existing reservoirs, construction of new reservoirs, ground water recharge programs, purchase of agricultural water, water conservation, and water demand management. A draft summary report for Phase 2 of the Red River Valley study is scheduled to be completed in January 1999.

United States Fish and Wildlife Service

The committee received information from the United States Fish and Wildlife Service concerning the status of mitigation and enhancement on the Garrison Diversion Unit Project. The United States Fish and Wildlife Service reported that it reached a milestone on October 1, 1997, when the Bureau of Reclamation transferred the last of 48 wildlife development areas to the Fish and Wildlife Service and the State Game and Fish Department. Approximately one-half of these tracts are located on the McClusky or New Rockford Canals and were acquired at the time the canals were being developed. An additional 18 wetland tracts were acquired throughout the state as mitigation for the Garrison project. Approximately 22,000 acres have been transferred to the Fish and Wildlife Service and the State Game and Fish Department as mitigation for the Garrison project. Concerning concurrency, the Fish and Wildlife Service reported that the federal government is 140 percent of concurrency on the acquisition of wetlands as mitigation for the Garrison Diversion Unit Project.

RECENT DEVELOPMENTS

Dakota Water Resources Act of 1998

The committee received information on the Dakota Water Resources Act of 1998. The Act amends the Garrison Diversion Unit Reformulation Act of 1986. The Act outlines a program to meet the water needs of North Dakota including irrigation; municipal, rural, and industrial water supply projects; fish and wildlife; recreation;

flood control; augmented streamflows; and ground water recharge.

The Act establishes the purposes of the project and adds wildlife enhancement, streamflow augmentation, and ground water recharge as purposes of the project to the 1986 Reformulation Act. It provides that the project will be a joint effort between the Secretary of the Interior and the state of North Dakota and that there will be a financial return to the federal government on the existing facilities and full reimbursement of the cost assigned to the Red River Valley municipal water supply facilities. It assures compliance with the Boundary Waters Treaty of 1909 and provides for state responsibility for design, construction, operation, and maintenance of the features constructed.

Concerning wildlife mitigation and enhancement, the Act authorizes specific recreation and fish and wildlife enhancement facilities and determines responsibility for mitigation and enhancement facilities' costs. The Act provides that the Kraft Slough program includes land exchange authority, and designates the deauthorized Lonetree Dam and Reservoir as a wildlife conservation area.

The Act provides that Garrison Diversion will continue to be part of the Pick-Sloan Missouri Basin program that was authorized in 1944. The Act contains language concerning the interest rate for authorized features of the project during construction and prevents interest from accruing until a particular project feature is completed.

Concerning irrigation, the Act further reduces authorized irrigation acreage to 70,000 acres, none of which will be located in the Hudson Bay or Devils Lake Basin. The Act guarantees irrigation authorized in the Act as eligible to receive project pumping power, continues Indian irrigation, and defines a process by which future irrigation is to be developed.

Concerning power, the Act authorizes Pick-Sloan preference power for municipal, rural, and industrial water supply systems and irrigation development. It also freezes current suballocation costs associated with the Pick-Sloan Missouri Basin program.

Concerning the state municipal, rural, and industrial water supply grant program, the Act authorizes continued development of municipal, rural, and industrial water supply systems in cooperation with the state, retains a 25 percent nonfederal cost share, gives the state credit for nonfederal contributions exceeding the 25 percent level, and authorizes a water conservation program with incentives. The Act also authorizes continued development of municipal, rural, and industrial water supply systems on the state's four Indian reservations.

Concerning the Red River Valley, the Act authorizes a decisionmaking process to determine the best method or methods to meet Red River Valley water supply needs. The Act identifies the Red River Valley supply feature as a reimbursable project feature and provides that the state will repay costs, with interest, for the

capacity used to deliver water to municipal and industrial users.

Concerning the Oakes Test Area, the Act authorizes the Secretary of the Interior to negotiate a mutually acceptable agreement for the transfer of the Oakes Test Area facilities to the state, and if no agreement is reached, the Secretary of the Interior is authorized to dispose of the facilities.

The Act authorizes \$200 million to complete facilities to meet Red River Valley water supply needs; \$300 million for state municipal, rural, and industrial water supply projects; \$200 million for Indian municipal, rural, and industrial water supply projects; \$6.5 million for recreation projects, including a wetlands interpretative center; \$25 million for the natural resources trust; and \$40 million for demolition and construction of a new bridge to replace the existing Four Bears bridge across Lake Sakakawea.

Finally, the Act authorizes an additional \$25 million for the North Dakota wetlands trust, renamed the natural resources trust, \$15 million of which is subject to completion and operation of the Red River Valley water supply project. The Act also authorizes an account for operation, maintenance, and replacement of fish and wildlife mitigation and enhancement and expands the scope of the trust program.

Devils Lake

The committee received updates throughout the interim concerning the Devils Lake flood situation from the State Engineer and the Lake Emergency Management Committee. Devils Lake is normally considered a closed subbasin of the Red River of the North Basin. However, evidence suggests that Devils Lake has, on several occasions during the past 10,000 years, reached its spill elevation of approximately 1,459 feet mean sea level and overflowed into the Sheyenne and Red Rivers. Geologists have concluded that Devils Lake water levels naturally vary widely due to climatic swings. Beginning 130 years ago with the first recorded level of 1,438.4 feet mean sea level, lake levels fell until reaching its recorded low of 1,401.9 feet mean sea level in 1940. From that point, the lake has followed a rising trend reaching the modern high of 1,444.69 feet mean sea level in June 1998. The lake is now approximately 10 inches below its July 1, 1998, level.

Flooding in 1993 caused Devils Lake to rise five feet in six months. The lake has steadily risen each year since then, almost 20 feet in total. The volume of water in Devils Lake has more than tripled since July of 1993. Over 51,000 acres of adjacent land, much of it deeded farmland or ranchland, has been flooded since 1993. The lake now covers approximately 98,000 acres. More than 172 buildings have been affected, and in 1997, approximately 400 damage claims were filed in Ramsey and Benson Counties totaling \$20 million. In addition, 83 homes on the Spirit Lake Nation Reservation have been

or will be moved. National Flood Insurance claims paid in 1996 totaled \$7.1 million for damage to private homes and businesses. Maintaining a transportation infrastructure in the Devils Lake Basin has cost tens of millions of dollars since 1993. The United States Army Corps of Engineers is raising the city of Devils Lake levee system. Stages one and two were completed in 1997 at a cost of \$7 million and protect the city to an elevation of 1,445 feet mean sea level. Another \$43 million has been committed to raise the dike for community protection to 1,450 feet mean sea level.

The North Dakota Parks and Recreation Department has four parks adjacent to the lake. The Narrows State Park was flooded and abandoned in 1995. The road to Graham's Island State Park was flooded in the spring of 1997, forcing the park to close. However, in November the road was raised and the park has reopened. Shelver's Grove and Black Tiger Bay State Parks have some flooded facilities, but they remain open. Concerning the Ramsey County rural sewer system, engineers have estimated it will cost \$950,000 to relocate pipes and pump stations required to keep the system operable. As lakeshore property owners move away to escape the rising water, income to service the system's existing debt decreases as over 125 accounts have been lost due to Devils Lake flooding.

The State Water Commission has adopted a multifaceted, three-prong approach to address flooding in the Devils Lake Basin. These include the upper basin storage of water, infrastructure protection around the lake to protect the city of Devils Lake and its residents, and an outlet to the Sheyenne River. Approximately 60,000 acres of wetlands have been drained in the Devils Lake Basin while approximately 252,000 acres of wetlands and lakes are still intact and storing water. In 1995, the State Water Commission initiated the available storage acreage program to hold additional water in the upper basin. Since the program began, 167 sites providing 22,000 acre-feet of storage have been enrolled in the program. The United States Fish and Wildlife Service has identified 36 projects to provide 12,774 acre-feet of long-term storage potential on public lands in the Devils Lake Basin. In 1996 eight projects were completed and now provide 1,762 acre-feet of storage. Cost thus far is \$471,000 for permanent facilities. Following the 16th conservation reserve program signup, 653,000 acres in the Devils Lake Basin are enrolled in the conservation reserve program. A total of 7,035 acres in basin counties has been enrolled in the federal waterbank program for 1996-97. Also, the North Dakota Wetlands Trust is helping to finance wetlands restoration on conservation reserve program tracts through incentive payments to landowners. The state waterbank program is also continuing to receive and accept applications for wetland restoration.

The third prong to address flooding in the Devils Lake Basin is construction of an outlet from Devils Lake to the

Sheyenne River. Although several potential alignments for a Devils Lake outlet have been considered, the committee learned that a west-end outlet is critical to attain cost and environmental viability. The outlet will follow the Peterson Coulee and will be in the form of an 84-inch concrete pipeline with pump stations near the lake itself and a capacity of approximately 300 cubic feet per second. However, it is unlikely that the outlet would be operated at its maximum capacity because of downstream flooding concerns, downstream water quality concerns, and Canadian concerns. The current design also precludes the outlet from being used as an inlet. Concerning the United States Army Corps of Engineers outlet study, the committee learned that the study is to be presented to Congress in December and will address economic feasibility, environmental issues, compliance with the Boundary Waters Treaty of 1909, and engineering feasibility. The current estimated cost of constructing the outlet is approximately \$44 million which will be split 65-35 with the federal government assuming 65 percent and 35 percent coming from nonfederal sources. The Legislative Assembly has authorized the State Water Commission to bond up to 25 percent of the cost of the outlet.

Missouri v. Craig

The committee received updates throughout the interim from the State Engineer and the Attorney General's office on a Missouri law suit entitled *Missouri v. Craig*. The litigation is important to North Dakota as it may impact upper Missouri River Basin reservoir management and the length of the navigation season on the Missouri River. *Missouri v. Craig* was an unreported decision by the United States District Court for the Western District of Missouri granting the United States Army Corps of Engineers' motion for summary judgment and denying the state of Missouri's and MO-ARK's motion for summary judgment. MO-ARK is a voluntary, nonprofit association whose organizational purposes are to promote flood control, navigation, irrigation, recreation, fish and wildlife, the environment, conservation, and the beneficial use of land and water resources within the Missouri River Basin. In this action, the state of Missouri and MO-ARK alleged that the United States Army Corps of Engineers adopted an annual operating plan for 1996-97 in violation of the National Environmental Policy Act. Specifically, the plaintiffs alleged that the corps took a "major federal action" regarding management of the Missouri River without first preparing an environmental assessment, finding of no significant impact, or preparing an environmental impact statement. The states of Montana, North Dakota, and South Dakota filed amicus briefs on behalf of the corps.

The United States Army Corps of Engineers operates the Missouri River mainstem reservoir system pursuant to a reservoir regulation manual known as the *Master*

Manual. The *Master Manual* was prepared in 1979. The *Master Manual* states that in order to achieve the multi-purpose benefits for which the mainstem reservoirs were authorized and constructed, they must be operated as a hydraulically and electrically integrated system. Therefore, this *Master Manual* presents the basic objectives and the plans for their optimum fulfillment, with supporting data. The *Master Manual* provides that the navigation season may be shortened in the event of a severe drought in order to conserve the remaining available water supply. The *Master Manual* provides that a navigation season may be shortened by two weeks if the system storage falls below 39 million acre-feet on July 1 of the year in question. This figure is known as the "trigger point."

The *Master Manual* also provides for the preparation of an annual operating plan by the corps. Pursuant to the corps' 1996-97 annual operating plan, if the reservoir storage level fell below 52 million acre-feet by July 1, 1997, then the corps could shorten the navigation season by two weeks. The plaintiffs alleged that the corps failed to comply with the National Environmental Policy Act in raising the trigger point to 52 million acre-feet in the 1996-97 annual operating plan. The plaintiffs alleged that this change was a major federal action significantly affecting the quality of the human environment and that the corps failed to prepare an environmental assessment, finding of no significant impact, or environmental impact statement.

After reviewing the standard for granting a motion for summary judgment, determining that MO-ARK had standing to bring the action, and determining that since MO-ARK had standing it was unnecessary to decide whether the state of Missouri had standing, the district court found that changing the trigger point was not a major federal action significantly affecting the quality of the human environment. The plaintiffs did not present evidence showing environmental harm. The court said:

Here, the Corps is seeking to adjust Main Stem water releases and storage in 1997, as it has done in the past, in furtherance of its many responsibilities under the Flood Control Act of 1944. Although the action "may" affect wildlife downstream and has caused a decrease in inland barge shipping, plaintiffs have not presented facts showing that a potential two week reduction in the navigation season this year is a major action that has caused or will cause a major environmental impact. Plaintiffs have not presented facts specifying the degree to which the threat of a shortened navigation season will increase pollution, endanger wildlife, or otherwise harm the environment. Plaintiffs have also not presented facts demonstrating any major environmental impact even if the 52 maf trigger point is extended for five years as proposed by the 1996-97 AOP. Therefore, plaintiffs have not shown any "major Federal action significantly affecting the quality of the

human environment" and the Corps' conclusion that NEPA is inapplicable to the decision to increase the trigger point in the 1996-97 AOP is not unreasonable.

The corps also argued that the challenged corps action is categorically excluded from the National Environmental Policy Act. However, because the district court determined that the corps' conclusion regarding the applicability of the National Environmental Policy Act was not unreasonable, it was not necessary to determine whether the adoption of the annual operating plan was an action categorically excluded from the Act.

Following the district court's decision, MO-ARK filed a motion with the court to alter its judgment on the basis that it had discovered new evidence that would change the outcome of the court's decision. The "new evidence" was a report prepared by the Tennessee Valley Authority at the request of the United States Army Corps of Engineers entitled *Missouri River Navigation Benefits: Incorporating the Effects of Air Quality Improvements*. The corps requested the report as part of the environmental impact statement it is required to prepare before the corps can revise the *Master Manual*. The district court denied MO-ARK's motion on January 16, 1998. The district court found that the corps' commissioning of the report was not based upon the concern of the possible effect on the environment of increasing the trigger point in the 1996-97 annual operating plan. The district court also said the study requested by the corps was much broader than the issue involved in the case and that the report did not alter the court's conclusion that the potential decrease in the 1996-97 navigation season was not a major federal action significantly affecting the quality of the human environment. The district court found nothing to change its holding that the corps' decision that the National Environmental Policy Act was not applicable to the 1996-97 trigger point was unreasonable. On January 27, 1998, Missouri appealed the district court's decision. North Dakota and several other upper basin states have filed amicus curiae briefs but will not participate in the oral argument and will await the decision of the United States Court of Appeals for the Eighth Circuit before determining how to proceed.

Promised Payment Plan

The committee received information on the promised payment plan as envisioned by the North Dakota Rural Water Systems Association. Under the promised payment plan, a four-year construction schedule of the municipal, rural, and industrial water supply budget would be developed based on the \$66 million federal municipal, rural, and industrial water supply authorization contained in the Garrison Diversion Reformulation Act of 1986. Under the plan, if in any one year of the proposed four-year budget the federal payment fell short of the budgeted amount, the state would promise to cover the shortage until the federal dollars were received. Benefits

of the promised payment plan identified by the North Dakota Rural Water Systems Association include full utilization of North Dakota's short construction season, lower project costs, better project design, increased initial signup of members, and orderly water development that would allow the best use of municipal, rural, and industrial water supply funds. The committee reviewed the feasibility of this plan and determined that based upon existing statutory provisions, it appears that the State Water Commission has the statutory authority to implement or facilitate the payment plan as envisioned by the Rural Water Systems Association. As a result, the committee passed a motion expressing its support for the State Water Commission to go forward to implement the promised payment plan.

WATERSHED DISTRICTS STUDY

Background

Senate Concurrent Resolution No. 4041 reflected the Legislative Assembly's concern with the present system of managing water based upon political boundaries and whether the establishment of watershed districts to manage water based on watershed boundaries may be an improvement over the existing system.

Water Resource Districts

The creation and operation of water resource districts is governed by NDCC Chapters 61-16 and 61-16.1. Section 61-16-05 requires that all land in North Dakota must be within a water resource district. Section 61-16-06.1 provides that any two or more water resource districts may be consolidated into a single district or existing districts may be adjusted to reflect watershed boundaries, as determined by the State Engineer, by filing with the State Water Commission a petition signed by a majority of the members of the board of each of the districts or 50 percent or more of the landowners within each of the districts. A petition filed by the district boards must be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of the petition.

A petition must contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. The plan must be as equitable as practicable to every landowner within the districts and must fully protect creditors and the holders of improvement warrants of the petitioning districts. The State Water Commission is required to hold a public hearing and the State Engineer is required to make, before the hearing, an investigation of the need for consolidation of the petitioning districts and to submit a report of the findings to the State Water Commission at the petition hearing. If the State Water Commission finds that it is not feasible, desirable, or practicable to consolidate the petitioning districts, it must deny the petition and state the reasons for the denial. If, however, the State Water Commission finds the problems of flood control, watershed

development or improvement, drainage, water supply, or other reasons make consolidation or boundary adjustment and establishment of the proposed water resource district desirable, it must grant the petition and create the district. Upon creation of the new water resource district, the State Water Commission is to dissolve the included districts or make necessary boundary adjustments to existing districts.

North Dakota Century Code Chapter 61-16.1 governs the operation of water resource districts. This chapter contains the powers and duties of water resource districts, including their basic authority, authority to finance projects, regulatory powers, and enforcement powers. Briefly, a water resource district may finance its operations or local projects through a general districtwide mill levy of not more than four mills for each individual water resource district, special assessments, user fees, revenue bonds or improvement warrants, and state or federal cost-sharing. In addition, joint water resource boards may levy an additional two mills for water projects.

Concerning the regulatory powers of water resource districts, districts are charged with the statutory responsibility to review and improve or deny permits for dikes, dams, and other devices that are capable of retaining, impounding, diverting, or obstructing more than 12.5 acre-feet of water and drains that drain a pond, slough, or lake, or any series thereof with a watershed area of 80 acres or more. Under NDCC Sections 61-16.1-51, 61-16.1-53, and 61-32-07, water resource districts have statutory responsibility to remove obstructions to artificial drains and restructure watercourses; take enforcement actions for unauthorized construction of a dike, dam, or other device for retaining, obstructing, or diverting water; and take enforcement actions for the unauthorized drainage of wetlands.

History of Water Resource Districts

The earliest beginnings of water resource districts can be traced to county drainboards. Legislation enabling the creation of drainboards was first enacted in 1895 to provide for the drainage of agricultural lands. However, it was not until 1935 that the Legislative Assembly established water conservation districts responsible for a broad range of water management and water development matters at the local level. Under 1935 Session Laws, Chapter 228, water conservation districts could be established only by the order of the State Water Conservation Commission upon receipt of a petition from any county, city, or township, or from 50 percent of the landowners within the proposed district. However, the Legislative Assembly, because it recognized the advantage of watershed boundaries over artificial or political boundaries, specifically directed the State Water Conservation Commission not to be constrained to county and township boundaries when creating districts.

The initial water management laws, codified as NDCC Chapter 61-16, remained virtually unchanged until 1957. At that time, the Legislative Assembly enacted a comprehensive reform of water management statutes and changed the name of local water conservation districts to water conservation and flood control districts. The State Water Conservation Commission retained authority to create districts and establish the boundaries upon receipt of a proper petition. However, the commission was given the authority to include additional watershed areas benefited by the creation of the district.

In 1973 the Legislative Assembly determined that all land in the state should be contained within a water conservation and flood control district. Most districts were created along county boundaries. Also, at this time, the name of water conservation and flood control districts was changed to water management districts.

The Legislative Assembly enacted a second comprehensive reform of water management in 1981. The Legislative Assembly expanded the powers and authority of water management districts and made several changes to improve the effectiveness of local government in addressing water issues. The Legislative Assembly eliminated legal drainboards, transferred the powers and authority of legal drainboards to water management districts and renamed legal drains assessment drains. Also, recognizing the increased responsibilities of water management districts, the Legislative Assembly again changed their name, this time to water resource districts.

When water resource districts were first created in 1935, the Legislative Assembly gave the State Water Commission the authority to set boundaries and specifically directed the commission not to consider county and township boundaries when creating districts. North Dakota Century Code Section 61-16-05, as it existed in 1935, provided:

Areas to be included within district - How determined. In determining the area to be included within the district, the commission shall disregard township and county boundaries and shall consider only the drainage areas to be affected by the water development proposed and the probable future development thereof. Whenever practicable, such boundaries shall follow section lines.

Thus, at that time, the Legislative Assembly preferred watershed boundaries over artificial or political boundaries for water resource districts and gave the State Water Commission sole discretion to determine and establish the boundaries of water resource districts.

North Dakota Century Code Section 61-16-05 was amended in 1957 to provide:

Area to be included within district - How determined. The area or areas to be included in a water conservation and flood control district shall embrace the territory described in the petition for the creation thereof. The commission

shall, however, consider and may include within boundaries of the district, the watershed and drainage areas which will be benefited by the construction and maintenance of works therein for water conservation, flood control or drainage as the case may be.

Thus, beginning in 1957, boundaries for water resource districts were established as requested in the petition, yet the State Water Commission had the authority to include additional watershed and drainage areas benefited by the creation of the district. The evolution of water resource districts has resulted in a water resource district in every county in North Dakota. In five counties, more than one water resource district exists. Also, there are 11 joint water resource districts operating in North Dakota. These include the West River Joint Board, the BOMMM Joint Board, the Souris River Joint Board, the Hurricane Lake Joint Board, the Rocky Run Joint Board, the Red River Joint Board, the Upper Sheyenne Joint Board, the Maple-Richland Joint Board, the Devils Lake Joint Board, the James River Joint Board, and the Tri-County Joint Board.

1979-80 Water Management Study

House Concurrent Resolution No. 3022 (1979) directed a Legislative Council study of the powers, duties, and jurisdictional boundaries of water management districts and legal drainboards. The objective of the study was to determine the most effective and efficient methods to provide for management, at the local level, of the state's water resources. The issue before the 1979-80 interim Natural Resources Committee was whether the then current water management system represented the most effective and efficient method of providing for local water management and, if not, what steps could be taken to provide for such water management. The committee heard testimony that water could be more effectively managed on the local level if the management agencies had jurisdictional boundaries along watershed lines and if local efforts were not duplicated by their agency. As a result of the study, the committee recommended a bill that would have established water district boundaries along watershed lines where feasible. However, in no event could water district boundaries divide a section or a city and the bill established a minimum of 25 and a maximum of 40 water resource districts in the state. Although this bill was enacted in 1981, the provisions relating to establishing water resource district boundaries on watershed boundaries were removed.

Water Management Districts in Other States Minnesota

The law governing watershed districts in Minnesota is codified as Minnesota Statutes Chapter 103D.

Minnesota watershed districts are special purpose local units of government the boundaries of which follow

those of a natural watershed. The name of the primary lake or stream in the watershed is usually the name of the watershed district. Advocates note that because water is difficult to manage on the basis of political boundaries such as county or city lines, the Minnesota Legislature in 1955 authorized the creation of watershed districts. Advocates note that because these districts are based on the natural hydrologic boundaries of a watershed, they allow for more practical and efficient water management.

Watershed districts are formed when citizens, county boards, or cities petition the Minnesota Board of Water and Soil Resources to form a district. The board is the state administrative agency for watershed districts. There are 42 watershed districts in Minnesota.

Over the years, watershed district responsibilities have increased significantly from their original objectives of managing surface water and flooding conditions. Watershed districts now deal with a wide variety of water-related concerns, including wetlands, ground water management, and water quality.

Minnesota Statutes Section 103D.201 states that the general purpose of watershed districts is to conserve the natural resources of the state by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources of the state. This section provides that a watershed district may be established to control or alleviate damage from floodwaters; to improve stream channels for drainage, navigation, and any other public purpose; to reclaim or fill wet and overflowed lands; to provide a water supply for irrigation; to regulate the flow of streams and conserve the stream's water; to divert or change all or part of watercourses; to provide or conserve water supply for domestic, industrial, recreational, agricultural, or other public use; to provide for sanitation and public health, and regulate the use of streams, ditches, or watercourses to dispose of waste; to repair, improve, relocate, modify, consolidate, and abandon all or part of drainage systems within a watershed district; to control or alleviate soil erosion and siltation of watercourses or water basins; to regulate improvements by riparian property owners of the beds, banks, and shores of lakes, streams, and wetlands for preservation and beneficial public use; to provide for hydroelectric power generation; to protect or enhance the water quality in watercourses or water basins; and to provide for the protection of ground water and regulate its use to preserve it for beneficial purposes.

Minnesota Statutes Section 103D.205 outlines the requirements for petitions to establish a watershed district. An establishment petition must be filed with the Board of Water and Soil Resources. The establishment petition must contain the name of the proposed watershed district; a description of the property to be included in the watershed district; the necessity for the watershed

district and the contemplated improvements within the watershed district; the reasons why the watershed district and the contemplated improvements would be conducive to public health and public welfare, or would accomplish any of the purposes outlined in Section 103D.201; show by illustration on a map the proposed watershed district; disclose the number of managers proposed for the watershed district; and contain a list of the nominees for manager positions containing at least twice the proposed number of managers.

Concerning the powers and duties of a watershed district, Minnesota Statutes Section 103D.335 provides that watershed districts have the power to sue and be sued; to incur debts, liabilities, and obligations; to exercise the power of eminent domain; to provide for assessments and to issue certificates, warrants, and bonds; and to perform all acts expressly authorized and all other acts necessary and proper for the district to carry out and exercise the power expressly vested in it. In addition, watershed districts may acquire and dispose of property, hire staff and consultants, and regulate development. The statute also authorizes watershed districts to exercise joint powers; cooperate with other entities; enter lands to make surveys and investigations to accomplish the purposes of the watershed district; provide for sanitation and public health and regulate the use of streams, ditches, and watercourses to dispose of waste and to prevent pollution; and borrow funds.

Minnesota Statutes Section 103D.401 governs watershed management plans. Watershed management plans must include updates and supplements of the existing hydrological and other statistical data of the watershed district; specific projects to be completed; criteria for storm water management from impervious surfaces pursuant to Section 103D.365; contain a statement of the extent that the purposes for which the watershed district was established have been accomplished; contain a description of problems requiring future action by the watershed district; contain a summary of completed studies on active or planned projects including financial data; and contain an analysis of the effectiveness of the watershed district's rules and permits in achieving its water management objectives in the watershed district. The Board of Water and Soil Resources encourages districts to expand their plans to include an inventory of pertinent information on the district that describes the watershed's setting and hydrological characteristics; a description and assessment of existing and potential water and water-related problems; a description and assessment of possible solutions to high-priority problems; a statement of the goals and specific objectives for water management within the district; and a list of district policy statements that define the district's role in managing water and water-related resources and that establish district performance standards for sound water management.

Concerning the fiscal management of watershed districts, districts are authorized to establish organizational expense funds, administrative funds, survey and data acquisition funds, projects of common benefit involving municipalities funds, emergency projects of common benefit funds, planning and implementation funds, maintenance of capital improvement funds, preliminary work funds, construction funds, repair and maintenance funds, emergency projects for the benefits of property funds, and bond funds:

1. An organizational expenses levy may be levied once upon creation or expansion of the watershed district. The levy is an ad valorem tax and is the lesser of 0.01596 percent of taxable market value of real property within the district or \$60,000.
2. The administrative levy consists of an ad valorem tax levy which is the lesser of 0.02418 percent of taxable market value of real property within the district or \$125,000.
3. A survey and data acquisition levy may be collected once every five years, may not exceed 0.02418 percent of taxable market value of real property within the district, and the fund balance may not exceed \$50,000.
4. The projects of common benefit involving municipalities fund is financed by an annual levy not to exceed 0.00798 percent of market value of real property within the district for a period not to exceed 15 consecutive years. This tax is designed to finance the cost attributable to the basic water management features of projects initiated by petition of a municipality of the watershed district.
5. The emergency projects of common benefit fund is financed by an ad valorem tax levy upon all taxable property within the watershed if the cost is not more than 25 percent of the most recent administrative ad valorem levy of the watershed district.
6. The construction fund is designed to establish an account for each watershed district project for the receipt and disbursement of funds for costs associated with the project. This fund consists of the proceeds of the sale of county bonds and construction loans from any agency of the federal government, special assessments to be levied to supply funds for the construction of the projects, and expenses incidental to and connected with the construction.
7. The repair and maintenance fund is designed to provide money for maintaining projects of a watershed district in a condition so that they will accomplish the purposes for which they were constructed. The fund is financed from property assessments based upon the benefit the project provides to the affected property.

Watershed districts also have authority to issue bonds to purchase property and to improve and develop the property.

Nebraska

In 1969 the Nebraska Legislature established 24 natural resources districts, charging them with the responsibility of developing facilities, works, and programs to manage, protect, and develop the state's natural resources. As a result of a merger, there are 23 natural resources districts in Nebraska. The districts were officially named in a manner indicating their relative river basin location and boundaries were watershed-based rather than based on political boundaries.

By the 1960s there were more than 500 special purpose districts in Nebraska, including irrigation districts that were created in 1895; drainage districts created in 1905; soil conservation districts created in 1937, which were later named soil and water conservation districts in the 1950s; watershed districts created in 1959; rural water districts created in 1967; advisory watershed improvement boards; reclamation districts; and sanitary improvement districts and sanitary drainage districts. In addition, state agencies were empowered to deal with natural resources issues involving fish and game, insects, predatory animal control, weeds, fertilizer and pesticide use, energy, environmental control, water and waste management, air pollution, public water supplies, road construction, irrigation, and surface and ground water.

This piecemeal approach to natural resource management was generally perceived as ineffective because of the overlapping authority, responsibilities, and geographic boundaries of existing entities. The solution devised by the Nebraska Legislature was for the state to create a system of natural resources districts that could deal with a wide variety of natural resource-related problems and opportunities. These districts were given statutory responsibility in 12 specific areas and given autonomy and taxing authority to provide local response to their natural resources challenges. The Revised Statutes of Nebraska Section 2-32-29 provides that the purposes of natural resources districts are to develop and execute plans, facilities, works, and programs relating to erosion prevention and control; prevention of damages from floodwater and sediment; flood prevention and control; soil conservation; water supply for any beneficial uses; development, management, utilization, and conservation of ground water and surface water; pollution control; solid waste disposal and sanitary drainage; drainage improvement and channel rectification; development and management of fish and wildlife habitat; development and management of recreational and park facilities; and forestry and range management.

In establishing boundaries, Section 2-32-03 requires the entire state to be divided into natural resources districts. The primary objective was to establish

boundaries that provide effective coordination, planning, development, and general management of areas that have related resources problems. These areas were to be determined according to hydrologic patterns. The recognized river basins of the state were used in determining and establishing the boundaries for districts and, where necessary for more efficient development and general management, two or more districts were created within a basin. Boundaries of districts were to follow approximate hydrologic patterns except where doing so would divide a section, a city or village, or produce similar incongruities that might hinder the effective operation of the district. However, the law specified that existing boundaries of political subdivisions or voting precincts could be followed wherever feasible. Districts were required to be of sufficient size to provide adequate finances and administration for plans of improvement and the number of districts could not be less than 16 nor more than 28.

The law establishing natural resources districts governed the assumption of the assets, liabilities, and obligations of existing soil and water conservation districts, watershed conservancy districts, watershed districts, advisory watershed improvement boards, and watershed planning boards whose territory was included within the boundaries of a natural resources district. The law also contains procedures for changing the boundaries of districts, dividing districts, or merging districts. The legislation contains provisions for nominating and electing a board of directors and filling vacancies on the board.

Districts have the power and authority to levy a tax of not to exceed four and one-half cents on each \$100 of actual valuation annually on all the taxable property within the district and to levy a higher tax if authorized by a majority vote. Districts also have the power and authority to issue revenue bonds for the purpose of financing facilities. Other powers are enumerated in Section 2-32-28 and include the authority to receive and accept gifts; establish advisory groups; employ necessary personnel to carry out the purposes of the district; purchase liability, property damage, workers' compensation, and other types of insurance; borrow money; adopt rules; and invite the local governing body of any municipality or county to designate a representative to advise and counsel the board on programs and policies that may affect the property, water supply, or other interests of the municipality or county. Natural resources districts have the power to contract for the construction of projects, contract with the United States for water supply and water distribution and drainage systems under any Act of Congress provided for or permitting the contract, acquire project works undertaken by the United States, and act as agent of the United States in connection with the acquisition, construction, operation, maintenance, or management of any project within the district's boundaries.

Testimony

The committee received testimony that management of water on political or county boundaries does not adequately address water management problems and in order to resolve these problems water must be managed on a watershed basin basis. Examples presented to the committee included the inability of water resource districts to adequately address damage to roads and bridges as a result of upstream flooding that is outside the jurisdiction of the water resource district. The committee also received testimony that county water resource districts were designed to establish and maintain natural and artificial drains but are not capable of handling larger water resource problems such as the clearing and snagging of watercourses. Also, the committee received testimony that county water resource districts can raise sufficient revenue to establish and maintain drains, but that there should be a procedure to enable the districts to raise additional revenue to address larger issues on a watershed basis.

The State Engineer testified in favor of managing water based upon hydrological as opposed to political boundaries and noted that much has been done to address the management of water on a watershed basis since the passage of the study resolution. For example, the Red River Basin Board was created within the past year by entities in North Dakota, South Dakota, Minnesota, and Manitoba to address water problems on a regionwide basis.

A representative of the North Dakota Water Resource Districts Association testified that the association, its members, and boards of county commissioners are opposed to the establishment of watershed districts. The committee received testimony that state law now allows the creation of joint water resource district boards which allow water resource districts to work together on a watershed basis to solve common water problems.

Legislation Considered

The committee considered a bill draft to allow water resource boards to undertake the snagging, clearing, and maintaining of natural watercourses and the debris-removal of bridges and low water crossings. Under the bill draft, a water resource district board could finance a project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. All provisions of NDCC Chapter 61-16.1 applying to assessments levied by water resource districts would apply except that an assessment could not exceed 50 cents annually on agricultural lands and could not exceed 50 cents annually for each \$500 of taxable valuation of nonagricultural property and no action would be required for the establishment of the assessment district or the assessments except that the water resource district board must approve a project and assessment by a vote of two-thirds of the members and the board of county

commissioners of the county in which the project is located must approve and levy assessments to be made by a vote of two-thirds of the members.

The committee received testimony that the inability of water resource district boards to undertake sufficient clearing and snagging operations on watercourses is not the result of water resource districts being formed along political boundaries but is due to an inability to raise sufficient funds to finance larger water resource projects and that the bill draft would address this problem.

Although the assessments in the bill draft were patterned after those used for federal projects as

authorized in NDCC Section 61-16.1-40.1, several members of the committee indicated that the assessment of up to 50 cents for each \$500 of taxable valuation for nonagricultural property was not fairly related to the assessment of up to 50 cents per acre for agricultural lands and they could not support the bill draft.

CONCLUSION

The committee makes no recommendation concerning the study of the establishment of watershed districts to manage water based on watershed boundaries.

INFORMATION TECHNOLOGY COMMITTEE

The Legislative Council delegated to the Information Technology Committee the council's authority under North Dakota Century Code (NDCC) Section 54-35-15 to study emerging technology and evaluate its impact on the state's system of information technology. The Legislative Council also delegated to the committee the responsibility to receive the annual report from the Information Services Division regarding the coordination of information technology services with political subdivisions under NDCC Section 54-44.2-02 and to receive reports from the director of the Information Services Division and the Commissioner of the Board of Higher Education regarding areas for coordinated information technology systems under NDCC Section 54-44.2-11. The Legislative Council assigned to the committee the study directed by Senate Concurrent Resolution No. 4024 (the development of an electronic mail and records management policy for governmental entities).

Committee members were Senators Larry J. Robinson (Chairman), William G. Goetz (until his resignation from the Legislative Assembly on July 10, 1997) Karen K. Krebsbach, Carolyn Nelson, Ken Solberg, and Rod St. Aubyn (who was appointed to replace Senator Goetz) and Representatives Rex R. Byerly (who was appointed to replace Representative Clark), Tony Clark (until his resignation from the Legislative Assembly on October 24, 1997), Eliot Glassheim, Ken Svedjan, Rich Wardner, and Robin Weisz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

EMERGING TECHNOLOGY'S IMPACT ON STATE'S SYSTEM OF INFORMATION TECHNOLOGY

Background

The Legislative Assembly has been closely involved in the development of information technology at the state level. As a result of a Legislative Council study during the 1967-68 interim, the 41st Legislative Assembly enacted legislation establishing the Central Data Processing Division (renamed the Information Services Division in 1989) for the purpose of establishing an electronic data processing center to be used by all state agencies except the institutions of higher education, Job Service, and the Office of the Adjutant General. As a result of a Legislative Council study during the 1969-70 interim, a higher education computer network was funded at three institutions and was later extended to all institutions of higher education under the State Board of Higher Education. As a result of a Legislative Council study during the 1979-80 interim, the 47th Legislative Assembly defined the responsibilities of the Information Services Division and state agencies for the use of data

processing resources and provided that the director of the division was to supervise all executive branch agency data processing activities. Recommendations resulting from the Legislative Council study during the 1995-96 interim were contained in House Bill No. 1034 (1997): that agencies prepare information technology plans; that the Information Services Division establish statewide information technology policies, standards, and guidelines; that the division and the State Board of Higher Education meet to coordinate their information technology systems and services; that the State Auditor provide information systems audits of information technology systems; and that the division perform information technology management reviews of state agencies except higher education institutions. Before final passage, House Bill No. 1034 was amended to involve the Legislative Council in the information technology planning and audit process and to remove the State Auditor from the information systems audit process.

House Bill No. 1034 amended NDCC Section 54-35-15 and added several responsibilities to the Legislative Council. The Legislative Council is to study emerging technology to evaluate its impact on the state's system of information technology; develop guidelines for reports to be provided by each agency or institution of the executive, judicial, and legislative branches of government; review the information technology management of state agencies and institutions; perform information systems reviews and audits of information technology systems of state agencies and institutions; and monitor implementation of information technology systems development projects and application of development projects. The Legislative Council staff advertised and solicited applications for an individual to handle these new, major responsibilities, but the attempts to recruit a qualified individual to fill this position during the interim did not succeed. At the request of legislative leaders, the staff solicited outside assistance for the committee. Two firms submitted proposals and on recommendation of the committee the Legislative Council contracted with Wolf & Associates (now known as Inteliant) to conduct three projects, which are described in this report.

House Bill No. 1034 also added responsibilities to the Information Services Division. Job Service North Dakota and the Adjutant General were brought under the division's jurisdiction (NDCC Section 54-44.2-02). The division is required to prepare guidelines for agency information technology plans (NDCC Section 54-44.2-10); develop a statewide plan based on agency plans (NDCC Section 54-44.2-10); develop statewide information technology policies, standards, and guidelines in consultation with the Legislative Council (NDCC Section 54-44.2-09); review information technology management of state agencies (NDCC Section 54-44.2-12); coordinate information technology services

with political subdivisions (NDCC Section 54-44.2-02); coordinate information technology systems and services with higher education (NDCC Section 54-44.2-11); and report noncompliance with statewide policies and standards to the Legislative Audit and Fiscal Review Committee (NDCC Section 54-44.2-12). During the interim, several questions were brought to the committee with respect to the interpretation of these responsibilities and those issues are described in this section of the report.

State Agency Information Technology Plans Statutory Requirements

Under NDCC Section 54-44.2-10, all agencies in the executive, judicial, and legislative branches of government are required to prepare information technology plans. A plan is required to be submitted to the Information Services Division and the Legislative Council by January 15th of each even-numbered year. A plan must be prepared based on guidelines developed by the division in consultation with the Legislative Council. The plan must provide information technology goals, objectives, and activities of the organization for the next five years, and must include a detailed list of information technology assets owned, leased, or employed by the agency. The division reviews each agency's plan for compliance with statewide information technology policies and standards and may require an agency to change its plan to comply with the policies or standards or to resolve conflicting directions among plans. An agency's budget request for the next biennium must be based on its information technology plan.

In addition, House Bill No. 1034 contained a statement of legislative intent listing requirements that each plan should include. These requirements include an executive summary that identifies the proposed information technology direction for the agency, annual projections for five years of operating costs by funding source, and information technology accomplishments; a description of the agency and a summary of the services provided by the agency; a list of current information technology systems; an assessment of current systems; a description of the information technology direction for the agency; and accomplishments in achieving information technology goals and objectives.

Oregon's Information Technology Planning

The committee received information from Oregon regarding its information technology planning efforts. Oregon has engaged in information technology planning since 1991. In Oregon, three entities are involved in governing state information technology efforts—the Information Resources Management Council, which is chaired by the Chief Information Officer and the membership of which includes agency directors, local government administrators, and private sector executives; the Information Resources Management Division,

which is responsible for adopting policies and standards for managing the state's information resources, ensuring that information resources fit together in a statewide system, and exercising overview responsibility for ensuring agencies' planning and implementation activities support the statewide information resources management plan; and the Joint Legislative Committee on Information Management and Technology, which reviews and establishes statewide goals and policy regarding information systems and technology, conducts studies of information management and technology efficiency, and makes recommendations regarding information resource management programs and information technology acquisitions.

Oregon's planning efforts appear to be successful because people become engaged in discussion and communication. This process is viewed to be as valuable as the product produced. In addition, the process is linked to business goals and objectives and requires early planning efforts, executive support and involvement, and involvement of external information partners, e.g., political subdivisions, other agencies, and federal agencies.

Oregon is also facing several issues related to information technology management. These issues include difficulty in recruiting, retaining, and retraining information resources management personnel; cumbersome technology procurement processes; inadequate contract management expertise to deal with the expanded use of contractors; inadequate project planning and management; inadequate overview processes; and year 2000 (Y2K) compliance concerns.

Of special interest to the committee was the Oregon joint legislative committee and its responsibility to review information technology projects. That committee reviews projects under specific principles and guidelines. The guidelines provide that every project should include active involvement by senior management, project planning, opportunities for reengineering, and a focus on data management; should provide for public access; should fit with the statewide direction on open systems and with the statewide information resources management plan; and should address interagency/intergovernmental needs and project management. Each guideline identifies questions that the joint legislative committee asks agency personnel about projects. Examples of the types of questions are: What is the extent to which your agency director and management team have been involved in shaping this project? Can you demonstrate that this technology investment will simplify work, eliminate work steps, minimize handoffs, and integrate parallel activities? If this project is going to be for collecting data from your clients, will you be employing any novel methods to make it easy for them to enter data or provide it to you?

Organizational Structure of Information Services Division

The Information Services Division is a division of the Office of Management and Budget. The director of the Office of Management and Budget appoints the director of the division. As a result of the added responsibilities of House Bill No. 1034, the organizational structure of the division changed to include the planning, review, and coordination functions. Under the new structure, the director of the division is responsible for the information technology policy and planning functions of the division, and the assistant director is responsible for the day-to-day operations of the four major services divisions - administrative services, development/software services, computer support services, and telecommunication services. In addition, the Governor appointed the director of the division to the position of chief information officer.

Guidelines for State Agency Plans

In accordance with NDCC Section 54-44.2-10, the Information Services Division developed guidelines for agencies to follow in preparing information technology plans. Under the guidelines, a plan is required to contain an executive summary; a detailed description of each new system, major enhancement, or continuing project; information on each major system; an information technology inventory; and a comparison of the results of achieving goals to the projected outcomes in the previous plan and a comparison of actual project costs to estimates included in the previous plan. After the guidelines were ready for initial review, the division presented the guidelines to the committee for review and discussion.

The committee discussed whether agricultural commodity entities and occupational licensing entities should be required to prepare information technology plans. The major question was whether entities with limited information technology assets, e.g., one or two personal computers, should be required to perform comprehensive information technology planning. The committee discussed whether the factor to decide which entities should be excluded from information technology planning requirements should be whether the entity is funded through continuing appropriations or special funds. A problem with using either of those factors is that a number of major state agencies have continuing appropriations with respect to limited activities and a few major agencies are special fund agencies.

The committee recognized that any exclusion would not be supported by specific statutory exception. The committee determined that a way of resolving this issue until legislative action can be taken was to authorize a standard of reduced information technology planning for state agencies with limited information technology resources and requirements.

The committee discussed the extent of detail required for the "detailed list of information technology assets"

required under NDCC Section 54-44.2-10. A list of every asset could result in several pages of inventory for some agencies, with questionable value for planning purposes. With respect to the detailed list of inventory, recognition also was made that some equipment cannot be easily allocated to one specific system because the equipment can be used with several systems, e.g., a legislator's notebook computer is used to access the bill status system, the legislator's automated work station system, the Lotus Notes system, and other legislative systems. Another concern was whether the detailed list required by NDCC Section 54-44.2-10, or the "information technology inventory, including the cost of the inventory" required by the legislative intent statement, should include software.

A question arose as to the value of projecting three to five years in advance because of the speed in which technology changes. It was determined that relatively good information can be obtained for many systems, but anyone who reviews these plans under an "audit" function must understand that technology changes, and these changes will affect plans accordingly.

Another concern was that existing systems may not fit into the new projects category and will not fit into the major system enhancements category unless major enhancements are planned. A suggestion was to provide for a miscellaneous system category in which agencies could place shared equipment and software and other "loose ends" not otherwise covered in order to account for all budget dollars.

Another concern was the requirement in the legislative intent statement that plans identify full-time equivalent positions when projecting annual costs by funding source. Many agencies do not allocate full-time equivalent positions to their information technology systems. A suggestion was to identify hours rather than positions because hours could be converted to full-time equivalent positions if necessary.

With respect to initial development of the plans, the January 15, 1998, deadline provided a very short time-frame for some agencies with major information technology systems. This date was seen as important in the future so state agencies would take their plans into consideration when preparing their budget requests. Of concern, however, was the possibility that the large users of information technology would need additional time for their first planning efforts.

In light of these concerns, the committee recommended that the guidelines provide a miscellaneous systems category be used to identify shared equipment and other assets not reported as projects or other systems, that the guidelines provide for full-time equivalent positions to be expressed in hours, and the Information Services Division allow certain agencies to submit preliminary plans to meet the January 15, 1998, statutory deadline, as long as those agencies submitted the completed plans by February 15, 1998.

After the initial round of planning was completed, the division presented to the committee changes being considered for the guidelines for the next round of agency planning. Among the new requirements, an agency will be requested to provide a top level organizational chart, a technology staffing level schedule, a personal computer hardware replacement schedule, and the name of the agency contact, all for the purpose of aiding the division analyzing the agency's information technology plan. In addition, the division plans to develop an abbreviated plan process for small agencies and larger agencies without information technology projects, and require an agency to submit the strategic portion of its plan by the January 15th deadline and the budget portion of its plan when the agency's budget request is submitted to the Office of Management and Budget.

Planning Efforts and Observations

The committee received information from the Aeronautics Commission, Game and Fish Department, Department of Human Services, Job Service North Dakota, Land Department, Secretary of State, University System, State Board for Vocational and Technical Education, and Water Commission concerning their efforts during their information technology planning process. Representatives of these entities described their planning efforts and presented their observations concerning the process. Among the observations were:

- It is valuable to involve Information Services Division personnel in the planning efforts of the agency. A recommendation was to increase the degree of division support for assisting agencies in maintaining plans and in addressing future Internet needs.
- It is difficult to estimate two bienniums into the future before January of the current biennium. A recommendation was to reduce the detailed budget requirements because realistic detailed budgets are not available for more than a year or two in advance. Another recommendation was to change the focus from a question of how much, to a question of what is accomplished.
- It is costly to develop the agency plan through assigning current staff or contracting with others. A recommendation was to provide full-time planning staff to continue the process and funds for continuation of the process.
- It took substantial effort to revise existing information technology plans in light of the requirements of House Bill No. 1034. A recommendation was to merge this process into other planning and budgeting processes.
- The planning process under House Bill No. 1034 focuses on budgetary items rather than goals and strategies. A recommendation was that the process should become oriented toward strategic

planning, with vision, objectives, and goals, rather than continue with the primary emphasis on budgeting. Another recommendation was to change the planning timeframe to coincide with the state's fiscal year for budgetary reasons.

- The reason for the development of statewide information technology standards appears to be volume buying rather than long-term vision or technology needs of specific agencies, and agencies will need additional funds to meet and maintain compliance with the standards.

Plan Approval Process

Eighty state agency plans were submitted to the Information Services Division—19 of those plans were the "limited" scope plans submitted by the agencies with limited information technology assets. Under the review process, an agency submits its plan to the division, the division compares the plan against a checklist to ensure all required items are contained in the plan, and an individual is assigned to provide followup on any changes required to be made by the agency. Once revisions are made and the division approves the plan, the agency is requested to send a final copy to the Legislative Council. It is anticipated a plan will have four versions—the original plan, the budgeted plan, the appropriated plan, and the plan reflecting intermediate revisions.

Projects Identified in State Agency Plans

As of April 1998, the Information Services Division had identified 152 projects in state agency information technology plans. The projects were categorized as continuing, new, or major change projects, with cost estimates of \$25,991,127 for the 1997-99 biennium, \$40,629,727 for the 1999-2001 biennium, and \$29,447,900 for the 2001-03 biennium. The division recommended to the committee that major projects should establish formal project management that includes the tools and benchmarks necessary to aid in reviewing project development. Also, funding for a feasibility study should be included with the funding for a project and there should be some type of discussion after the feasibility study is completed to determine whether a project should be initiated or continued.

The Information Services Division described a major benefit of the technology planning process as the inventory of the state's technology requirements. The result is a list of all projects that agencies are requesting, and that list includes current projects necessary to continue projects started in this biennium and projects that are anticipated to start in the next two budget cycles. The division has been primarily a service bureau—providing support and services—and agencies may or may not have informed the division of major projects in the planning stages. With the detail provided by agency plans, the division now is informed of complete projects and plans for future requests for services.

As a result of reviewing all state agency information technology plans, the Information Services Division also can assemble information on funding being projected for hardware purchases. The division informed the committee that the division would prepare tables indicating the number of personal computers planned for purchase and the possibility of better planning for contracts to purchase hardware. Another benefit of compiling the information appears to be the discovery that projects may extend over four years, and there needs to be a review process to make sure that something of value is being received. One type of review process considered by the committee was a feasibility study before initiating a project and using that study to decide whether the project should proceed. This contrasts with using a feasibility study as the preliminary step for proceeding with a project.

Survey of Agencies With Approved Plans

Upon approval of an agency's plan, the Information Services Division requested the agency to complete a survey about the planning process. The survey included 16 questions, among which were the approximate cost for agency staff time and the hours involved in developing the plan, whether the agency used a consultant to prepare the plan and the cost of the consultant, and comments on the process. Sixty-six agencies responded to the survey.

Responses to the survey indicated that the total number of hours taken to complete the plans was 9,727. With respect to individual agencies, the hours ranged from 1 to 1,537, with an average of 203 hours per plan per agency. The total cost of agency staff time to complete the plans was estimated at \$203,646. The cost to individual agencies ranged from \$8 to \$36,100 with an average cost of \$4,333 per agency in staff time to complete the plans. Nine agencies hired consultants to assist in developing the plans at a total dollar value of \$165,193. Sixteen agencies had an information technology plan before House Bill No. 1034 required such a plan.

With respect to benefits of and concerns about the planning process as described by survey respondents, the highest ranked benefits where the process allows a more proactive approach to implementing technology, it provides better information going into the budget process, and it forces the agency to gather information and analyze technology expenditures. The top three concerns expressed about the planning process were the learning curve required for the first effort, the project detail cost information required before completion of the requirements analysis, and the difficulty in breaking out information technology expenditures from other business requirements.

Consideration of Proposed Legislation

The committee considered a bill draft to revise

several provisions that resulted from House Bill No. 1034 (1997). Agricultural commodity promotion groups and occupational or professional boards were excepted from the jurisdiction of the Information Services Division to eliminate the requirement that those agencies (with limited information technology assets) engage in comprehensive information technology planning. "Information technology" was redefined for purposes of clarity and the definition of "information technology services" was eliminated, which eliminates the current confusion between the definition of information technology and the definition of information technology services. The division was granted authority to review and approve additional network services not provided by the division in order to allow the division to ensure compatibility with state network requirements. "Detailed" was eliminated as the type of listing of information technology assets to be included in the plan in order to allow lists to be designed to provide relevant information. Information technology plans were to cover the current biennium and the next two bienniums rather than the next five years to better identify the periods desired. Telephone services were redefined as network services to cover voice, data, or video transmission regardless of whether transmission is through the public telephone network. The specific times for providing reports of coordination of activities were deleted to allow flexibility in determining when reports can be given. An additional requirement for the statewide plan was that the plan must emphasize long-term strategic goals and objectives. The current exclusion of institutions under the control of the board of higher education from compliance with statewide information technology policies and standards was limited to academic and research uses of information technology, and thus administrative uses were subjected to the policies and standards. Reports of noncompliance with statewide policies and standards were to be made to the Legislative Council or its designated committee, rather than to the Legislative Audit and Fiscal Review Committee, to provide for the reports to be made to the appropriate interim committee that has been assigned responsibility for information technology review. The confidentiality provision governing information the division receives from agencies was revised to allow the division to refer to the agency a request for access to information of that agency. This eliminated the difficulty the division, as custodian of the information, has in being a provider of information without direct knowledge of which information is confidential and which information is appropriate for release. A new requirement was for the division, in consultation with the Legislative Council, to establish guidelines for an agency to use in determining whether an information technology project requires a feasibility study and analysis. The division, in consultation with the Legislative Council, was to prepare an analysis of the project and make a final determination as to whether the agency could proceed with the project. If

the decision was not to proceed, funds appropriated for the project could not be expended without approval of the Office of Management and Budget after consultation with the Legislative Council.

The committee took no action on this bill draft because the revisions, to the extent appropriate, were included in another bill recommended by the committee, which is described under **Recommendations**.

Statewide Standards and Policies

Under NDCC Section 54-44.2-02, the Information Services Division is required to establish guidelines for acquisition of information technology services or equipment by executive branch agencies, except for institutions under the control of the Board of Higher Education. The division adopted *ISD Guideline G001-98*, which adopts the purchasing procedures of the Central Services Division of the Office of Management and Budget. In addition, the guideline includes procedures for purchasing or leasing information technology services. Under the guideline, all contracts or service agreements equaling or exceeding \$25,000 must be sent to the division, and a letter of approval must be obtained from the division before proceeding with the contract or agreement.

Under NDCC Section 54-44.2-09, the Information Services Division is required to develop, in consultation with the Legislative Council, standards and policies for information technology development. The division established a standard and policy review group, and each agency was encouraged to designate one individual to represent the agency in this group. The review group reviewed, discussed, and evaluated proposed standards. Attendance ranged from 30 to 70 people per meeting. The goal of standards and policies development was to provide a base on which to establish a common statewide information technology directive.

One concern raised was the relationship of higher education to the Information Services Division. The specific question was the exclusion of the institutions of higher education from mandatory compliance with statewide information technology policies and standards. At issue was the workability of excluding higher education from complying with policies and standards, but statutorily requiring the division to report noncompliance to the Legislative Audit and Fiscal Review Committee. This apparent contradiction appeared to be resolved by including higher education in the initial planning process in developing the policies and standards.

Each standard consists of three components—strategy, policy, and the standard. Strategies are points identifying the intent or preferred environment of the standard; policy is the statement of policy used to implement the strategies; and the standard is the specific requirements supporting the policy. As of September 8, 1998, the Information Services Division had adopted these standards:

- Operating systems.
- Network services.
- Application development.
- Data management.
- Security.
- Office automation.
- Document imaging.
- Video conferencing.

The statute allows the Information Services Division to grant exceptions to compliance with the standards. This procedure is recognized in the standards through a procedure allowing an agency to receive an exception. That agency, however, has to address that exception in its next (year 2000) information technology plan. Committee members urged the division to limit the number of exceptions, because if several agencies or a few large agencies receive exceptions, the purpose of statewide standards has been weakened.

Statewide Information Technology Plan

Under NDCC Section 54-44.2-10, the Information Services Division is to prepare a statewide information technology plan based on the information technology plans prepared by state agencies. By necessity, the statewide plan could not be developed until all agencies had completed their information technology plans. Throughout the interim, the division reviewed with the committee the composition proposed for the statewide plan. As described to the committee, the statewide plan will include an executive summary and information technology vision statements; a description of technology infrastructure; identification of issues and recommendations; a description of 1997-99 accomplishments; agency information technology plan summaries, which will include system goals and objectives and spending projections; agency project summaries, which will include project description, benefits, and costs; boards and commissions summaries; and reports on coordination meetings with counties, cities, and higher education.

The information technology vision statements are:

- State government should be customer-focused (technology should be convenient and include use of e-commerce, videoconferencing, voice response, and Internet applications and should involve one-stop shopping, the state web site, integrated applications, and a single user interface).
- State government should be efficient (technology should provide faster processing through automating manual processes, automating record-keeping, and redesigning current processes and should include faster and better informed decisionmaking through decision support systems, geographic information systems, and training of workers).

- State government should be well-managed (technology requires getting the most from scarce resources through technology planning, implementation of standards and best practices, project management, human resources development, and asset management that addresses hardware and software replacement schedules, tools for automation, and alternative configurations).
- State government should provide leadership for developing a shared infrastructure (a single statewide area network that allows for flexible, evolutionary expansion can provide information technology that benefits many and redistributes or levels costs).

The final plan is scheduled to be printed by November 30 and will be distributed to interested parties and will be available on the division's web site.

Statewide Network Inventory and Assessment Requirements for a Statewide Network

Under its charge to study emerging technology and its impact on the state's information technology system, the committee observed that a major need for information technology is the ability to communicate. Current government information technology trends are increased Internet usage, electronic interface with citizens, and increased demand for efficiency, new technology, quality of service, and multimedia capabilities. To support public access to government information over the Internet, infrastructure issues need to be addressed. Experience in other states shows that a centrally and cost-effectively supported infrastructure will reduce agency and citizen access costs.

Current Statewide Network

The current statewide network was initiated in 1982, when district offices of the Department of Transportation were connected to the department's central office. In 1984 the Higher Education Computer Network was integrated into the network and the North Dakota Information Network was created to jointly manage the network. North Dakota was the first state with combined state government and higher education networks. In 1985 the network was extended to all counties to provide connectivity between county social service boards and the Department of Human Services.

In 1991 the network's backbone was converted to digital facilities, and the Interactive Video Network (IVN) was implemented on these new digital facilities. In 1992 the North Dakota Information Network selected AT&T's Software Defined Network (SDN) long-distance voice services and North Dakota became an earlier adopter of virtual private network technology, which is now used by most states and large businesses for long-distance service. The rate is determined by the total committed aggregate of minutes of state government and higher

education. The rates for state government are nine cents per minute for credit card and 1-800 service, five cents per minute for instate long-distance service, and 10.5 cents per minute for out-of-state long-distance service. The contract is used by higher education and is available to counties, cities, and school districts, and each customer group is billed separately by AT&T. In 1994 the North Dakota Information Network committed as the anchor tenant for U S West to establish a statewide frame-relay network. This contract converted the existing private network to a router based frame-relay network. The rates remained the same as under the private network, and businesses now use frame-relay service, which is an indirect economic impact of the state contract. Current use of this service is by state government with 22 percent, large business with 52 percent, and small business with 26 percent. North Dakota was second only to Nebraska in having statewide frame-relay services.

In 1994 the North Dakota Information Network provided Internet access from the state network and Northwest Network (NWNET) was selected as the Internet service provider. North Dakota was an early adopter of state government access to the Internet.

In 1996 all buildings on the Capitol grounds with the exception of the Governor's residence were connected with fiber optic cable; and in 1997 state government entered a partnership with Montana Dakota Utilities for fiber optic cable connection of 10 state government buildings in Bismarck to the Capitol.

State agencies and counties, colleges and universities, and elementary and secondary schools all use the same physical network equipment and transport facilities. Thirty-four counties are tied to the statewide network. The difference between these users is that state government needs to protect certain information data bases, and thus uses a firewall. In comparison, the higher education computer network needs open access for over 20,000 students and North Dakota School Net has a common customer base to support.

A major need for state government was described as the need to make current applications web enabled to achieve maximum benefit of the wide area network and public access. Government has a lot of information available on the Internet but very little self-service government access, e.g., ability to apply for licenses. One suggestion was to conduct an inventory of applications to determine those that can be modified with minimal investment. Challenges to the current network were described as including the impact of free resources or discounts provided by vendors to higher education, the impact of grant funding that causes different types of software requirements, the impact of federal agencies that require certain types of software, new technology (which is slow to come to a small state), and the fact that development is reactive—in response to requests.

Statewide Telecommunications Report

The committee determined that current state network resources needed to be analyzed before determining whether any change in the state network should be made. On recommendation of the committee, the Legislative Council contracted with Inteliant for an inventory of all current networks used for voice, data, and video communications. This inventory was viewed as the first step in analyzing the needs and potential for providing common networks. The goal of the entire project was to help the state to deploy its statewide network to meet current needs and anticipate future needs.

The *Statewide Telecommunications Report* presented by Inteliant consisted of 20 sections comprising 290 pages including maps, charts, and appendices. The project focused on the pieces of the statewide network which would need to be considered if major changes are made to the ways that data and voice are transmitted from one location to another. Information was gathered by personal interview, review of inventory reports, phone calls, and completion of questionnaires. This information is viewed as a starting point for deploying new telecommunications capabilities within the state. After the committee received the report, the next step was to decide whether to develop recommendations and a strategic plan for upgrading North Dakota's telecommunications infrastructure.

Strategic Telecommunications Plan

The committee determined that continual improvement of the statewide network will allow government employees to communicate through internal wide area networks to accomplish their work easier and faster and can result in lowering postage and phone costs, transferring information more quickly and securely, and providing information through the Internet. States with advanced infrastructures can support services such as telecommuting, distance learning, virtual universities, and telemedicine. With such an infrastructure, the question is whether there should be a broad policy supporting public access to government information over the Internet. A modern infrastructure could provide citizen access and the free exchange of government information throughout the state, with the potential benefit for economic development by having an advanced telecommunications infrastructure to attract and retain desirable business. This infrastructure would not be the statewide network but would result from the state contracting for a level of service the state requires, and contractors providing service greater than the state level and the excess capacity would be available for private sector use, e.g., the statewide frame-relay service contracted by the state in 1994 resulted in a service primarily used by business.

On recommendation of the committee, the Legislative Council contracted with Inteliant to conduct detailed research of five other states that are implementing creative new approaches to upgrading telecommunications,

develop a set of recommendations for North Dakota for implementing similar changes to get similar or superior results in North Dakota, develop a workplan defining the timeframe for implementing the recommendations, and provide a cost-benefit analysis of the recommendations. Basically, this contract was a quick-followup approach to the inventory by looking at states that have implemented innovative approaches, looking at the mistakes they have made, looking at what North Dakota has, and determining how North Dakota's system can be made better.

The *Strategic Telecommunications Plan* presented by Inteliant resulted from reviewing the development of communication networks in five states - Arizona, Kansas, North Carolina, Oklahoma, and Washington. The plan described the following trends that encourage states to take a different approach to the distribution of information among their agencies and to their citizens:

- The need to encourage economic development in the state through the use of a high-speed statewide communication network.
- The increased demand by citizens and companies for improved government services at decreased costs.
- The increased demand by citizens and companies for better access to government information using the Internet.
- The technologies and mediums used to provide high-speed communications are changing very rapidly but are merging to provide all services over one set of fiber, cable, or radio.
- The need to ensure that government services are provided at the most cost-effective level possible.
- The increased demand for high-speed data, voice, and video communications.

Based on the best practices of the states reviewed, the plan presented these recommendations:

- Establish a statewide communications infrastructure agency for all telecommunications planning, selection, implementation, and management for all state agencies, higher education, and public schools.
- Establish the director of the agency as the chief information officer for the state as a cabinet level position reporting directly to the Governor.
- Establish a state communications infrastructure board that includes representatives from the three branches of government, private enterprise, and local government with the overall responsibility to approve standards and policies related to network technologies in the state.
- Mandate that the agency develop a business plan defining rate plans, missions, goals, policies, transition plan, business objective, measurements, and general procedures.

- Establish a group within the agency for improving personnel productivity and workflow processes for customers.
- Establish a technology development fund to establish the statewide network and to evaluate emerging technologies and implement common, shared components for users of the network.
- Require each entity that uses the statewide network or is a user of agency services to file a strategic information technology plan.
- Establish a project quality assurance process to provide an independent assessment of the status of major projects.
- Create a division within the agency to plan and administer access to state information primarily through the Internet.

The plan provides a framework for proactively deploying technology. The recommendations establish the authority for a centrally managed statewide network with clearly defined accountabilities for communications within the state. Cost information in the plan compared the networking costs in fiscal year 1998 per workstation in North Dakota (\$1,240), North Carolina (\$1,000), Kansas (\$790), and Oklahoma (\$240). The committee received initial cost estimates, with the caveat, actual costs cannot be determined until these factors are determined: the actual design of the network, the sites for interactive video, and the rate of migration to the new network. The initial estimated costs assumed that it would take six years to convert to the new network. The estimates contained in the plan were \$6.1 million additional expense during the 1999-2001 biennium; \$2.6 million additional expense during the 2001-03 biennium; \$3.6 million savings during the 2003-05 biennium; and \$12.5 million savings during the 2005-07 biennium. Costs are expected to be lower under the plan because of purchasing leverage, improved technologies, economies of scale, and consolidated administration. At the last meeting of the committee, Inteliant presented a workplan for developing fiscal note information detailing the initial funding for the statewide communications infrastructure agency (the Information Technology Department) and implementation of the *Strategic Telecommunications Plan*. This information is expected to be available during the 1999 legislative session.

The committee solicited comments from the elected state officials and 13 major state agencies with respect to the plan. Testimony expressed support for a statewide communications agency because the Information Services Division currently is responsible for the wide area network used by state government and higher education; appointment of a chief information officer as a cabinet level position, which has been done for the last two years; development of a strategic business plan, as long as the plan includes all information technology and not just wide area networks, the plan identifies the organizational structure of the agency, and the plan

identifies the strategies for improving personnel productivity and workflow processes; development of information technology plans by users of the statewide network; and establishment of a project quality assurance process to provide an independent assessment of the status of major projects. Questions were raised over the feasibility of requiring public schools to participate in the statewide network; establishing a board that did not include an elected state official as a required member and limited state agency representation to "major" state agencies, and the chairman of which was appointed by the Legislative Council chairman rather than by the Governor; and establishing a board at the operations level rather than at a policy (advisory) level, which involves another entity in information technology decisionmaking (especially if the committee were to recommend creation of a statutory Legislative Council Information Technology Committee). Questions were also raised over the lack of estimated costs or potential savings for establishing a personnel productivity and workflow processes improvement group, a technology development fund, the project quality assurance process, and a separate entity within the agency to plan and administer access to state information primarily through the Internet. A specific concern related to the need to identify the costs to implement the plan, and the need to understand what the service demands are in the state. Support was expressed, however, for any improvement that would result in a technology network, especially between state agencies and county offices that share information with one another, which would provide economical communication services. Finally, a question was raised about the speed of implementing this change before seeing the benefit of the provisions of House Bill No. 1034 (1997), e.g., strategic planning, project management quality assurance, and project coordination.

The committee determined that the feasibility of a statewide network depended on participation by as many entities as possible. Under the current network, participation by political subdivisions is voluntary. The committee determined that if a county, city, or public elementary or secondary school desires access to a wide area network, that access should be through the statewide network in order that all public entities would benefit from economies of scale resulting from the statewide network. Even though inclusion of public schools would add 231 school districts, with 500 school buildings, to the user pool, this was seen as an important component to obtain efficiencies of scale.

The committee solicited comments from representatives of organizations representing counties, cities, and schools with respect to inclusion in the network. Testimony indicated support for state and local partnerships and recognition of the importance of technology infrastructure to economic development efforts. Although the need for a high degree of coordination and

compatibility was recognized for certain areas, e.g., human services and judicial services, requiring this type of relationship was viewed as removing current flexibility in performing local functions. Representatives of North Dakota School Net described arrangements that cooperation has made in providing Internet access service to member schools, and low-cost Internet access relationships being developed between schools and local cable or independent telephone companies. Most of the testimony expressed concern over the effect mandated participation in the state network would have on the substantial investment in computer networks and service delivery and the special, low-cost relationships developed for obtaining network services. Concern also was expressed over costs that could be incurred in meeting state standards imposed as a condition for participating in the state network.

The committee discussed the necessity for creating a board with the responsibility for approving the business plan, statewide information technology standards, and the statewide information technology plan. Reporting to another entity was not seen as unduly burdensome, especially because the consolidated relationship legislators would have with the agency (the board would have the substantive review powers the Legislative Council had under NDCC Section 54-35-15). With respect to the composition of the board, the committee determined that the Governor's appointees should not be limited to representing "major" state agencies. The committee also determined that legislative involvement is important, and the chairman of the Legislative Council should designate the chairman of the board. Also, the committee determined that actual participation by the ex officio members is important, and those members should not delegate these responsibilities to others.

Y2K Compliance Efforts

Background

The Y2K problem refers to the difficulty computer processors will have in recognizing the year 2000. In the early years of writing computer programs, data storage space and processing power were very costly items and programmers commonly used two digits, rather than four, to represent the year, i.e., 99 rather than 1999, to save space and power, and the practice continued by tradition in later years. The problem is the unknown consequences when 1999 (99 for processor purposes) turns over to 2000 (00 for processor purposes). The question is whether 00 will be recognized as 2000 or some other date, e.g., 1900. Another date recognition question arises because 2000 is a leap year (even though a century year, which are not leap years unless they are divisible by 400). This Y2K problem will affect computer hardware, software, and embedded chips (microprocessors contained in a variety of equipment). The recognized procedure for determining Y2K compliance is a five-step process involving awareness,

assessment, renovation (with necessary prioritization of systems), validation (testing), and implementation.

The Information Services Division is responsible for software residing on the mainframe processing unit (enterprise server) and has been addressing Y2K problems for the past four to five years. As of September 15, 1998, the division had completed 84 percent of Y2K compliance effort required for activities under its responsibility, and the work was proceeding at approximately four percent per month. Although the division's efforts have been proceeding on schedule, concern was expressed over the status of Y2K planning efforts by state agencies in general. Specifically, four areas of concern were:

- Those agencies that develop their own software programs.
- Those agencies that write their own software programs that access the division's enterprise server programs.
- Physical alarms and systems, e.g., heating systems, cooling systems, alarm systems, and security systems.
- Litigation issues, which are under risk management.

Because of the concern over agency inattention to the Y2K problem, the division converted its auditor position authorized under House Bill No. 1034 (1997) to a business analyst position in order to provide assistance on the Y2K project, and the division's disaster recovery staff member had also been assigned to the Y2K compliance effort.

Y2K Compliance Issues

The committee received extensive information concerning the potential impact failure of computer hardware, software, and embedded chips would have due to not being Y2K compliant, e.g., computer systems may crash, utility service may be interrupted due to embedded chips that fail or maintenance systems that shut down facilities because of "overdue" maintenance, health care facilities may not be able to provide care in intensive care units, emergency 911 systems may fail, transportation systems may fail, traffic control signals may not work, financial institutions may not be able to record or process financial transactions, and business in general may be severely disrupted. It was noted that some effects have already been experienced due to the "forward-looking" requirement of some computer applications, e.g., credit cards with expiration dates beyond January 1, 2000, have caused disruptions in checkout systems.

The committee solicited testimony from various segments of North Dakota's economy, including state agencies and state organizations representing counties, cities, utilities, financial institutions, and health care organizations. Generally, those entities or areas of the economy are aware of the Y2K problem and are

becoming more active in informing their constituents of the need to initiate a Y2K assessment process or to increase their current Y2K compliance efforts. A common concern, however, was the exposure to liability for noncompliance, especially because of the cost of compliance and the difficulty of adequately funding these efforts.

The committee received a substantial amount of testimony describing concerns about public agencies and private businesses that were not aware of Y2K problems and thus were not making any Y2K compliance efforts. Individuals recommended a statewide Y2K assessment of agencies and schools, development of joint expertise and resources, establishment of milestones, and budgeting for these expenses; monitoring and assisting on critical infrastructure needs—electric utilities, water, and rural hospitals; providing public education and guidance; and providing for contingency planning.

Of special concern is the potential for business partners and suppliers to not be Y2K compliant, and how that would affect an agency or business that is Y2K compliant. The most common example is a utility in North Dakota that is Y2K compliant but utility service becoming disrupted in this state because the transmission grid fails due to cascading outages caused by a few major failures of out-of-state utilities.

The committee received information concerning the potential liability if state agencies are not Y2K compliant. Four states have passed legislation immunizing governmental entities from liability based on an error caused by a government computer, and several states have considered and are considering this type of legislation. With respect to contingency planning for increased litigation, testimony from the Attorney General's office indicated that the Y2K issue does not present a unique situation because the state is always faced with the possibility of extensive litigation. Tort claims against the state are viewed as the responsibility of the risk management fund, and contract claims against the state can be defended as other contract claims.

The committee also received information as to the potential impact Y2K compliance efforts could have on state revenues. A business has a variety of tax treatment options for handling Y2K costs, e.g., software development costs can be expensed annually as paid or depreciated over five years. Information indicated a worst-case scenario of a reduction of state corporate tax revenues of \$1.4 million for 1999 and a reduction of \$205,000 for subsequent years. With respect to individual income tax revenues, the estimates indicated a reduction of \$450,000 in the first year and negligible impact in subsequent years. The reduction in financial institutions tax revenue was estimated at \$200,000.

Y2K Impact Survey

Because of the concerns over the progress of state agencies in conducting Y2K compliance efforts, the

Information Services Division sent a Y2K impact survey to 110 state agencies in March 1998. The primary purpose of the survey was to increase agency awareness of the potential for Y2K problems in agency computer systems. Ten agencies did not return the Y2K survey. Because only 22 agencies indicated they have a Y2K project, committee members were concerned that agencies may not be aware of the impact of the year 2000 on areas of agency operations other than enterprise server applications. Survey responses also indicated agencies were relying on the division's Y2K compliance efforts, agencies were considering the purchase of new equipment and software as a method of Y2K compliance, and agencies were not engaging in any business contingency planning. Business continuation plans are seen as crucial to ensuring that critical operations of an agency continue, regardless of whether the agency's Y2K compliance efforts have been successful.

Y2K Agency Assessment

Because of the results of the survey by the Information Services Division, the committee became concerned over the prospect of state agencies not becoming Y2K compliant in time to avoid disruptions in services or operations. On recommendation of the committee, the Legislative Council contracted with Inteliant to conduct a Y2K assessment of four state agencies. The purpose for the assessment was to conduct a spot check of specific agencies to provide information on whether agencies are on track with Y2K compliance efforts and to determine whether those agencies had business continuation plans. The contract provided for concentration on software, embedded chips, and contingency planning to determine whether the selected agencies have established processes to prepare the agencies for the year 2000. The agencies assessed were the Workers Compensation Bureau (because of its involvement with records and disbursements), the State Department of Health (because of its involvement with public health and safety), State Radio (because of its involvement with 911 emergency response services), and the State Hospital (because of health care concerns).

The *Y2K Agency Assessment* presented by Inteliant pointed out these strengths that will facilitate the Y2K process:

- Agency managers are aware of the need to develop methodologies to address Y2K issues.
- Agency personnel are knowledgeable in technology applications.
- Enterprise server applications are on track for Y2K compliance.
- The Information Services Division has provided training for agency personnel.
- Agency personnel are interested in receiving assistance.

As a result of the assessment, however, several concerns came to light:

- Each agency has created its own Y2K methodology.
- Lack of documentation could cause disruptions if personnel changes occur.
- Lack of a complete inventory of hardware, systems (including systems with embedded processors), equipment, facilities, and applications maintained by the agency or its contractors.
- Lack of a defined or documented test strategy.
- Lack of a documented contingency plan.
- Lack of consideration of Y2K impact on facilities.
- Lack of coordination of efforts to avoid unnecessary duplication.

The assessment began on July 20, 1998, and was completed on September 4, 1998. The *Y2K Agency Assessment* contained 11 recommendations, many of which were implemented during and after the assessment process. The recommendations, along with action taken with respect to the recommendations, were:

- Appoint a state Y2K director to provide leadership to ensure involvement by senior management in agencies. In September 1998 the Governor designated the chief information officer (the director of the Information Services Division) as the state government Y2K coordinator.
- Appoint agency Y2K directors to ensure accountability or responsibility for Y2K efforts is assigned to a senior management individual in each agency. In September 1998 the Governor sent a memorandum to all state agency directors pointing out that while the Information Services Division has a contact within each agency for Y2K compliance efforts, each agency should designate a senior management level individual to be responsible for Y2K compliance.
- Assess Y2K readiness across departments to ensure there are no surprises. The Information Services Division has assigned this responsibility to two staff members.
- Agencies should formalize their project management, testing, and contingency plans for their Y2K issues. The Information Services Division's Y2K web page <http://www.state.nd.us/isd/y2k/> contains a Y2K plan guideline to assist agencies with the planning process. The division also participates in meetings with state agencies and institutions regarding Y2K compliance efforts. The Governor's memorandum also set out the need for agencies to create a project plan consisting of assessment, inventory, remediation, and testing of potential Y2K issues as well as contingency plans for key business applications that support critical services; provided an agency Y2K reporting form, which is to be completed monthly and sent to the Information Services

Division; and provided for certification of agencies completing their Y2K compliance projects.

- Continue to develop material available on the state Y2K web page to avoid duplication of effort and achieve the highest-quality processes. The web page has a Y2K project plan and additional information, and plans are to post additional information as appropriate, e.g., state agency Y2K compliance status.
- Establish public affairs programs to increase public confidence in the state's ability to mitigate Y2K issues.
- Educate and motivate the private sector to take steps to prepare for the year 2000.
- Require all vendors providing goods and services, including service contract renewals and equipment or facility leases, to provide written assurances that they comply with Y2K requirements. As of October 1, 1998, the State Purchasing Division started including a Y2K compliance statement on all purchase orders and requests for bids (vendors and bidders accept the Y2K compliance responsibility when signing the orders or submitting the bids) and the Facility Management Division has requested all agencies leasing space to contact the lessors for a Y2K certification letter.
- Review contracts to determine which party is responsible for Y2K compliance and include specific assignment of responsibility in contracts renewed before January 1, 2000. The Attorney General reviews many of the state's contracts and now requires a Y2K compliance responsibility provision.
- Establish financial contingencies at the state and agency level, based on each agency's assessment and the overall risk of failure, and appropriate funds to the Emergency Commission to distribute as unforeseen emergencies arise due to Y2K complications.
- Ensure that legislators are cognizant of the potential impact of 1999 legislation on an agency's Y2K remediation efforts.

Y2K County Assessment

Testimony indicated that many counties had not completed a Y2K assessment. Of special concern was the unevenness between counties, especially with the potential impact on emergency 911 systems. On recommendation of the committee, the Legislative Council and the North Dakota Association of Counties contracted with Inteliant to assess one medium-size county—Stutsman—and one small-size county—Adams—to obtain a “snapshot” of Y2K readiness.

The *Year 2000 County Assessment* presented by Inteliant identified these strengths:

- Staff in both counties were willing to address the issues.
- The majority of counties statewide do not have a high level of complex automation in their operations.
- The relationship between counties and state agencies is strong and can simplify the process.
- Both counties have received strong support from their software vendors.
- Both counties do not have any huge Y2K issues.

The assessment identified concerns similar to the concerns identified from the assessment of the four state agencies, i.e., lack of common methodology, documentation, an inventory, a defined or documented test strategy, a documented contingency plan, consideration of Y2K impact on facilities, and coordination of efforts. In addition, county budgets for fiscal year 1999 were being prepared without the counties being far enough along in the Y2K process to establish solid figures for Y2K compliance.

The assessment recommended that each county should appoint a Y2K director, formalize Y2K planning, establish financial contingencies, require vendors to provide written assurances the vendor complies with Y2K requirements, review all contracts to determine which party is responsible for Y2K compliance, ensure coordination of Y2K efforts among county departments, and ensure county officials are cognizant of the impact of decisions on the county's Y2K remediation efforts. Because of a recommendation that the North Dakota Association of Counties establish a public affairs program, this assessment was seen as providing an impetus the North Dakota Association of Counties could use to urge counties to move forward with Y2K compliance efforts.

Recommendations

The committee recommends Senate Bill No. 2043 to establish an information technology department. The department would be responsible for all telecommunications planning, selection, and implementation for all state agencies and institutions, counties, cities, and public elementary and secondary schools. The bill also provides for transition of responsibilities of the current Information Services Division, which would be replaced by the new department. The department would be administered by a chief information officer appointed by the Governor. In addition, the bill creates an information technology board, consisting of four legislators appointed by the Legislative Council, seven members appointed by the Governor, the chief information officer, the commissioner of higher education, and the supreme court administrator. This board would be responsible for approving the business plan of the department, reviewing and approving statewide information technology standards and the statewide information

technology plan, assessing major projects to ensure quality assurance, and reporting to the Governor and the Legislative Council on matters concerning information technology. The board could exclude from mandatory participation in the state network any county, city, or school district that demonstrates its current network services are more cost-effective than wide area network services available from the department. As a means to ensure network functionality, each entity using the network would have to comply with network standards and prepare an information technology plan. The bill substantially implements the recommendations contained in the *Strategic Telecommunications Plan* prepared by Inteliant. The main purpose of this bill is to provide the structure for consolidated telecommunications planning and implementation for all state agencies, higher education, counties, cities, and school districts into one department. The bill repeals the existing law providing for the Information Services Division and transfers the division's responsibilities to the department. The revisions to the provisions of House Bill No. 1034 (1997), which the committee considered separately from this bill, are also included in the new provisions establishing the department to the extent those revisions were relevant to the powers and duties of the department.

The committee recommends Senate Bill No. 2044 to establish a Legislative Council Information Technology Committee. The committee's duties would include establishing statewide goals and policy regarding information systems and technology, conducting studies of information technology efficiency and security, reviewing activities of the (newly created) Information Technology Department, and making recommendations regarding established or proposed information technology programs and information technology acquisitions. These duties are similar to the powers and duties of the Oregon Joint Legislative Committee on Information Management and Technology.

The committee recommends House Bill No. 1037 to limit state and political subdivision liability for failure to become Y2K compliant. The bill provides that the state is not liable for a contract or tort claim resulting from failure of computer hardware, software, networks, or processors to account for a date compatible with the year 2000 date change if the state has made a good-faith effort to make the hardware, software, networks, or processors Y2K compliant. The bill describes "compliant with the year 2000 date change" as including date structures that provide four-digit date recognition or interfaces that prevent noncompliant dates and data from entering or exiting any system. Thus, dates other than January 1, 2000, are contemplated as within the scope of the immunity provided by the bill. The bill also provides a similar immunity for political subdivisions with respect to a tort claim. Committee members expressed some concern over the requirement for a good-faith effort to be made, but without such a qualification members expressed the

fear that entities would not implement or continue Y2K compliance efforts.

As a result of the assessment of state agencies, the committee requested the Legislative Council chairman to urge the Governor to direct state agencies to prepare business continuation plans to take effect if their efforts to become Y2K compliant were unsuccessful. Committee members viewed this request for gubernatorial action as support of the Information Services Division in its efforts to make agencies aware of potential Y2K problems. The Legislative Council chairman made such a request September 17, 1998, and the Governor issued a memorandum containing a number of directives to all state agencies on October 7, 1998.

The committee recommends that the executive budget include an appropriation subject to the approval of the Emergency Commission for distribution as unforeseen emergencies arise due to failure of state agencies to become Y2K compliant.

The committee recommends that state agencies and institutions monitor legislative actions that could affect their ability to complete Y2K compliance efforts, and notify relevant legislators and legislative committees of those impacts.

COORDINATION OF INFORMATION TECHNOLOGY SERVICES WITH POLITICAL SUBDIVISIONS

Under NDCC Section 54-44.2-02(5), the Information Services Division is to conduct meetings with political subdivisions to review and coordinate information technology services. The division, Association of Counties, and League of Cities formed a committee to review the coordination of technology between state government and political subdivisions. The committee met on February 19, July 15, and October 7, 1998. With respect to technology and those areas in which sharing is working: 27 counties are connected to the state network for e-mail, Internet, and state government access; counties and cities may obtain service under the state telephone long-distance contract; the division contracts with the North Dakota Association of Counties to provide technical support at county locations; and records management provides guidelines for counties and cities to use in the management of their records.

HIGHER EDUCATION AREAS FOR COORDINATED INFORMATION TECHNOLOGY SYSTEMS

North Dakota Century Code Section 54-44.2-11 requires the director of the Information Services Division and the commissioner of the Board of Higher Education to meet each year to plan and coordinate their information technology systems and services and report their findings and recommendations to the Legislative Council. The report was presented to the committee in

October 1998. According to the report, higher education and the division have agreed that each campus will complete an individual information technology plan; higher education will complete an abbreviated plan for grants, academic, and noncampus technology requirements; and higher education will coordinate planning efforts through a single point of contact. Current areas of cooperation are:

- The Interactive Video Network, which is used primarily to deliver instructional services and time is made available for state agencies.
- The Legislative Bill Tracking System, which was developed by the Information Services Division, the Higher Education Computer Network, and the Legislative Council to provide public access to information on measures under consideration by the Legislative Assembly.
- A single procurement contract for network equipment, which results in savings through combining volume for larger discounts.
- Single contracts for long distance, Internet access, and a private line backbone service between the cities of Bismarck, Fargo, and Grand Forks which allow the division and the Higher Education Computer Network to receive better pricing and result in a single vendor contact for each service.
- Compliance with the division's technology standards by institutions of higher education, even though institutions are exempted from mandatory compliance, as long as the standards can be implemented in the institutions' environment.
- Deployment by the division and the Higher Education Computer Network of the On-line Dakota Information Network (ODIN) to provide common library services.

Recommendations for future cooperative projects include a cooperative effort by the division and Mayville State University to create a project management training course for technology project managers; continuation of the cooperative effort by the division and the University System to design and cofund a statewide area network; and active involvement by the division in the project to reengineer the University System's administrative requirements.

DEVELOPMENT OF ELECTRONIC MAIL AND RECORDS MANAGEMENT POLICY FOR GOVERNMENTAL ENTITIES

Electronic records create many new concerns with respect to records management. Records in an electronic format are hardware and software dependent. With the move from enterprise server applications to personal and network computers, the risk of data loss increases. Also, most electronic information systems

used to create, receive, and store records do not provide full records management functionality.

The committee reviewed North Dakota open records laws, records management requirements, federal law, and the relationship of other states' open records requirements to electronic mail policies. Under NDCC Section 44-04-18, unless otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. Section 44-04-17.1 defines a record as "recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business." Section 44-04-17.1 further provides that a record includes preliminary drafts and working papers.

With respect to electronically stored records, Section 44-04-18 provides that access to an electronically stored record must be provided at the requester's option in either a printed document or through any other available medium. If no means exist to separate or prevent the disclosure of any closed or confidential information contained in a computer file, the computer file is not considered to be an available medium.

Because the definition of "record" appears to include electronically produced and stored information, electronic mail is subject to the constitutional and statutory provisions that require all records of public or governmental entities of the state or a political subdivision are public records that must be open and accessible for inspection. However, not all electronic mail may be considered to be a "record" that is subject to the open records requirement. If an electronic mail document in the possession or custody of a public entity or agent is of a personal nature and was not received or prepared for use in connection with public business or contains information relating to public business, the document does not fall within the definition of a "record" under Section 44-04-17.1. In addition, the North Dakota Century Code contains various exceptions to the open records requirements, including:

1. Public employee personal, medical, and employee assistance records (NDCC Section 44-04-18.1).
2. Records of law enforcement and correctional employees and records relating to confidential informants (NDCC Section 44-04-18.3).
3. Trade secret, proprietary, commercial, and financial information and information relating to economic development records (NDCC Section 44-04-18.4).
4. Records relating to the Legislative Council, the Legislative Assembly, the House of Representatives, the Senate, or a member of the

Legislative Assembly if the records are of a purely personal or private nature, a record that is an attorney work product or is attorney-client communication, a record that reveals the content of private communications between a member of the Legislative Assembly and any person, and a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved (NDCC Section 44-04-18.6).

5. Active criminal intelligence information and criminal investigative information (NDCC Section 44-04-18.7).
6. Attorney work product (NDCC Section 44-04-19.1).

Under NDCC Section 54-46-05, the head of each executive branch agency must establish and maintain an active, continuing program for the economical and efficient management of the records of the agency, regardless of the form of the records. That section also requires agency heads to submit to the state records administrator schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes. Section 54-46-08 requires the administrator, after consultation with the official or department head concerned, the Attorney General, the State Auditor, and the state archivist to determine that the type or class of record has no further administrative, legal, or fiscal value before the final disposition of any type or class of record.

North Dakota Century Code Section 12.1-11-05 provides that it is a Class C felony if a public servant who has custody of a government record knowingly, without lawful authority, destroys the verity or availability of a government record. That section defines a "government record" as any record, document, or thing belonging to, or received or kept by the government for information or record, or any other record, document, or thing required to be kept by law pursuant to a statute that expressly invokes the penalty in that section. Therefore, a public servant who destroys a public record, including electronic mail or a record that consists of preliminary drafts or working papers, could be subject to criminal prosecution, unless it can be shown the record was disposed of under an approved records management program.

Under these statutes, unless specifically exempted from the open records requirements, electronic mail in the custody of a public entity which has been received or prepared for use in connection with public business or contains information relating to public business is a public record and must be maintained in accordance with an agency's records management program. Generally, other states also treat electronic mail in the same manner as any other record.

The committee also received information from the Information Services Division, which formed an electronic records committee in March 1997 to develop

guidelines for the management of electronic records. The electronic records committee included representatives of 34 state agencies. As a result of its meetings, the electronic records committee identified records management, security, legal, technical, archival, and administrative issues. That committee also reviewed many other organizations' products, including the National Archives and records administration entities in Wisconsin, Delaware, Florida, Utah, and Tasmania. As a result of its work, the electronic records committee developed electronic records management guidelines for use by state agencies. The guidelines cover electronic records management—creating electronic record systems, using electronic record systems, maintaining electronic records, disposing of electronic records, establishing a records management program, and

security of electronic records. The guidelines are intended to provide guidance on effective management of electronic records to state agencies and county, city, and park district offices.

The Information Services Division distributed the *Electronic Records Management Guidelines* to state agencies and city, county, and park district offices to use in the management of their electronic records. The division's web page <http://www.state.nd.us/isd/Doc/erguide.pdf> also contains the guidelines.

Conclusion

The committee makes no recommendation with respect to the electronic records management guidelines developed for use by governmental entities.

INSURANCE AND HEALTH CARE COMMITTEE

The Insurance and Health Care Committee was assigned six studies. Section 27 of Senate Bill No. 2004 directed a study of emergency medical services. House Concurrent Resolution No. 3030 directed a study of the development of a strategic planning process for the future of public health in this state. House Concurrent Resolution No. 3033 directed a study of the effects of managed health care on the future viability of the health care delivery system in rural North Dakota. House Concurrent Resolution No. 3043 directed a study of the feasibility and desirability of implementing hail suppression programs for the reduction of property damage in urban and rural areas and funding the programs through property and casualty line insurance premium taxes. The Legislative Council also assigned the committee the responsibility to receive annual reports from the Commissioner of Insurance relating to the progress of the partnership for long-term care program. The Legislative Council chairman directed the committee to receive reports from the Governor and the Department of Human Services on the children's health insurance program (CHIP).

Committee members were Senators Karen K. Krebsbach (Chairman), Judy L. DeMers, and Jerry Klein and Representatives Michael Brandenburg, Thomas T. Brusegaard, Mike Callahan, Ron Carlisle, Al Carlson, David Drovdal, Pam Gulleason, Kenneth Kroepflin, Alice Olson, Clara Sue Price, Wanda Rose, and John M. Warner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

EMERGENCY MEDICAL SERVICES STUDY

The committee was charged with studying emergency medical services and encouraged to review the emergency medical services system, the training and equipment funding needs of emergency medical providers, and the role of emergency medical services in trauma care coordination.

Legislative Background

House Bill No. 1257 (1997) required the State Health Council to adopt rules prescribing minimum quality review standards for emergency medical services personnel. The bill also provided that a certified emergency medical technician-intermediate or paramedic employed by a hospital and working in a nonemergency setting is under the supervision of the hospital's patient services management. House Bill No. 1474 (1997), which was withdrawn, would have provided for a volunteer emergency medical technician award program.

Recent Studies

During the 1987-88 interim, the Budget Committee on Institutional Services studied the problems faced by and the funding of the North Dakota emergency medical services system and, in particular, volunteer ambulance services and the State Department of Health's Division of Emergency Health Services. The committee recommended two bills relating to emergency medical services which were enacted in 1989. One bill, as recommended, would have imposed a 25 cent per month excise tax on telephone access lines to provide financial assistance to licensed ambulance services, training, and equipment. As passed, only the portion of the bill creating North Dakota Century Code (NDCC) Section 23-27-04.2, relating to the distribution of training and equipment grants to licensed ambulance services prehospital emergency medical services, was enacted.

Statutory Background

North Dakota Century Code Section 23-27-04.1 requires the State Department of Health to assist in the training of certain licensed ambulance service prehospital emergency medical services personnel and to financially assist certain licensed ambulance service prehospital emergency medical services units in obtaining equipment. The legislative history indicates personnel training services must be met before the department may financially assist ambulance units in obtaining equipment. Since the enactment of NDCC Section 23-27-04.2, appropriations have been insufficient to provide financial assistance in obtaining emergency medical services equipment.

Testimony and Committee Considerations

The emergency medical services system is a free enterprise system. Ambulance service ownership varies across the state, including city, private, and volunteer services. Representatives of the North Dakota Emergency Medical Services Association testified the funding and health of emergency medical services is not a local issue because emergency medical services providers treat individuals from all over the state and country.

Volunteerism

Representatives of the North Dakota Emergency Medical Services Association and representatives of volunteer ambulance services testified the issue of volunteerism is a major concern in rural areas. The threat to volunteerism is a result of a variety of factors that ultimately result in the job descriptions of emergency medical services volunteers becoming more and more demanding. Additionally, although the number of continuing education credits required of an emergency medical services provider has not increased over the last

20 years, new medical innovations result in the content of the training hours becoming more complex.

Funding Sources

The committee received information regarding possible emergency medical services funding sources, including funds from a telecommunications relay service surcharge, a wholesale or retail liquor tax, a cigarette or tobacco tax, a motor vehicle excise tax, a surtax on health and accident insurance policies, and a gasoline tax. The committee also reviewed information regarding how other states fund emergency medical services. Unique funding sources used by other states include special education trust funds, revenue from emergency medical services publications, ordinance violations, preventative health services block grants, vehicle registration fees, drivers' license fees, seatbelt violation fines, tax levies, sales tax, and emergency medical services licensure fees. While reviewing possible funding sources, the committee recognized that the Constitution of North Dakota, Article X, Section 11 provides that revenue from gasoline and other fuel excise and license taxation, motor vehicle registration, and license taxes may only be used for construction, reconstruction, repair, and maintenance of public highways and the Constitution of North Dakota, Article IX, Section 2 limits how fines for violation of state laws may be used.

Ambulance services may impose a mill levy up to five mills; however, use of the ambulance service mill levy varies because tax bases vary considerably across the state and some counties hesitate to increase mill levies because the amount of the increased funding might be less than the amount of voluntary funding lost due to the decreased giving to voluntary fundraising activities. The committee considered whether raising the mill levy limit from 5 to 10 mills would help emergency medical services providers, but recognized local communities might oppose an increase in mill levies because it would be perceived as a tax increase.

A representative of the North Dakota Emergency Medical Services Association proposed that emergency medical services funding shortfalls be met by imposing an excise tax on nongovernmental access telephone lines. The representative testified that a charge on cellular telephone users is especially appropriate considering the use of cellular telephones to report roadside accidents.

Department of Health Initiatives

The State Health Officer described emergency medical services initiatives of the Department of Health. These include assisting ambulance services with billing; establishing a "center of excellence" within the department; assisting ambulance services partnering with regional hospitals; helping to improve the accuracy and quality of ambulance service billing of the federal government and increasing the recovery from the federal

government; and providing a more accurate state emergency medical services data base.

The department plans to reduce the redundancy of multiple emergency medical services forms and to provide training to ambulance services regarding proper completion of data collection forms and reimbursement forms. Additionally, because emergency medical services forms are often improperly completed, the department has initiated a pilot program that will provide for electronic forms at hospitals.

A representative of the North Dakota Health Care Association testified that although hospitals are strong supporters of ambulance units, the 46 hospitals in the state are unable to provide, by themselves, emergency medical services to the entire state.

Funding Needs

The committee received testimony that specific emergency medical services areas in need of funding include retention and training of emergency medical services providers, transportation funding, equipment funding, and the state trauma plan. Representatives of the North Dakota Emergency Medical Services Association testified emergency medical services programs need to be removed from federal funding because federal funding comes with obligations, and when the federal money dries up, the Emergency Health Services Division must use state funds to continue programs.

The current emergency medical services grants appropriation is not meeting the educational needs within the state; therefore, the Department of Health is not making equipment grants. Testimony of a representative of an ambulance service indicated that most ambulance services have certain fixed costs regardless of the number of runs made; therefore, in order to provide equitable funding, instead of basing grants on run volume, grants should be based on the fixed costs of an ambulance service.

The committee received copies of the 1997-2001 North Dakota EMS Plan (five-year plan). The plan was created through a group process involving 19 representatives from medical stakeholder organizations and addresses each of the nine emergency medical services components. The nine components are: regulation and policy, resource management, human resources and training, transportation, hospital facilities, communications, medical direction, public information and education, and evaluation. Under the plan, attainable goals of each of the nine emergency medical services components are established, with three objectives created and prioritized for each of the nine components. The plan includes implementation strategies for each of the 27 objectives.

The committee received requests from representatives of ambulance services, representatives of the North Dakota Emergency Medical Services Association, and representatives of the Division of Emergency Health Services for funding for emergency medical services

training grants, emergency medical services equipment grants, and for implementing the five-year plan. Testimony indicated ambulance service emergency medical services training grants are underfunded in the amount of \$2 million, ambulance service equipment grants are underfunded \$1 million, and the estimated costs of initiating the first steps of the five-year plan would be \$.8 million.

Reimbursement

Representatives of the North Dakota Emergency Medical Services Association testified emergency medical services providers face a significant problem with reimbursement for services. The 1997 Balanced Budget Act Medicare reimbursement provisions make it very difficult for emergency medical services to be reimbursed. New federal Medicare legislation allows retrospective reviews of emergency medical services for reimbursement purposes. Although Medicare and Medicaid use the same billing codes, the rates established by the state for Medicaid are different from the rates established by the federal government for Medicare. The new Medicare rate structure may impact ambulance transportation reimbursement.

Testimony from an ambulance service volunteer was that information regarding how to bill Medicare and Medicaid for services is available from Blue Cross Blue Shield of North Dakota, but Medicare and Medicaid rules change so rapidly the ambulance services have a hard time keeping up to date with the changes. The committee also received testimony that bad debt is high in the ambulance industry. Nationally, 20 to 40 percent of bad debt is written off by ambulance services.

Recommendations

The committee recommends House Bill No. 1038 to appropriate from the general fund \$3,800,000 to the State Department of Health for the purpose of defraying expenses of prehospital emergency medical services. This bill also amends the law relating to distribution by the State Department of Health of grant moneys for prehospital emergency medical services, specifically requiring the equipment grant distribution formula to consider ambulance unit fixed costs and not rely entirely on run volume in the formula.

The committee recommends House Bill No. 1039 to require that determination of insurance coverage of ambulance services for prehospital emergency medical services be based on a prudent layperson standard. The bill addresses the problem of insurers failing to reimburse ambulance services for prehospital emergency medical services when a retrospective review indicates the client did not require emergency medical services.

PUBLIC HEALTH STRATEGIC PLANNING STUDY

The committee was charged with studying the

development of a strategic planning process for the future of public health in the state.

Background

Turning Point Grant

In March 1997 the State Department of Health applied for the Turning Point Grant from the Robert Wood Johnson and W. K. Kellogg Foundations to assist in creating a strategic plan for public health. The application proposed a complete examination of the public health system in North Dakota. Although the department did not receive the grant, the application indicates the direction strategic planning for public health is going in the state.

Public Health System Framework

The State Department of Health and several local public health departments make up the state's public health system. Additional federal public health services are provided within the state by Indian Health Service and a federal public health clinic in Fargo. The state's public health system is made up of a variety of players across the state, including county public health departments, city public health departments, multicounty public health districts, single county public health districts, and city-county public health districts. Twenty-four public health units provide public health services to 49 of the state's 53 counties. Four counties in the state are not included in a public health unit.

The duties and qualifications of public health board members and funding sources vary for each of the different types of public health units. Services provided by public health units are not consistent across the state. Services vary based on the combination of local need as determined by community assessments, emergency response, and state and federal funding priorities.

State Department of Health

The duties of the State Health Council include establishing standards and regulations necessary for the maintenance of public health. The duties of the State Health Officer include establishing and enforcing minimum standards of performance of the work of local departments of health, promoting the development of local health services, and recommending the allocation of health funds to local jurisdictions. Community, county, regional, and tribal assessments are made by the State Department of Health for many public health units.

Testimony and Committee Considerations

Turning Point Grant

The Turning Point Grant would have awarded \$300,000 over two years to hire a strategic planning consultant. The State Health Officer testified that regardless of receipt of grant moneys or additional appropriations, public health strategic planning will be implemented at the state level because strategic

planning is an expense of doing business. However, the committee received testimony that in order to be effective, a grassroots approach to public health strategic planning is necessary instead of a plan created at the state level.

A representative of the North Dakota Health Care Association testified that if statewide public health strategic planning occurs, although it is not reasonable to merge public and private health, it would be beneficial to clarify the public health roles and services in order to provide a seamless health system. The State Health Officer testified existing law regarding public health is spread out over four North Dakota Century Code chapters and the law is antiquated; therefore, it would be very helpful to consolidate the law in one chapter.

Public health has undergone significant changes over the last 10 to 15 years. Testimony indicated that in performing strategic planning, public health should focus on the core services and not let economic incentives dictate policy. Generally, a problem with public health systems is “following the money” as a result of dedicated funding for special interest programs. The committee received testimony that North Dakota is fortunate in this respect because it does not rely heavily on federal moneys within the public health system.

Local Public Health Unit Strategic Planning

Some local public health units perform their own strategic planning. A representative of First District Health Unit testified the local public health administrators identified the following three issues as priorities for all local public health units in the state: the development of a shared vision for public health by the local public health units and the Department of Health, the development of an effective communication system between the local public health units and the Department of Health, and the development of a continuing education and training program that includes training on essential population-based functions of public health and training on emerging trends.

The committee considered changing the minimum qualifications of public health unit local health officers. Current law requires a local health officer to be a licensed physician. The committee considered allowing a local health officer to be a nonphysician medical provider, or to be a nonphysician if a three-physician advisory committee is formed. The committee received mixed responses to the proposed changes in local health officer qualifications.

Recommendations

The committee recommends Senate Bill No. 2045 to repeal four chapters of the North Dakota Century Code regarding public health and to create a chapter that consolidates existing public health law, unifies the powers and duties of local public health units, and requires statewide participation in some type of public

health unit. Most of the substantive changes are intended to unify the law that applies to public health units; however, one substantive change would require statewide participation in some type of public health unit. The committee worked closely with the Department of Health in consolidating and unifying the public health law, and the Department of Health worked closely with the local public health unit administrators in reviewing and making suggestions relating to the committee’s bill drafts. The State Health Officer and representatives of public health administrators testified in support of the bill draft the committee recommended, but a representative of the North Dakota Association of Counties testified in opposition to the statewide public health unit requirement.

MANAGED HEALTH CARE STUDY

The committee was charged with studying the impact managed care may have on the rural North Dakota health care delivery system.

Legislative Background

1997 Legislation

House Bill No. 1168 implements the requirements of the federal Health Insurance Portability and Accountability Act of 1996. House Bill No. 1418 prohibits insurers from interfering with certain medical communications or taking certain retaliatory actions solely on the basis of a medical communication. The bill also prohibits certain indemnity provisions in contracts between health care providers and third-party administrators.

Recent Studies

During the 1995-96 interim, the Legislative Council’s Insurance and Health Care Committee studied the feasibility and desirability of implementing recommendations of the North Dakota Health Task Force for improving the health status of North Dakotans, monitoring the rate of health care cost increases, reviewing the impact of newly enacted programs to improve the health status of North Dakotans, and addressing unmet medical needs in rural areas. The committee did not recommend any legislation as a result of this study.

Managed Care Health Care System

Managed care is a health care system that integrates the financing and delivery of a comprehensive set of health care services to covered individuals through an agreement with a service provider. Managed care combines the traditional roles of insurance companies—paying for health care—and traditional roles of health care providers—overseeing and delivering care. Additional features common to managed care include contractual arrangements with selected providers to provide care to a specified group, organized arrangements for quality assurance and utilization review, and payment arrangements that typically include some

degree of risk-sharing by providers. In addition to managed care, there are a variety of hybrid systems, such as systems that integrate providers without assuming direct financial risk for the delivery of medical services.

Goals of Managed Care

The primary reason organizations change from fee-for-service models to managed care is managed care's potential to control the cost of health care. The goal of managed care is to reduce costs by contracting with providers for a comprehensive set of services at a fixed amount. As a result, providers are encouraged to avoid waste and unnecessary tests because this would result in reduced net income to the providers.

Methods used in the managed care system to control costs while maintaining service quality include:

1. Formal quality assurance, which is a process used by an organization to measure the extent to which providers conform to defined standards, and the process is based on the information, improved care, and outcome.
2. Utilization review, which is a process involving medical professionals outside the managed care organization who review the activities of medical professionals within the managed care organization. The review evaluates the medical necessity of various tests, treatments, and procedures based on guidelines for various diagnoses.
3. Standards for selection of health care providers within the managed care organization.
4. Mandates that members use providers and procedures within the managed care organization or significant financial incentives for members to use providers and procedures within the managed care organization.
5. Gatekeeping, which is a process to help ensure that members seek and receive only the necessary treatment and that the treatment a patient receives from different specialists is coordinated.

Types of Managed Care

Under the managed care system, providers generally do not receive compensation for each service provided as is done in the traditional fee-for-service system; instead, providers receive a predetermined amount per individual enrolled in the managed care plan. Managed care covers a broad variety of models, with differing degrees of provider choice accorded participants and provider reimbursement techniques. The major types of managed care organizations include:

1. Health maintenance organizations (HMOs) are groups of providers that provide prepaid health care. Health maintenance organization providers make available a prearranged set of

basic and supplemental health maintenance and medical services to the individuals covered by the plan. The individual's choice of providers is limited to those participating in the health maintenance organization. In a health maintenance organization, the individual member pays a fixed annual premium for comprehensive care rather than paying for each service received. The health maintenance organization assumes the risk the expenses in providing care will not exceed the premiums charged.

2. Preferred provider organizations (PPOs) are systems in which a third party negotiates discounted rates for services directly with selected providers. Individuals covered by a preferred provider organization plan may use providers outside the member group; however, financial incentives encourage the use of the preferred providers.
3. Exclusive provider organizations (EPOs) are similar to preferred provider organizations except that exclusive provider organization providers can be prohibited from treating any patient who is not enrolled in the organization, and individuals covered by the plan are reimbursed for services received only from participating providers. The costs of services rendered by a nonparticipating provider are not reimbursed.
4. Point of service (POS) plans cover individuals by providing care from providers designated by the network. Care received from other providers are reimbursed at significantly reduced levels.
5. Independent practice associations (IPAs) often are not exclusive for the provider. Under this model, providers have service agreements to provide health care to enrollees, and the providers also have other managed care or fee-for-service patients.

The main characteristic of all managed care models is the integration of the delivery of medical care and the financing of medical care into one system.

Advantages of and Concerns Related to Managed Care

Potential advantages of managed care include:

1. Improvement in coordination of care because in many managed care systems each enrollee is assigned to a single primary care physician who coordinates the delivery of comprehensive services designed to meet the enrollee's special needs.
2. Improvement in access to care when states contract with managed care organizations for services designed to overcome access barriers such as lack of transportation, language

differences, multiple-social problems, and the unavailability of providers willing to accept Medicaid patients.

3. Emphasis on preventive health care because managed care organizations have financial incentives to prevent illnesses and maintain health.

Concerns related to managed care include:

1. Managed care is more costly to establish, administer, and monitor than fee-for-service programs because significant startup costs are necessary for the acquisition of computer systems for the processing of utilization and quality data, and costs may also include expenses of contracting with an actuarial firm for the development of capitation rates.
2. Managed care organizations may increase their profits by limiting access to care or providing poor quality services.
3. Managed care organizations have little incentive to provide Medicaid recipients (who may be in the system for only a few months at a time) the kind of preventive care that produces cost savings only on a long-term basis.

Testimony and Committee Considerations

The committee received testimony from the State Health Officer encouraging the committee to focus its study on the continuing outmigration of North Dakotans from rural areas, the redesignation of small rural hospitals as critical access hospitals, the continuation of emergency medical services in rural areas, and the provision of reasonable access to primary care providers in rural areas.

North Dakota Managed Care

The committee received data indicating most people who belong to managed care plans in the United States live in urban areas and learned that this trend is true in North Dakota as well. A representative of the Insurance Department provided the committee with a list of health maintenance organization providers in the state and testified that most insurance products include some elements of managed care.

North Dakota insurance law includes some statutory managed care safeguards. State law addressing health maintenance organizations provides grievance and appeal procedures and requires health maintenance organizations to provide that quality assurances exist within the programs. Existing safeguards for preferred provider organization plans include requirements that emergency services must be reimbursed, unavailable services must be reimbursed, there must be a reasonable differential between reimbursement of services provided by preferred provider network providers and nonpreferred provider network providers, and services must be available within a 50-mile radius.

Testimony indicated that managed care is not currently problematic in rural North Dakota. The committee also received testimony from a representative of Blue Cross Blue Shield of North Dakota that the Legislative Assembly should not rush to enact legislation because managed care is in such a state of change on the state and federal levels. The representative testified that at this point, any new state legislation would apply to "things that could be," versus "things that are" which would likely slow the development and lessen the flexibility of the development of health care in the state.

Although the committee received reports of the success of managed care in rural portions of the state, the committee also received testimony that a possible drawback to managed care in rural North Dakota is that any rural providers who do not use networks will not have the benefits of managed care. Additionally, the committee received testimony that managed care is generally not appropriate in rural North Dakota, in part because managed care encourages physicians to limit care.

Other States

The committee received information regarding managed care legislative actions taken in other states, including comprehensive consumer bills of rights, willing providers, point of service, bans on "gag" clauses, emergency care services, and mandated benefits. The committee received information regarding managed care consumer protections the state of Minnesota has implemented, including the requirement that all health maintenance organizations in Minnesota must be nonprofit and the state-sponsored incentives for health maintenance organizations in smaller Minnesota communities. Additional information was provided regarding the similarities and differences of nonprofit and for-profit managed care entities.

Federal Legislation

The committee received reports on federal legislation that might affect managed care in rural North Dakota. "Patient's Bill of Rights" legislation being considered in Congress; a portion of the Balanced Budget Act of 1997 sets a floor for Medicaid fee for service, and this floor might result in increasing managed care in rural North Dakota because the floor is perceived by health care providers as a chance to make more money; and a portion of the Balanced Budget Act of 1997 establishes the Medicare rural hospital flexibility program and allows for critical access hospitals.

The committee received testimony that the federal critical access hospital legislation provides flexibility and allows North Dakota to create a plan that fits the state's needs. Although the federal legislation does not set a timeline for completion of a state's critical access plan, parties interested in the critical access hospital plan are holding information gathering and planning meetings. A representative of the University of North Dakota Center

for Rural Health testified the federal legislation regarding critical access hospitals is in response to an ongoing evolution of rural hospitals. Critical access hospitals are closely related to managed care and the rural health care delivery system. Proponents of the federal critical access hospital legislation hope that critical access hospitals will help stabilize the rural health care delivery system, and a stable delivery system is required for successful implementation of managed care. The committee also received testimony that emergency medical services are integral to a critical access hospital plan.

The committee was informed that the flexibility the federal legislation gives the state will not necessarily result in decreasing the level of patient care, but may allow critical access hospitals to forego providing patients unneeded services. One problem faced by rural hospitals is that individuals are not using the small hospitals and are going straight to the larger community hospitals. The use of the small rural hospitals is primarily for low-intensity emergencies, and a critical access hospital would be ideal for this type of situation, thereby making care more readily accessible to individuals living in small communities. Additionally, critical access hospitals might result in increasing reimbursements to hospitals. The committee learned that a possible drawback critical access hospitals may face is the public perception that the facility is less-qualified to deal with emergency situations; however, this public perception may already exist for small, rural hospitals.

Medicaid Managed Care Pilot Project

A representative of the Department of Human Services provided the committee with information regarding the Medicaid managed care pilot project being implemented in Grand Forks. In addition to quality, access, and cost measures, the pilot project will monitor specific diseases that will be targeted for management and review.

Health Care Quality Reviews and Health Care Data Collection

The committee received information on the statutory creation of the Health Care Data Collection Committee in 1987 and the statutory duty—created in 1995—of the Department of Health to collect health care data. A representative of the Department of Health testified the State Health Council's Health Care Data Collection Committee collects data on the average charges made by physicians in the state, and this data base is in the process of being updated. The data base is being designed to track the charges made by the state's larger third-party payers. This information is available to consumers and will be available on the Department of Health's web page.

Conclusion

The committee makes no recommendation regarding managed health care legislation; however, the committee recognizes the importance of the Legislative Assembly staying abreast of the effects managed health care might have on rural North Dakota.

HAIL SUPPRESSION STUDY

The committee was charged with studying whether the state should implement hail suppression programs for the reduction of property damage in urban and rural areas, and the possible funding of such a hail suppression program through property and casualty line insurance premium taxes.

Background

Neighboring States and Provinces

Neighboring states and a Canadian province have addressed hail suppression. In Alberta, Canada, insurance companies and brokers established the Alberta Severe Weather Management Society to administer a cloud seeding program that serves rural and urban areas. The Alberta Severe Weather Management Society is private and not for profit. South Dakota Codified Laws Chapter 46-3A provides for the South Dakota Water Management Board, which may perform hail suppression operations, and Montana Statutes Chapter 85-3 authorizes the Montana Department of Natural Resources and Conservation to perform hail suppression operations. Although the Montana and South Dakota weather modification laws were patterned on North Dakota weather modification law, neither state is active in weather modification.

North Dakota Atmospheric Resource Board

North Dakota Century Code Chapter 61-04.1 pertains to weather modification, and hail suppression falls within the definition of weather modification. Section 61-04.1-08 creates the North Dakota Atmospheric Resource Board as a division of the State Water Commission. The board may contract with any person, the federal government, or any county or group of counties to provide weather modification operations. Additionally, Section 58-03-07 authorizes township electors to use township funds for weather modification activities. Although the board has discretion in what to charge counties for providing weather modification services, the mill levy tax funds appropriated to the state weather modification fund by a county may not exceed seven mills upon the taxable valuation of property in the county. This mill levy may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes.

Operational cloud seeding in North Dakota began in the 1950s when ground-based seeding began in the western portion of the state. In 1975 the North Dakota Weather Modification Board was created as a division of the Aeronautics Commission, and state cost-sharing was

made available in 1976. Six counties—Ward, Mountrail, McKenzie, Hettinger, Slope, and Bowman—conduct weather modification activities for the purposes of suppressing hail and enhancing rainfall.

Insurance Premium Taxes

North Dakota Century Code Section 26.1-03-17 provides a premium tax of two percent must be paid for life insurance, 1.75 percent for accident and health insurance, and 1.75 percent for all other lines of insurance. This money is deposited in the insurance tax distribution fund. North Dakota Century Code Chapter 18-04 provides for the distribution of a portion of the insurance premium tax to fire departments and fire districts, as appropriated by the Legislative Assembly. The amount appropriated to the insurance tax distribution fund for insurance tax payments to fire departments for the 1997-99 biennium was \$5.2 million, the same amount as was appropriated for the 1995-97 biennium. The tax premium for fire departments has been a topic of discussion over the years. Section 8 of House Bill No. 1010 (1997) requires the Commissioner of Insurance to analyze fire district payments distributed during 1996, 1997, and 1998 and report to the Budget Section in December 1998.

Testimony and Committee Considerations Hail Suppression Technology

The committee learned that the materials used in hail suppression cloud seeding are silver oxide, dry ice, and salt. Delivery systems used in hail suppression are either ground based or airborne, and for a variety of reasons, airborne delivery systems are more accurate than ground-based delivery systems. Cloud seeding opportunity recognition technology includes radar, satellite imagery, National Weather Service observations, forecast products, airborne instrumentation, and visual observations. The testimony received indicated the effects of hail suppression cloud seeding is decreased hail and increased rain. A representative of the University of North Dakota Department of Atmospheric Science, however, testified not all weather scientists believe weather modification works. Weather modification opponents want to evaluate hail suppression by studying random cloud seeding projects, but cloud seeding programs are seldom willing to seed only half of the time and for that reason such studies do not exist.

A representative of the Atmospheric Resource Board explained the dynamics of hail producing thunderstorms and the three hail suppression cloud seeding methods. Although each storm behaves differently, a storm eventually decays without hail seeding, and it is difficult to determine on a case-by-case basis whether hail suppression cloud seeding made a difference in a particular storm. A representative of the Atmospheric Resource Board testified it is because each storm behaves differently that it is most appropriate to evaluate

hail suppression using large data bases over long periods of time, and these statistics show that hail suppression cloud seeding has a positive effect overall, and this supports case-by-case interpretations that hail seeding helps in a particular storm.

A representative of the Atmospheric Resource Board testified hail suppression is generally effective in a matter of minutes and stops being effective in a matter of minutes. Generally, South Dakota does not allow hail suppression to take place in South Dakota to affect North Dakota storms and Montana does not allow hail suppression to take place in Montana to affect North Dakota storms.

North Dakota Hail Suppression and Hail Suppression Studies

The North Dakota cloud modification project is funded 80 percent from county funds that are from mill levies and 20 percent from state funds. The six participating counties use a 10-mile buffer zone, and there are slight downwind effects. The participating counties do not distinguish between rural and urban areas within the county in providing hail suppression services. Organizations that have evaluated the North Dakota cloud modification project evaluate primary factors, secondary factors, and economic factors.

Studies of the North Dakota project indicate rainfall increases in a near downwind area from 7 to 14 percent. The article "An Exploratory Analysis of Crop Hail Insurance Data for Evidence of Cloud Seeding Effects in North Dakota" in the May 1997 issue of the *Journal of Applied Meteorology* refers to studies of the climatology of hail damage to crops which show North Dakota experiences the highest insurance dollar loss of any state in the United States, and southwestern North Dakota has the highest ratio of damage claims paid to insured crop liability. The reduction in hail crop insurance loss ratios in the six program counties is estimated to be 45 percent. Specific statistics are not available for hail damage to property other than crops because most insurance companies do not classify property and casualty claims for hail-only damage. North Dakota State University performed three studies for the North Dakota Atmospheric Resource Board.

North Dakota State University study "Economic Effects of Added Growing Season Rainfall on North Dakota Agriculture" (Ag Econ Report No. 172) indicates the total statewide value of one inch of rainfall is projected to average over \$600 million annually for the state's most common crops.

North Dakota State University study "Economic Benefits of Crop-Hail Reduction Efforts in North Dakota" (Ag Econ Report No. 247) indicates total benefits recognized by participants of the North Dakota Cloud Modification Project are approximately \$10 million annually, exclusive of possible decreased property damage benefits. The study is based on the study of crop-hail loss-cost ratios for the 1976-85 period.

North Dakota State University study "A Target-Control Analysis of Wheat Yield Data for North Dakota Cloud Modification Project Region" is based on crop data for five classes of wheat for the years 1976-88. The study indicates an increase of wheat yield in hail suppression target areas of almost six percent, which translates to \$16 million per year in present hail suppression target areas, exclusive of any positive downwind effect in nontarget areas.

Alberta Hail Suppression Program

A representative of the Alberta Severe Weather Management Society testified the Alberta hail suppression program was established due to a series of severe storms in the early 1990s, after which the insurance companies worked together to try to mitigate damages resulting from hail. Because the provincial budget did not include funding the program, the insurance companies looked to funding the program through private enterprise. The Alberta hail suppression program is funded by voluntary contributions from insurance companies, and the amount of money contributed is determined by the percentage of each company's property and automobile insurance gross written premiums. The Alberta hail suppression program took bids from private enterprise and ultimately contracted with Weather Modification, Inc., Fargo. The representative of the Alberta Severe Weather Management Society testified that although the program has been very successful at addressing hail damage in urban areas, the decrease in property damage has not been reflected in the cost of insurance because the program is only two years old and the actuarial process does not work that quickly. Because of the success the Alberta program has achieved, Manitoba and Saskatchewan are considering similar programs.

Insured Property

A representative of Nodak Mutual Insurance Company testified that in an average year there are 25 hailstorms in the United States which cause significant property damage. The three largest hailstorm losses in the United States were the 1990 hailstorm in Denver, causing \$625 million of insured property damage; the 1992 Orlando hailstorm, which caused \$575 million of insured property damage; and the 1992 Wichita hailstorm, which caused \$420 million of insured property damage. The representative testified hail is the largest classification of insured property damage. Nodak Mutual Insurance insured property damage from the 1995 Minot hailstorm was in excess of \$2 million, an amount larger than the Nodak insured property damage caused by the 1997 Grand Forks flood.

Fifteen percent of the Nodak Mutual Insurance Company's business is crop hail insurance. In the years 1988 through 1994, Nodak Mutual Insurance experienced a 77 percent loss, with 33 percent less loss in the counties with hail suppression programs. The

representative of Nodak Mutual Insurance Company testified that in some areas of the state, crop insurance has become unaffordable for farmers. PIA member companies in North Dakota reported a crop insurance loss ratio of 85 percent in 1997, and the concentration of casualty loss in North Dakota is in the four major population centers.

A representative of the Consumer Protection Division, Insurance Department, testified one of the problems the department faces in gathering hail damage data for urban and noncrop hail losses is that most insurance companies do not specifically categorize losses for hail; therefore, any of the statistics used by the department are based on informal information. The representative testified there is a need for standardized hail information, and this information could be acquired through legislation; however, the attitude of insurance companies regarding collection of hail damage data is mixed.

Insurance Availability

Insurance companies in North Dakota expressed concern about the affordability and availability of property casualty insurance. However, their representatives testified that in North Dakota there is not an availability crisis but there is an availability problem. A representative of the Atmospheric Resource Board testified hail suppression programs may result in insurance premiums decreasing or insurance premiums remaining constant instead of increasing, and hail suppression may also increase the number of people able to afford insurance for hail damage.

An Insurance Department representative reported in the last five years there has been a trend in homeowners' insurance premiums dramatically increasing, and insurance companies tightening the restrictions on whom the companies are willing to underwrite; therefore, there is value to insurance companies in mitigating hail damage. The committee was reminded that hail damage is only one element of loss that goes into determining the amount of homeowners' insurance premiums. Other elements of loss include fire and crime.

Funding Sources

Increasing the current insurance premium tax of 1.75 to 2 percent on specific lines of property and casualty insurance might negatively impact domestic insurance companies and not affect foreign insurance companies. Because of premium tax retaliatory statutes, an insurance premium tax increase to two percent would likely only affect the six North Dakota domestic insurance companies and not foreign insurance companies because most states have insurance premium taxes in excess of two percent.

A representative of the Insurance Department testified an alternative funding source for hail suppression might include charging insurance companies a hail mitigation fee, which would be charged directly to the

insurance companies instead of the consumers; however, to the extent a company incorporates the fee into its premium to the consumer, the fee might show up in the gross premium and indirectly be subject to the premium tax. Additional funding alternatives for a hail suppression program include:

- Legislation that would require a specific "hail mitigation fund fee" be charged directly against each consumer's premium in designated lines of insurance and designate the insurance company as the collector of the fee;
- Legislation that would require a specific "hail mitigation fund fee" be charged against insurance companies for designated lines of insurance and be exempt from the application of premium tax;
- Legislation that would require a specific "hail mitigation fund fee" be charged against the company—tax or fee—to be collected and reported as premium; or
- Legislation to establish a special "hail mitigation fund" with funding coming directly out of the general fund.

The total premium for the designated lines of insurance in 1996 was \$295,426,000; therefore, a one-half percent of premium "hail mitigation fund fee" would generate an annual revenue of \$1,474,125. A representative of the Insurance Department testified if a hail suppression program is set up on a voluntary basis similar to Alberta's, it is likely a majority of the North Dakota companies will not participate because there seems to be a fear that hail suppression will result in the writing of fewer insurance policies.

The PIA representative testified the insurance industry should not be the only entity responsible for funding a hail suppression program, but instead a simple funding mechanism that does not burden the insurance industry, such as funding hail suppression through the general fund using money that is generated via the existing insurance premium taxes, should be implemented.

Although the PIA representative was unable to determine how much of the PIA members' premiums go to paying for hail loss because insurance companies treat this information as proprietary, fire is probably the number one loss for homeowners, and hail is probably the number one loss for crops. The representative of Nodak Mutual Insurance Company testified in support of hail suppression programs because one of the positive aspects of hail suppression includes more affordable insurance. The PIA representative opposed funding a hail suppression program via premium taxes, in part because not everyone insures property and not everyone insures property to value.

Hail Suppression Program Considerations

A representative of the University of North Dakota Department of Atmospheric Science testified if a region

participates in hail suppression activities, the region needs to make policy decisions regarding the impact of increasing rainfall versus the impact of receiving hail, and it is important that hail suppression programs be flexible to take these regional considerations into account. The representative testified it may be helpful to have some universal guidelines, and it may also be helpful to have a board made up of local representatives who look out for local interests to assist in decisions being made from the ground up.

Proposals Considered

The committee considered three alternative bill drafts for a hail suppression pilot program. One pilot program would provide hail suppression services to the western portion of the state, one pilot program would provide hail suppression services to the western and central portions of the state, and one pilot program would provide hail suppression services statewide. Each of the three bill drafts provided for a one-year organizational period and a five-year implementation period, with the pilot program running through June 30, 2005. The six-year cost of a pilot program servicing the western portion of the state would be \$7.7 million, the program servicing the western and central portions of the state would be \$10.7 million, and the pilot program servicing the entire state would be \$15 million.

Recommendation

The committee recommends House Bill No. 1040 to require a statewide urban and rural hail suppression pilot program that will run from August 1, 1999, through June 30, 2005. The bill provides for a general fund appropriation of \$3,100,000 to the State Water Commission for the purpose of funding the first two years of the hail suppression pilot program.

PARTNERSHIP FOR LONG-TERM CARE PROGRAM ANNUAL REPORTS

The committee was charged with receiving annual reports from the Commissioner of Insurance regarding the status of the partnership for long-term care program. A representative of the Commissioner of Insurance reported that the program was never put into effect because Congress passed the Omnibus Budget Reconciliation Act of 1993, which contained provisions precluding the pursuit of the program. Because of this change in federal law, the state does not have authority to pursue the partnership for long-term care program.

Recommendation

The committee recommends Senate Bill No. 2046 to repeal North Dakota Century Code Chapter 26.1-45.1, relating to the partnership for long-term care program.

CHILDREN'S HEALTH INSURANCE PROGRAM STATUS REPORTS

The committee was charged with receiving executive reports regarding the status of the children's health insurance program (CHIP) state plan. The children's health insurance program was enacted by Congress as part of the Budget Reconciliation Act of 1997. Under the children's health insurance program, with an approved state plan and a partial fund match, each state may be eligible to receive an allotment of money based on the estimated number of uninsured children in the state and based on a regional cost factor. North Dakota has been allotted over \$5 million in federal children's health insurance program funds for the current federal fiscal year and a portion of the state's unused funds may be carried over to future years. The federal government has budgeted the children's health insurance program for 10 years, with funding decreasing in the fifth through seventh years. Under the children's health insurance program, a state's plan may expand Medicaid coverage, create a separate health insurance plan, or may include both methods by expanding Medicaid and creating a separate health insurance plan.

The Budget Reconciliation Act of 1997 required approval of a state children's health insurance program plan by September 30, 1998, in order to qualify for the first year federal allotment. Later, federal legislation changed the children's health insurance program submission requirements to allow states an additional year to have a state plan approved while preserving the entire amount of the first year federal allotment. A representative of the Department of Human Services testified the state's initial children's health insurance program plan would have expanded Medicaid coverage and created a separate health insurance plan. The initial plan would have:

1. Added Medicaid coverage for all 18-year-old children whose family income is below 100 percent of the poverty level.
2. Provided insurance coverage for uninsured children who are not Medicaid-eligible up to 150 percent of the poverty level.
3. Provided the same coverage provided through the Public Employees Retirement System, plus basic preventive dental and vision coverage and well-baby, well-child, and well-adolescent preventive health care services.
4. Subjected families to the same asset test used for the Medicaid program.
5. Not charged families any premiums for insurance coverage and not required payment of any coinsurance or deductible amounts.
6. Determined eligibility by personnel of the local county social service offices.
7. Redetermined eligibility at six-month intervals.

8. Provided a six-month waiting period between the time insurance is dropped and eligibility for North Dakota Healthy Steps begins.

The representative testified that as a result of the extension of the children's health insurance program state plan approval deadline, the plan is to implement the state plan in two phases, with the first phase expanding Medicaid coverage to children 18 years of age residing in families with income at or below the current federal poverty level, and with the second phase creating a separate health insurance plan. The representative testified the first phase of the children's health insurance program state plan would cost approximately \$800,000 for two years and would be funded by Medicaid savings, and the second phase would be included in the 1999-2001 executive budget.

MISCELLANEOUS ISSUES

The committee obtained information regarding telemedicine in the state and the impact telemedicine may have on critical access hospitals, emergency medical services, and managed care in rural areas. The term telemedicine encompasses a wide variety of services and technology, ranging from medical use of store-and-forward technology to the medical use of real-time technology. Nationwide, telemedicine concerns include funding and reimbursement, infrastructure planning and development, professional licensing, and confidentiality. These same telemedicine concerns have been raised in North Dakota as well. In 1995 the Governor established the Task Force on Telemedicine and organized the *Governor's Conference on Telemedicine: Exploring an Emerging Technology*. The committee reviewed the basic concepts of telemedicine. Additionally, the committee received testimony from several North Dakota telemedicine providers. The committee learned a variety of different technologies are used across the state to provide medical education, physical and mental health consultations, preventive medical services, virtual house calls, medical appointments with nonlocal specialists, and administrative services for health service providers.

The committee learned that different types of telemedicine technology have different purposes. Some technology is better suited for routine medical services, while other technology might be more appropriate for emergency medical services. Additionally, the issue of professional licensing across state lines is not unique to medicine, but is becoming a common issue for all types of professionals.

A representative of U S West reported on the status of the federal universal service fund, informing the committee that telemedicine providers can apply to access federal money to assist in implementing telemedicine services. The representative acknowledged telemedicine technology can be very expensive and smaller medical providers may find telemedicine cost-prohibitive; however, cooperation between telemedicine

providers resulting in bulk purchasing can lessen some of the financial barriers to telemedicine.

The committee was informed some of the concerns of North Dakota telemedicine providers include high equipment prices, duplication of services between competing or noncompeting telemedicine providers, licensure

across state lines, lack of reimbursement for telemedicine services, malpractice, acceptance of new technology, and the complicated network of telephone services providers. Additionally, some North Dakota licensed medical professionals are concerned about out-of-state medical providers entering the state.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned four studies. Section 22 of House Bill No. 1167 directed a study of the charitable gaming laws and rules to determine whether the laws and rules regarding taxation, enforcement, limitation, conduct, and play of charitable gaming are adequate and appropriate. House Concurrent Resolution No. 3001 directed a study of the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system. Senate Concurrent Resolution No. 4045 directed a study of state funding of the office of clerk of district court, the issues and problems associated with the continued implementation of court unification, and the effective provision of judicial services to the citizens of this state. Senate Concurrent Resolution No. 4036 directed a study of the level of and remedies for discrimination in this state. The Legislative Council delegated to the committee the responsibility to review uniform laws recommended to the Legislative Council by the 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 and constitutional revision.

The Legislative Council chairman directed the committee to study the authority of the Attorney General to enter contingent fee agreements with private attorneys and to conduct public hearings on statewide primary and general election ballot measures.

Committee members were Senators Wayne Stenehjem (Chairman), Marv Mutzenberger, Carolyn Nelson, Rolland W. Redlin, John T. Traynor, and Darlene Watne and Representatives Charles Axtman, Duane L. DeKrey, Lois Delmore, G. Jane Gunter, Kathy Hawken, Roxanne Jensen, Scot Kelsh, William E. Kretschmar, Andrew G. Maragos, Shirley Meyer, Paul Murphy, Darrell D. Nottestad, Leland Sabby, Allan Stenehjem, and Gerald O. Sveen. Senator James A. Berg was a member of the committee until his death on September 20, 1997.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

CHARITABLE GAMING STUDY

The goals of this study were to determine whether the laws and rules regarding taxation, enforcement, limitations, conduct, and play of charitable gaming are adequate and appropriate.

Background

During the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana lottery, which was seeking a new home in light of the impending revocation of its charter in its state of

origin. The scandal and controversy following this attempt led to the state's first constitutional amendment, which outlawed all forms of lotteries and gift enterprises.

In 1976 the constitutional prohibition was amended to allow the Legislative Assembly to authorize public-spirited organizations to conduct games of chance when the net proceeds of the games are devoted to public-spirited use. Temporary laws were passed by the 1977 and 1979 Legislative Assemblies and "permanent" legislation was enacted in 1981 (NDCC Chapter 53-06.1).

Since 1981, several Legislative Council interim committees have studied charitable gaming. Many of the changes that have been made to the charitable gaming law resulted from Legislative Council recommendations. The changes have primarily affected the kinds of games that can be held, the kinds of organizations that can hold them, the allocation of expenses of conducting the games, the administration and enforcement of the charitable gaming law, and the taxation of gaming proceeds.

In 1991 a State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The bill provided that the Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers who violate any provisions of law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of any provision of law or rule. In 1993, however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

Beginning in 1993, as a means of preventing and detecting cheating in the game of twenty-one, organizations with adjusted gross proceeds exceeding \$10,000 per quarter and that accepted wagers exceeding \$2 are required to install surveillance equipment. In 1995 the definition of eligible use for gaming proceeds was expanded to enable net proceeds to be used to relieve, improve, and advance the physical and mental conditions, care and medical treatment, health and economic interests of injured or disabled veterans. In 1997 the Legislative Assembly appropriated funds to the Department of Human Services to contract with qualified treatment service providers for compulsive gambling prevention, awareness, crisis intervention, rehabilitation, and treatment services.

Testimony and Committee Considerations

The committee received testimony and reviewed extensive information submitted by the Gaming Division of the Attorney General's office and representatives of the Charitable Gaming Association of North Dakota with regard to many aspects of the charitable gaming

industry. The committee's considerations centered on four issues—trends in the charitable gaming industry; revitalization of charitable gaming; limits on bingo prizes; and participation in a multistate lottery.

Trends in the Charitable Gaming Industry

Representatives of the Gaming Division of the Attorney General's office and various representatives of charitable gaming organizations reported on trends in and concerns of the charitable gaming industry in the state. The testimony indicated that although charitable gaming has evolved into an industry that was not envisioned 20 years ago, a great deal of money has been given to worthwhile causes as a result of the gaming.

The Gaming Division estimated that 5,000 to 6,000 persons are employed by the charitable gaming industry in the state. The wages for gaming employees range from minimum wage to ten dollars per hour plus tips. Because of the low unemployment rate in many parts of the state, it is often difficult to hire and retain persons who are willing to work for minimum wage.

Testimony from the Gaming Division indicated that, with the exception of sites with pull-tab dispensing devices, charitable gaming proceeds have been flat over the last three years. The testimony indicated that the lack of gaming activity in the state could, in part, be attributed to tribal casino gaming and the severe weather and flooding in 1997. The Gaming Division testified that between 1992 and 1997, 135 organizations discontinued gaming in the state. A survey of the those organizations indicated that the reasons for discontinuing gaming included personnel problems, too much paperwork, not making money, the club closed or group disbanded, lost sites, lost business to casinos, and lack of interest.

Testimony from representatives of the charitable gaming industry indicated that charitable gaming is one of the most heavily taxed industries in the state and that any further increases in taxes may result in the closing of some sites.

The committee received testimony from various gaming organizations on the costs involved in setting up a new gaming site. Depending on the site, it can take from six months to two years to recoup the cost of setting up a new site. Because of the cost of video surveillance equipment required for sites that conduct blackjack, it is difficult to make a profit on that game.

The committee received testimony regarding the use of video surveillance equipment at sites that conduct the game of twenty-one. Testimony from the Gaming Division and representatives of the gaming industry indicated that video surveillance equipment has not been as effective as originally hoped. Since the implementation of the 1993 law requiring the equipment, an estimated \$1.5 to \$2 million has been invested in the equipment that is used at 275 sites and 550 tables. The testimony indicated that video surveillance equipment has been a deterrent to theft and cheating, especially for the smaller

organizations that have fewer persons available to supervise the tables.

The committee also received testimony regarding how organizations address the issue of under and excess gaming expenses. "Under" expenses refers to the amount an organization's actual expenses are below the allowable expense limit. Organizations may use this amount for any purpose. "Excess" expenses refers to the amount that an organization's actual expenses exceed the allowable expense limit. Organizations must reimburse this amount to their gaming accounts to disburse to eligible uses. The allowable expense limit for organizations is 50 percent of the first \$200,000 of adjusted gross proceeds and 45 percent of adjusted gross proceeds exceeding \$200,000. Allowable expenses also include the cost of video surveillance equipment for twenty-one and two and one-half percent of pull tab gross proceeds.

Testimony from representatives of the gaming industry indicated some organizations are able to rely on outside sources of funds, e.g., membership dues, fund raisers, and state grants, to reimburse its excess gaming expenses. Testimony further indicated that higher expenses may be due to increases in the minimum wage, the low unemployment rate, the need to hire additional personnel, the costs of games and supplies, security expenses, and video surveillance.

Revitalization of Charitable Gaming

The committee received testimony from representatives of the charitable gaming industry indicating that steps need to be taken to revitalize the charitable gaming industry. The testimony indicated that the numerous regulations, the lack of flexibility in the conduct and play of games, the high taxes, and the competition from the tribal casinos have contributed to the slump in charitable gaming in the state.

Representatives of the charitable gaming industry offered a legislative proposal that removed statutory provisions on the conduct and play of certain games of chance. The proposal would allow the Gaming Commission to permit variations to the game of poker and twenty-one. Proponents testified that the changes would allow the industry to work with the Gaming Commission to make rules for games of chance. The proponents indicated that presently, any minor change requires legislative action and administrative rulemaking, which may take up to three years. Proponents claimed that this proposal would make the gaming industry more responsive to its customers and would not increase wager limits.

Other testimony on the proposal indicated that any changes to the game of poker and twenty-one would be an expansion of gaming.

Limits on Bingo Prizes

The committee received testimony from representatives of several gaming organizations regarding the

levels of prize payout for bingo. The testimony indicated that some sites were requiring organizations to offer certain levels of prize payout for bar bingo. According to the testimony, some bar establishments require organizations to offer bingo prizes at a level the organization is unable to afford which results in the organization being forced to give up the site to another organization that is able to offer the higher prizes. The concerned gaming organizations indicated that bingo is the only charitable game in which the maximum prize is not regulated.

The committee considered a bill draft that provided that a licensed organization's total bingo prizes could not exceed its gross proceeds for a 90-day period. The bill draft also provided that if bingo is not the primary game at a site and the site is leased by a licensed organization, the organization may not pay prizes in which the total prizes exceed 90 percent of bingo gross proceeds for a 90-day period. The committee received testimony from the Gaming Division that the changes proposed in the bill draft were being addressed by administrative rule. The committee concluded that the subject matter of the bill draft is of a technical nature that would more appropriately be addressed by administrative rule rather than by statute.

Multistate Lottery

The committee received testimony from the Gaming Division regarding the multistate lottery game known as "Powerball." Powerball is an on-line national lottery game. Thirty-seven states and the District of Columbia have legalized lotteries, 21 of which participate in Powerball. Some states have independent lottery games. Testimony indicated participation by North Dakota in the Powerball lottery would generate an estimated \$5.1 million in income or approximately 30 percent of gross proceeds. It was estimated that North Dakotans spend \$5 million on Powerball in other states. Because the Constitution of North Dakota prohibits a lottery, a constitutional amendment would be necessary before a Powerball-type game could be conducted in the state.

Testimony from representatives of the charitable gaming industry indicated that there is a concern that a lottery would decrease interest in charitable gaming. Unless charitable gaming is somehow involved in the lottery, the representatives testified that the charitable gaming industry would be opposed to the state's participation in the multistate lottery.

Recommendations

The committee recommends House Bill No. 1041 to remove statutory provisions on the conduct and play of games of chance and allow the Gaming Commission to adopt the rules for those games. The bill provides that in addition to traditional straight poker, which may only be played on two occasions per year, the Gaming Commission may adopt rules that would permit an organization to conduct certain poker variations. The bill also

removes several standard rules of conduct and play for the game of twenty-one.

The committee recommends House Concurrent Resolution No. 3008 to amend the Constitution of North Dakota to permit the Legislative Assembly to provide by law for participation by the state in a multistate lottery. The proposed constitutional amendment, if approved by the Legislative Assembly, would be submitted to the voters in the general election in 2000.

COURT UNIFICATION AND CLERK OF DISTRICT COURT FUNDING STUDY

The committee was assigned House Concurrent Resolution No. 3001, which directs a study of the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system, and Senate Concurrent Resolution No. 4045, which directs a study of the state funding of the office of clerk of district court, the issues and problems associated with the continued implementation of court unification, and the effective provision of judicial services to the citizens of this state. Because of similarity in the studies directed by these resolutions, the committee decided to combine the two studies into one comprehensive study.

The study of the funding of the clerk of district court through the unified judicial system was proposed by the 1995-96 interim Budget Committee on Government Finance as a result of its study of the unified court system with emphasis on the distribution of court revenues and the allocation of the costs of the system between the counties and the state.

Background

District Courts

The Constitution of North Dakota, Article VI, Section 1 provides:

The judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court, and such other courts as may be provided by law.

Article VI, Section 9 provides that the state be divided into judicial districts by order of the Supreme Court. In 1979 the Supreme Court divided the state into seven judicial districts. In each judicial district there is a presiding judge who supervises court services in the district. The duties of the presiding judge, as established by the Supreme Court, include convening regular meetings of the judges within the district to discuss issues of common concern, assigning cases among the judges of the district, and assigning judges within the district in cases of demand for a change of judge.

County Courts

In 1981 the Legislative Assembly enacted legislation providing for one county court in each county instead of the multilevel system of county courts, county justice courts, and county courts of increased jurisdiction as

existed at that time. The legislation also provided that county judges had to be law-trained and full time and provided for the assumption by the state of many district court expenses.

County courts had jurisdiction over civil cases involving \$10,000 or less; criminal misdemeanors, infractions, and traffic cases; small claims cases involving \$3,000 or less; probate; testamentary, guardianship, and mental health commitment proceedings; appeals from municipal court, and any other cases as were assigned by the presiding district judge of the judicial district in which the county was located.

Court Unification

In 1991 the Legislative Assembly unified the court system through elimination of county courts and the creation of additional district court judgeships from county court judgeships. In 1991 there were 53 district and county judges. Under unification the law provides that the total number of district court judgeships must be reduced to 42 before January 1, 2001. The Supreme Court has been eliminating judgeships. As of November 1998, the number of judgeships has been reduced to 44, with one additional judgeship to be eliminated at the end of 1998. The primary implementation date for consolidation of trial courts was January 2, 1995, the day after the completion of the terms of all county court judges.

Office of Clerk of District Court

Historically, the clerks of court have been elected county officials whose salaries are set by state law, but are paid by the county. The duties of the clerk are prescribed by state law, and the duties of the clerk are essentially performed for the district court. In 1989 the Legislative Assembly enacted legislation that provided counties the option of seeking state funding for the clerk of district court. The legislation, codified as NDCC Section 11-17-11, provides that "[t]he board of county commissioners of any county may initiate the option to transfer responsibility for funding of the clerk of district court to the state by the filing of written notice to the state court administrator"

In Section 6 of 1997 Senate Bill No. 2002, the Legislative Assembly expressed its intent to provide for the state funding of clerks of court. Section 6 provides:

It is the intent of the fifty-fifth legislative assembly that counties use the provisions of chapters 11-10.2, 11-10.3, and 54-40.3 to combine or share the services of clerks of district court and that the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund administration of the district courts.

In addition to the issue of state funding of clerks of court, 1997 Senate Bill No. 2002 addressed the issue of the combining or sharing of the services of clerks of court. This legislation, codified as NDCC Section 11-10-02, provides that in counties having a population

of not more than 6,000, the register of deeds must perform the functions of the clerk of court unless the board of county commissioners adopts a resolution separating the offices. Before the passage of this legislation, in counties with a population of not more than 6,000, the clerk of court was required to be the register of deeds unless the board of county commissioners adopted a resolution separating the offices. Section 11-10-02 also provides that in a county with a population of more than 6,000, the offices of clerk of court and register of deeds may be combined into an office of register of deeds if the board of county commissioners adopts a resolution to combine the offices.

Testimony and Committee Considerations Fees Charged by Clerks of District Court

During the course of studying issues relating to the clerks of district court, the committee received testimony regarding a number of services and filings provided by the clerk of district court for which a minimal fee or no fee is assessed. The committee received recommendations of filing fees that could be imposed or increased to generate additional revenue including the fees for foreign judgments, annual reports, and petitions for subsequent administration.

The committee received testimony from a representative of the Supreme Court regarding the estimated revenue that would be generated from the implementation of new fees or by increasing fees.

Reduction of Judgeships

The Supreme Court reported that the reduction in the number of judgeships is on schedule, and the court unification process is progressing well. With the number of judgeships reduced to 44, it was reported that caseload problems exist in some districts and that additional caseload problems may arise as population shifts occur in some parts of the state. The court further reported that because of conflicts of interest, there are a significant number of recusals by district judges, and the list of alternative judges is small.

The committee also received testimony from the Supreme Court and the National Center for State Courts on the results of a weighted caseload study conducted by the National Center for State Courts. The study methodology involved using case weights for particular categories of case types which were calculated by determining the average time for individual case events and the frequency with which these events actually occurred. The case weights were then multiplied by the number of filings to determine the amount of judicial resource time required to process the caseload. To determine judicial resource needs, the amount of judicial resource time required to process the caseload was compared to the amount of judicial resource time available. It was pointed out that the findings are only a guide and subjective elements such as fluctuations in population in some

parts of the state, an increase in aging population, and a decrease in the juvenile population all have an impact on judicial caseloads. The National Center's final determination was that there are 3.84 more full-time equivalent judges in the state than are needed to handle the state's caseload. At the time the study was conducted, there were 46 district judgeship positions. Following the reduction in the number of judgeships to 44, the committee received testimony that the number of excess judgeships needed to handle the state's caseload was adjusted to 2.84.

Clerk of District Court Consolidation Study

The committee received testimony regarding the results of the *North Dakota Clerk of Court Consolidation Study* conducted by the National Center for State Courts. The study was conducted in response to a request from the Supreme Court for the National Center for State Courts to conduct a study of the clerks of district court to evaluate the most effective structure for the provision of court support services to the judiciary and the public it serves. The testimony indicated that the study was conducted to respond to the need for further planning and the development of implementation strategies pursuant to 1997 Senate Bill No. 2002. The study addressed the issues of state funding of clerks of district court and their personnel in the judicial branch personnel system and the consolidation of clerks of district court offices.

The study involved a review of 154 full-time and 50 part-time positions within the North Dakota Clerk of District Court offices, a total of 177.8 full-time equivalent (FTE) positions. Through interviews with judges and administrative and clerical personnel throughout the courts and clerk of district court offices, from data gathered through the questionnaire of clerk of district court personnel, and from consultation with the Clerk of Court Study Advisory Committee, the National Center developed a plan for clerk of district court restructuring, including new state job classifications and pay plans.

The National Center reported that 23 counties could have their clerk of district court functions consolidated. The consolidated counties would have their court support functions restructured while maintaining public access to the courts without full-scale clerk of court operations. The study also indicated that the registers of deeds in the 23 counties could handle court filings and other tasks. The state could consider reimbursing the 23 counties for a .25 FTE mid-level clerk salary for assisting in filing of documents, assisting clients in emergency matters, and accessing and shipping files. The study further recommended that in the remaining 30 counties, the Supreme Court should bring all court-related clerk of district court operations and personnel within the North Dakota Judicial Personnel System as state employees.

The committee received estimates that the implementation of the plan proposed in the study, which would include state funding for 30 counties, would be an estimated \$11.2 million, plus or minus 10 percent. The estimate was based on the assumption that staffing requirements would require one full-time clerk for every 600 filings.

The committee received extensive testimony regarding the implementation of the plan developed by the National Center for State Courts. Testimony in opposition to the plan indicated that clerk of district court services should be retained in all counties, regardless of size. It was argued that the people of the state do not want to replace people with computers and that the Legislative Assembly should work to enhance rural communities, not aid in their demise. Further testimony indicated that the North Dakota Clerks of Court Association unanimously passed a resolution of nonendorsement of the National Center's plan. It was claimed that the implementation of the plan would cause economic development to work in reverse because of the outmigration of attorneys and their families in counties without clerk of district court services. In addition to the reduction in services to the smaller counties, the testimony indicated that the plan would place an additional burden on the courts of the larger counties, reduce services, and increase the cost to counties for more storage space for files which is already at a premium.

Testimony received from a district judge indicated that judicial services can be provided to rural communities in an efficient and cost-effective manner and that the consolidation plan proposed in the study would lead to increased costs for participants, the need for new facilities to be built at state expense, and a severe limitation on the public access to justice for rural citizens.

The committee also received testimony in opposition that indicated implementation of the plan would adversely affect abstractors, title insurance agents, and landmen in their search of documents for judgments and chains of title. It was argued that the accessibility to records is vital to many professions.

Clerk of Court Consensus Process

During the course of reviewing information and receiving testimony regarding the consolidation of clerks of district court offices and the state funding of the clerks, the committee determined that the clerk of district court study may exceed the time the committee had to consider it. The committee recommended that the North Dakota Consensus Council be involved to develop a plan regarding the number of, the duties of, and the funding of the clerks of district court.

The Clerk of Court Consensus Process, which was formed to develop a plan regarding clerks of district court, included three representatives of the North Dakota Clerks Association, two representatives of the State Bar Association, three members of the interim Judiciary

Committee, one representative of the North Dakota Association of Counties, and one representative of the North Dakota County Commissioners Association. The Consensus Process conducted five meetings.

The committee received testimony from a representative of the Consensus Process regarding its findings and recommendations. The testimony indicated that in developing a plan, the Consensus Process recognized the importance for the courts to be run efficiently but also recognized that any change to the current system must be done in an orderly fashion. The testimony also indicated that the participants in the Consensus Process did not support the conclusions or the proposals of the study by the National Center for State Courts. The participants support the proposal developed by the Consensus Process as a substitute for consideration by the Supreme Court and the Legislative Assembly. The proposal of the Consensus Process consisted of proposed legislation, two interim study resolutions, and recommendations to the Legislative Assembly, the North Dakota Association of Counties, the North Dakota County Commissioners Association, and the Supreme Court.

The Clerk of Court Consensus Process plan recommended that adequate and proper judicial services, including clerk of district court services, be provided in each county in this state and that funding for clerk of district court services be provided by the state judicial system in cooperation with the boards of county commissioners in the counties of the state. To accomplish this objective, the plan included the following general principles:

- **State Services.** Court services of clerks of district court are state services of the judicial system and state funding should be provided for state services.
- **Judicial System Management.** The judicial system should be responsible for the administration of and budget for court services of clerks of district court.
- **Separated Services.** Court services should be separated from noncourt services of clerks of court and noncourt services of clerks of court should remain the financial and administrative responsibility of the counties.
- **Flexibility.** A county should have flexibility to provide the court services of clerks of court in the county at the county's own expense.
- **Judicial Administration.** Judges should be able to administer court services of clerks of district court.
- **Combined Offices.** There should be no change in the combined offices of registers of deeds and clerks of court as provided for in North Dakota Century Code Section 11-10-02.

- **Elections.** There should be no state-mandated elections for clerks of court following the election in November 1998.

The plan further provided that the options available to a county regarding state funding of clerk of district court services would depend on the number of full-time equivalent (FTE) positions the Supreme Court determines are necessary to provide adequate clerk of district court services. Under the plan, a county in which the Supreme Court determines that two or more FTE employees are necessary to provide adequate clerk of district court services would have two options: (1) state-funded clerk of district court services; or (2) county-funded clerk of district court services. A county in which the Supreme Court determines that more than one but less than two FTE employees are necessary to provide adequate clerk of district court services would have three options: (1) state-funded clerk of district court services; (2) contract with the Supreme Court for clerk of district court services; or (3) county-funded clerk of district court services. A county in which the Supreme Court determines that less than one FTE employee is necessary to provide adequate clerk of district court services would have two options: (1) contract with the Supreme Court for clerk of district court services; or (2) provide clerk of district court services at its own expense. The testimony indicated that the Legislative Assembly may need to give further consideration to the number of FTEs that triggers a county's options. The plan also provided that counties would be required to notify the Supreme Court of its decision as to which option it has chosen before April 1, 2000, and that state funding for the provision of clerk of district court services would be provided beginning January 1, 2001.

Recommendations

The committee recommends House Bill No. 1042 to impose a new fee for four types of filings, including an \$80 fee for petition for subsequent administration, an \$80 fee for filing a trust registration, an \$80 fee for a petition for allowance of a trustee's annual report or other remedies, and a \$10 fee for filing of annual reports by guardians, and which would increase the fee for filing a foreign judgment or decree from \$10 to \$80.

The committee recommends continuation of clerk of court services in every county. The committee expresses support for legislation introduced during the 1999 legislative session which would provide for adequate and proper judicial services, including clerk of district court services, in each county in this state and for funding for clerk of district court services by the state judicial system in cooperation with the boards of county commissioners in the counties of the state. The committee also expresses support for implementation of the proposals in the plan developed by the Clerk of Court Consensus Process.

DISCRIMINATION IN NORTH DAKOTA STUDY

A study of the level of and remedies for discrimination in this state was proposed as a companion proposal to 1997 Senate Bill No. 2332, which would have created a human rights commission. The bill failed to pass the Senate.

Background

Civil Rights and Discrimination

A civil right is an enforceable right or privilege that if interfered with by another gives rise to an action for injury. Examples of civil rights are freedom of speech, press, assembly, the right to vote, freedom from involuntary servitude, and the right to equality in a public place. Discrimination occurs when the civil rights of an individual are denied or interfered with because of membership in a particular group or class. Statutes, both state and federal, have been enacted to prevent discrimination because of a person's race, sex, religion, age, previous condition of servitude, physical limitation, national origin, and in some instances sexual preference.

The most important expansion of civil rights in the United States was the enactment of the 13th Amendment of the United States Constitution which abolished slavery throughout the United States; and the 14th Amendment of the United States Constitution which was passed to ensure that no state "shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States . . . [or] deny to any person within its jurisdiction the equal protection of the laws." Section 5 of the 14th Amendment gave Congress the power to pass any laws needed for its enforcement. Many of these statutes are still in force today and protect individuals from discrimination and from the deprivation of their civil rights.

The most prominent civil rights legislation since Reconstruction is the Civil Rights Act of 1964. Congress enacted the Civil Rights Act of 1964 under its power to regulate interstate commerce. Under 42 U.S.C. Section 2000a, discrimination based on "race, color, religion, or national origin" in public establishments that had a connection to interstate commerce or was supported by the state is prohibited. The Civil Rights Act of 1964 and subsequent legislation also declared a strong legislative policy against discrimination in public schools and colleges. Title VI of the Civil Rights Act prohibits discrimination in federally funded programs. Title VII of the Civil Rights Act prohibits employment discrimination when the employer is engaged in interstate commerce. Since 1964, Congress has passed numerous other laws dealing with employment discrimination.

The judiciary, most notably the United States Supreme Court, plays a crucial role in interpreting the extent of civil rights. Supreme Court decisions can affect the manner in which Congress enacts civil rights legislation, as occurred with the Civil Rights Act of 1964. The

federal courts are crucial in mandating and supervising school desegregation programs and other programs established to rectify state or local discrimination.

North Dakota Discrimination Laws

The Constitution of North Dakota, Article I and NDCC Chapter 14-02.4 contain provisions that provide for the protection of civil rights in North Dakota.

The Constitution of North Dakota, Article I contains the state's Declaration of Rights. Within this article are the protections afforded to the people of North Dakota regarding civil rights and discrimination. Article I, Section 1 provides:

All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

Article I, Section 7 contains the declaration of rights regarding employment. Section 7 provides:

Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

North Dakota Century Code Section 1-01-07 provides that all original civil rights are either rights of person or rights of property. Section 1-01-08 provides that rights of property and of person may be waived, surrendered, or lost by neglect.

North Dakota Century Code Chapter 14-02.4 deals with discrimination in general. Discrimination on the basis of sex, race, color, religion, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance is prohibited. The chapter contains numerous provisions that are similar to the protections against discrimination which are afforded by federal law. This chapter often is referred to as the "North Dakota Human Rights Act." The state policy against discrimination is contained in Section 14-02.4-01, which provides:

It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination

in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate.

The North Dakota statutes contained in Chapter 14-02.4 also provide protection against discrimination in the areas of employment, public accommodations, housing, state and local government services, and credit transactions. Sections 14-02.4-03 through 14-02.4-10 prohibit discriminatory practices by employers; Sections 14-02.4-12 and 14-02.4-13 prohibit discriminatory housing practices; Sections 14-02.4-14 through 14-02.4-16 prohibit discriminatory practices in public accommodations; and Section 14-02.4-17 prohibits discriminatory practices in credit transactions.

The remedies for a person with a discrimination claim that arises under NDCC Chapter 14-02.4 are found in Sections 14-02.4-19 and 14-02.4-20. Under Section 14-02.4-19, a person may bring an action in district court within three years of the alleged act. If the discrimination claim involves an employer's discriminatory practice, the complaint of discrimination must be made to the Department of Labor within 300 days of the alleged discriminatory act. For a claim of discrimination regarding housing, public accommodations, or services, the claim must be made within 180 days of the alleged act.

Section 14-02.4-20 provides that if a person is determined by the district court to have committed a discriminatory practice, the court may order relief in the form of a temporary or permanent injunction, equitable relief, or back pay. The section also authorizes a court to grant to the prevailing party reasonable attorney's fees.

Federal Statutes

The 5th and 14th Amendments of the United States Constitution limit the power of the federal and state governments to discriminate. The Fifth Amendment has an explicit requirement that the federal government not deprive any individual of "life, liberty, or property," without due process of law. It also contains an implicit guarantee that each person receive the equal protection of the laws. The 14th Amendment explicitly prohibits states from violating an individual's rights of due process and equal protection.

Discrimination in the private sector is not directly constrained by the Constitution, but has become subject to a growing body of federal and state statutes. Some of the more commonly known federal statutes are the Equal Pay Act (29 U.S.C. Section 206); Title VII of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21); the Nineteenth Century Civil Rights Acts (42 U.S.C. Sections 1981, 1981a, 1983, 1988); the Age Discrimination in Employment Act (29 U.S.C. Sections 621-634); the Rehabilitation Act (29 U.S.C. Sections 791, 793, 794(a)); the Americans with Disabilities Act (42 U.S.C. Chapter 126); and the Black Lung Act (30 U.S.C. Section 938).

The Equal Employment Opportunity Commission interprets and enforces the Equal Pay Act, the Age Discrimination in Employment Act, Title VII, the Americans with Disabilities Act, and sections of the Rehabilitation Act. The Commission itself was established by Title VII. The Commission's enforcement provisions are contained in 42 U.S.C. Section 2000e-5, and its regulations and guidelines are contained in Title 29 of the Code of Federal Regulations, part 1614.

Testimony and Committee Considerations

The committee received testimony regarding the level of discrimination in the state from representatives of local and state government agencies, human service-type agencies, elected officials, agencies representing low-income populations and handicapped persons, and agencies that deal with housing.

Much of the testimony received by the committee focused on the lack of state remedies for discrimination complaints and the need for a centralized state agency to be available to receive and investigate discrimination complaints. The only state agency authorized to receive any type of discrimination complaints is the Labor Department. Representatives of the Labor Department provided testimony on the department's authority to receive employment discrimination complaints. The Labor Department maintains an annual contract with the Equal Employment Opportunity Commission to process employment discrimination complaints. Under the contract, the department receives \$500 per case with a maximum of 65 cases per year. In 1996 the department processed 107 complaints.

The committee received testimony from a representative of the Governor's office that a small "one-stop shop" could be established as a single place in state government for persons with complaints to obtain information and seek redress.

Testimony received by the committee from a representative of the Attorney General's office indicated that because the Attorney General does not have the authority to handle discrimination complaints from private citizens, statistics are not being gathered on the number and nature of complaints. Without statistics, it is difficult to determine the level and amount of discrimination in the state. The testimony indicated that citizens of the state are heavily dependent on federal discrimination enforcement laws and although the state offers redress through the state court system, the cost of hiring an attorney is prohibitive, and legal aid services are not available for discrimination claims.

Opponents of the idea of a centralized state agency authorized to receive and investigate discrimination complaints, e.g., a human rights commission, argued that a human rights commission is not needed and that the establishment of a new commission that may perform duplicative duties already belonging to other agencies and organizations would not be a positive

change. Others in opposition to the idea argued that small business is already overregulated and a human rights commission would create more government regulation of small business.

North Dakota Advisory Committee

The chairman and several members of the North Dakota Advisory Committee to the United States Civil Rights Commission appeared before the committee to discuss the activities and findings of the advisory committee. The advisory committee, which is composed of 13 North Dakota citizens whose appointments to the committee reflect a balance of gender, race, and political and religious affiliation, is charged with the responsibility of advising the United States Civil Rights Commission on the existence and extent of discrimination in North Dakota and on whether a need exists to establish a human rights commission in North Dakota. The advisory committee gathers information by conducting hearings throughout the state and by receiving testimony from the public regarding personal experiences of discrimination. Members of the advisory committee testified that much of the testimony gathered at the hearings was focused on discrimination in the areas of employment and rental housing. Regarding rental housing, most of the discrimination tends to be directed at single women with children and at handicapped persons. Another major issue addressed in the testimony heard by the advisory committee was the lack of mediation, conciliation, and referral services to address complaints. A common complaint reported by the advisory committee was that people with discrimination claims become lost in the system and do not know where to go for assistance.

The advisory committee testified that, based upon the hearings it has conducted, it is convinced there are issues and instances of human rights violations in the state that are significant enough to warrant the establishment of a human rights commission. The advisory committee recommended that if a human rights commission were established in the state, the basic authority should be vested in the commission to investigate and mediate alleged discrimination, and the commission must have enforcement powers.

South Dakota Commission of Human Rights

A representative of the South Dakota Division of Human Rights was invited to appear before the committee to discuss the workings of the South Dakota Commission of Human Rights. The South Dakota commission's function is to promote equal opportunity through the enforcement of the state's Human Rights Act. The commission employs two full-time investigators, one part-time secretary, and one part-time director. The representative provided statistics on complaints, an explanation of the complaint procedure and its cost, a guide for complainants and respondents, and the rules of the commission. The testimony

indicated that in 1997, 104 of the 110 complaints received by the division were employment-related.

Survey of Agencies and Departments

During the course of reviewing issues relating to the level of discrimination in the state, it was brought to the attention of the committee that a number of state agencies receive calls from persons who claim to be victims of discrimination; however, because the agencies lack the authority to handle discrimination complaints, statistics are not gathered on the number and nature of the calls. The committee requested that certain agencies and departments track the nature and number of calls it receives regarding discrimination complaints for a period of six months.

The survey revealed that the agencies or departments most frequently contacted to report discrimination claims were the Governor's office and the Department of Human Services. A representative of the Department of Human Services testified that the department receives 10 to 20 claims of discrimination per month. The department reported that the claims of discrimination were in a variety of areas, including employment, education, housing, disabilities, public assistance, and public accommodations.

Housing Discrimination

The committee received testimony from representatives of the North Dakota Fair Housing Council regarding the operations of the organization. The North Dakota Fair Housing Council is available to assist individuals with housing discrimination complaints, but the council has no authority to enforce housing discrimination laws. The council is authorized to do limited investigations to confirm if discrimination did or did not occur. The council also provides assistance in the form of outreach and education. Eighty percent of its funding of the council is received from the federal Housing and Urban Development agency; the remainder is received from community development block grant funds and from private fundraising. Most of the housing complaints received by the council involve rental situations. In 1995 the council received 350 allegations of housing discrimination, the majority of which involved race discrimination. The second highest number of complaints involve the exclusion of children in rental housing.

The committee received testimony that the North Dakota Fair Housing Council had filed a complaint against a Fargo-area newspaper for publishing rental property advertisements that contained descriptive terms that may be considered discriminatory. A representative of the newspaper testified that the newspaper had never been notified of the impropriety of the use of the terms nor was it offered any educational services by the council before the complaint was filed.

The committee received testimony from the Labor Department that the department could seek a grant from

the Housing and Urban Development agency to receive and investigate housing discrimination cases. However, to qualify for the grants, changes to North Dakota law regarding housing discrimination would be necessary.

Recommendation

The committee recommends House Bill No. 1043 to repeal the current housing discrimination statutes and create new housing discrimination laws. The bill includes the procedures for filing a housing discrimination claim and the remedies available to a person when a finding of discrimination is made. The bill designates the Labor Department as the agency responsible for receiving and investigating housing discrimination claims.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of nine members. 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 on which 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 may 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 four uniform Acts to the Legislative Council for its review and recommendation. These Acts range from amendments to existing uniform Acts adopted in North Dakota to comprehensive legislation on subjects not covered by existing state law. The four Acts were the Uniform Management of Public Employee Retirement Systems Act; the Uniform Child Custody Jurisdiction and Enforcement Act; the Uniform Principal and Income Act (1997); and the Uniform Guardianship and Protective Proceedings Act (1997).

Uniform Management of Public Employee Retirement Systems Act

The national conference approved the Uniform Management of Public Employee Retirement Systems Act in 1997. The Act would govern public employee retirement systems, which are not governed by federal law under the Employees Retirement Income Security Act.

In compliance with NDCC Section 54-35-02.4, the committee referred the Act to the Employee Benefits Programs Committee for review and actuarial analysis. The Judiciary Committee received technical comments and an actuarial review regarding the Act. The

Employee Benefits Programs Committee made no recommendation on the Act.

The committee makes no recommendation regarding the Uniform Management of Public Employee Retirement Systems Act.

Uniform Child Custody Jurisdiction and Enforcement Act

The Uniform Child Custody Jurisdiction and Enforcement Act would replace the Uniform Child Custody Jurisdiction Act, which North Dakota enacted in 1969 as NDCC Chapter 14-14. The 1969 Act has been adopted in every state.

Testimony in explanation of the Act indicated that the Act seeks to eliminate the differences between the Uniform Child Custody Jurisdiction Act and the federal Parental Kidnapping Prevention Act; to clarify the scope of child custody actions to which the Act applies; to prioritize the home state as a ground for taking jurisdiction and clarify the emergency jurisdictional grounds; and to add interstate enforcement procedures and powers to improve interstate enforcement of child custody orders.

The committee received no testimony in support or in opposition to the Act. The committee makes no recommendation regarding the Uniform Child Custody Jurisdiction and Enforcement Act.

Uniform Principal and Income Act (1997)

The national conference recommended the Uniform Principal and Income Act in 1997. The Act is a revision of the Uniform Principal and Income Act of 1962, which North Dakota enacted in 1969 as NDCC Chapter 59-04.1.

The committee reviewed information comparing NDCC Chapter 59-04.1 with the provisions of the revised Act. Testimony in explanation of the revised Act indicated that the Act intends to make principal and income rules conform to prudent investor rules under the Uniform Prudent Investor Act, which North Dakota enacted in 1997 as NDCC Sections 59-02-08.1 through 59-02-08.11. The revised Act is also intended to provide for investment modalities that were not in existence in 1962, such as derivatives, options, deferred payment obligations, and synthetic financial assets.

Testimony on the revised Act indicated that the Act has some favorable features. However, section 104 of the revised Act is both broad and vague and will encourage litigation between trustees and beneficiaries over the nature of the trust instrument and the extent of the beneficiary's interest in the trust. According to the testimony, section 104 would grant distinct authority, and its removal would not be detrimental to the remainder of the Act. The testimony indicated that the American Bankers Association has taken the position that the Act should be enacted without section 104.

The committee makes no recommendation regarding the Uniform Principal and Income Act (1997).

Uniform Guardianship and Protective Proceedings Act (1997)

The Uniform Guardianship and Protective Proceedings Act (1997), which was recommended by the national conference in 1997, is a revision of Article V of the Uniform Probate Code, which North Dakota enacted in 1973. Article V of the Uniform Probate Code consists of NDCC Chapters 30.1-27 through 30.1-30.

Testimony in explanation of the revised Article V indicated that the major objectives of the revision are to provide for standby guardians for children; require better control of conservators; and allow delegation of investment authority.

Testimony in opposition to the revised Article V indicated that the present law regarding guardianships is more specific and clear than the revised Act and that there are no major defects in the current structure. The testimony further indicated that there are areas of concern with the revised Act including the removal of the requirement to appoint a guardian ad litem in each case, the establishment of a guardianship without a hearing, the reduction of the time limit for an emergency temporary guardianship to 60 days, the lack of specificity in defining the areas of a limited guardianship, and the removal of the guardian's authority to place a ward in a mental health care facility under "voluntary" admission status for up to 45 days. The committee received no testimony in support of the revised Article V.

The committee makes no recommendation regarding the Uniform Guardianship and Protective Proceedings Act (1997).

CONTINGENT FEE ARRANGEMENTS

By the directive of the chairman of the Legislative Council, the committee conducted a study of the authority of the Attorney General to enter contingent fee agreements with private attorneys. The committee received and considered information and recommendations relating to contingent fee arrangements and a North Dakota Supreme Court decision in which the court affirmed the constitutionality of the contingent fee arrangement that existed in that case.

Authority of Attorney General

Testimony received from a representative of the Attorney General's office indicated that the Attorney General's office does not have any agreements in which the office has agreed to pay special assistant attorneys general on a contingent fee basis. The testimony indicated, however, there are several special assistant attorneys general with contingency fee contracts with state agencies. Several state agencies have entered agreements with collection agencies, not particular attorneys, to do collection work for those state agencies. If it is necessary for the collection agency to sue to collect a debt on behalf of the state agency, the attorney the collection agency uses to bring the lawsuit in the name

of the state agency must be appointed as a special assistant attorney general for that litigation. The attorneys the collection agencies use in these circumstances are paid by the collection agencies on a contingency fee basis.

Under NDCC Section 54-12-08, the power to appoint special assistant attorneys general lies with the Attorney General, but the special assistants' compensation is agreed to and paid by the agencies the attorneys are appointed to represent. The requesting agency and the attorney agree upon the attorney's compensation. That compensation may be an hourly fee, a flat fee, or a contingency fee. On a few occasions, agencies have agreed to pay attorneys on a contingent fee basis.

State v. Hagerty

The committee also received testimony from a representative of the Attorney General's office regarding the North Dakota Supreme Court decision *State v. Hagerty*, 580 N.W.2d 139 (1998), in which the court declared that because of the longstanding acceptance of contingent fee arrangements and in view of the historical authority of the Attorney General, the Attorney General has the authority to employ special assistant attorneys general under contingent fee agreements unless the agreements are specifically prohibited by statute. In *Hagerty* the agencies the attorneys represented had entered contracts providing the attorneys would be compensated on a contingent fee basis. The Attorney General then appointed the attorneys involved in the case as special assistant attorneys general. The Supreme Court concluded this arrangement did not violate the "public moneys" provision of the Constitution of North Dakota, Article X, Section 12. Section 12 provides, in part:

All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature;

The committee considered two bill drafts. One provided that the Attorney General may not appoint a special assistant attorney general in a civil case in which the amount in controversy exceeds \$150,000, and the special assistant attorney general is to be compensated by a contingent fee arrangement unless the arrangement is approved by the Legislative Council; and the other provided that the arrangement must be approved by the Emergency Commission.

Testimony in opposition to the bill drafts indicated that the bill drafts raised the issue as to whether the approval of the contingent fee arrangements is an executive or legislative function because the court, in *Hagerty*, held that the decision to enter the arrangements is a core function of the Attorney General. A concern was also

expressed over the confidentiality issues that would arise if the Legislative Council had the authority to approve the arrangement because the Legislative Council meetings may not be closed to the public. The testimony indicated that a constitutional amendment would be necessary for the Legislative Council to conduct closed meetings.

Recommendation

The committee recommends Senate Bill No. 2047 to provide that the Attorney General may not appoint a special assistant attorney general in a civil case in which the amount in controversy exceeds \$150,000, and the special assistant attorney general is to be compensated by a contingent fee arrangement unless the arrangement is approved by the Emergency Commission. The bill provides that any proceeding or information used by the Emergency Commission under the bill is not subject to the open records and meetings provisions of NDCC Sections 44-04-18 and 44-04-19.

PUBLIC HEARINGS ON BALLOT MEASURES

By directive of the chairman of the Legislative Council, the committee conducted public hearings on the constitutional measures scheduled to appear on the primary and general election ballots. The purpose of the hearings was to promote public discussion and debate on the measures and to create a public history.

Measure No. 1 - Primary Election

The only constitutional measure on the June 1998 primary election ballot related to the filling of judicial vacancies. The measure, which would amend the Constitution of North Dakota, Article VI, Section 13, provided that persons appointed to the Supreme Court or district court positions would serve for at least two years before having to face an election.

Testimony in support of the measure indicated that the measure would be a means to ensure the future quality of the judiciary in North Dakota. The measure would alleviate the immediate financial pressures associated with running in an election and would allow a newly appointed judge an opportunity to serve the public for a two-year grace period. According to the testimony, the measure provides a balance between finding qualified individuals willing to seek judicial appointment and the voters' right to elect judges.

There was no testimony in opposition to the primary election ballot measure.

The measure was approved in the June 9, 1998, primary election.

Measure No. 1 - General Election

Measure No. 1 on the general election ballot would remove the references to the names, locations, and missions of the institutions of higher education from the Constitution of North Dakota.

Testimony in support of measure No. 1 indicated the original drafters of the constitution designated various cities to house the various institutions of higher learning in order to make education accessible to the people of the state, but that was over 100 years ago. With the knowledge and technology available today, the mode of higher education has changed. Having the names and missions in the constitution is restrictive to the schools and the removal of the language would allow the Legislative Assembly and the State Board of Higher Education to move higher education forward into the twenty-first century. The number of full-time students enrolled in higher education institutions in the state is declining because of fewer higher school graduates, but there is continually increased funding for higher education. The testimony further indicated that measure No. 1 is about allowing for flexibility, not about closing colleges. The only reason a college should remain open is for excellence in education.

Testimony in opposition to measure No. 1 argued that the drafters of the constitution believed it was necessary to name the locations of the institutions of higher education and that thinking has withstood the test of time. The purpose of the constitution is to protect the rights of the people and a vote in support of the measure would give away the power reserved to the people to protect the colleges. The testimony further indicated that those in support of the measure claim passage of the measure would make institutions more responsive, would force administration and faculty to become more innovative, would make institutions operate more efficiently, and would give the Board of Higher Education more latitude; however, the real intent and purpose of the measure is to ask the people of the state to give up their constitutional protection that requires educational decisions to be made on an institution-by-institution basis.

Other testimony in opposition to the measure indicated that all of the institutions of higher education are necessary for education to be accessible to all areas of the state. The opposition claimed the measure would take power away from the people and place it with an unelected board. It also was argued that the University System in the state is a tremendous asset and is a solution to the state's economic problems, not the problem. The testimony in opposition further claimed that the passage of the measure would send a message of uncertainty to the staff at the institutions and may make staff and faculty recruitment more difficult.

Testimony from the Chancellor of the North Dakota University System indicated that it is a myth that all the University System does is educate people to leave the state. In 1995, 61 percent of North Dakotans enrolled in the University System remained in the state, and 25 to 30 percent of out-of-state students remained in the state after graduating from the University System. In addition, 50 to 60 percent of the physicians in North Dakota have attended the University of North Dakota School of Medicine and Health Sciences. The testimony further

indicated every student has an impact of \$10,000 per year on the community in which that student lives.

The measure was defeated in the November 3, 1998, general election.

Measure No. 2 - General Election

Measure No. 2 on the 1998 general election ballot relates to the election of county officers. The measure would require elected county officers to be elected by the voters in the jurisdiction they will serve, require candidates for elective county office to be residents at the time of election, and require that sheriffs be elected.

Testimony received by the committee in support of the measure No. 2 indicated that the position of county sheriff should be an elected position, because as an elected official, the sheriff is accountable to the citizens of the county, not just three or five county commissioners. Further testimony in support of the measure indicated that an elected sheriff works harder, is more responsive to the needs of the people, and is able to work as a buffer between the citizens of the county and the county commissioners. The committee received testimony that a survey conducted by the North Dakota Association of Counties indicated that 91.9 percent of the responders believed the sheriff should be elected; 7 percent believed the sheriff should not be elected; and 1 percent were undecided.

Testimony in opposition to measure No. 2 argued that the measure sets apart sheriffs from other elected officials and the measure would work to unravel legislation encouraging government restructuring. The measure would allow larger counties to vote on a measure that will take away the rights of the smaller counties. The testimony in opposition to the measure further indicated that because of the residency requirement in the measure, a deputy in one county could not run for sheriff in another county without moving to that county before the election. It was indicated in the testimony that this residency requirement would apply to all elected county officials, not just sheriffs.

The measure was approved in the November 3, 1998, general election.

CONSTITUTIONAL AND STATUTORY REVISION

The committee continued the tradition of reviewing and making recommendations regarding revisions to the North Dakota Century Code which may be necessary in light of judicial decisions or constitutional amendments. The committee received and considered information and recommendations relating to a North Dakota Supreme Court decision in which a section of the North Dakota Century Code was declared unconstitutional and to a district court decision in which a section of the North Dakota Century Code was declared unconstitutional. Further, the committee received testimony and

considered information and recommendations regarding a problem created by the repeal of a statute in 1997.

Billey v. North Dakota Stockmen's Association - Recommendation

The committee received testimony regarding the North Dakota Supreme Court decision *Billey v. North Dakota Stockmen's Association*, 579 N.W.2d 171 (N.D. 1998), in which the court declared unconstitutional those portions of NDCC Sections 36-09-18 and 36-22-03 which direct payment of fees into the general fund of the North Dakota Stockmen's Association. The issue before the court in *Billey* was whether four types of fees the association collected and retained were "public moneys" required by the Constitution of North Dakota, Article X, Section 12 to be deposited with the state treasurer and be paid out only pursuant to appropriation. Sections 36-09-18 and 36-22-03 specifically authorized the association to collect these fees and to deposit them in the general fund of the Stockmen's Association. The court concluded that the association acts as an agent of the state when performing brand inspection and recording services, and the fees generated from those services are public moneys under the constitution. The Supreme Court affirmed the decision of the district court and held that the order is stayed until the end of the 1999 legislative session.

The committee recommends Senate Bill No. 2048 to provide that fees collected for certain services of the North Dakota Stockmen's Association must be remitted to the State Treasurer for deposit in the North Dakota Stockmen's Association fund. The bill further provides that the moneys in the fund are appropriated on a continuing basis to the North Dakota Stockmen's Association.

Grandparent Visitation

The committee received testimony regarding a district court decision, *Hoff v. Berg*, Civil No. 97-C-1663, Burleigh County District Court (N.D. Apr. 24, 1998), in which the court declared NDCC Section 14-09-05.1 unconstitutional. Section 14-09-05.1 permits grandparents and great-grandparents to petition for visitation with grandchildren. In *Hoff*, the district court found "the legislature has gone too far," because it had designed the grandparent visitation statute "to give the grandparents an absolute and unrestricted right to visitation unless the parent can establish it is not in the best interest of the child." The district court found the statute facially unconstitutional because it infringed impermissibly on the right of a parent to raise a child without interference from the state. Testimony from a representative of the Attorney General's office indicated that, upon appeal to the North Dakota Supreme Court, the Attorney General would file an amicus brief supporting the constitutionality of the statute. The testimony indicated that the district court decision does not affect the continued implementation of

the grandparent visitation statute in any cases other than *Hoff v. Berg*.

At the time the Judiciary Committee adjourned, the district court decision had been appealed to the Supreme Court; however, the appeal had not been scheduled on the court's calendar. Under the Constitution of North Dakota, Article VI, Section 4, the Supreme Court may not declare a legislative enactment unconstitutional unless at least four members of the court so decide.

Safe Deposit Box Entry - Recommendation

In 1997 the Legislative Assembly repealed NDCC Section 57-37.1-12, which provided a procedure for the acquisition of the contents of a safe deposit box after the death of the owner. Under the section, a person could obtain a petition from the clerk of court and have a bank officer aid in the inventory of the safe deposit box. The committee received testimony that the repeal of the law has created a lack of uniformity in the procedure to gain entrance to a safe deposit box and that a special administrator is now required to be appointed to gain entry to a box.

The committee recommends Senate Bill No. 2049 to provide for an affidavit procedure whereby an interested

person may have access to a safe deposit box after the death of the owner to determine if the box contains a will or other documents that state the owner's wishes regarding a funeral or burial arrangements.

Technical Corrections and Twentieth Century References - Recommendations

The committee continued the practice of reviewing the Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language. Because many of the statutory forms contain references to the twentieth century, the committee also reviewed statutes that contain those references to determine if changes were necessary.

The committee recommends House Bill No. 1044 to remove references to the twentieth century in statutory forms. The bill draft also removes antiquated and gender specific language. Testimony in explanation of the bill draft indicated that the most common change in the bill consists of removing the 19 in "19__".

The committee recommends House Bill No. 1045 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change.

1-04-09	Chapter 10-22 was repealed by 1997 S.L., ch. 103
4-24-10	The change corrects a reference to the Milk Stabilization Board, which was changed to the Milk Marketing Board by 1997 S.L., ch. 69
9-10-06	Section 32-03-19 was repealed by 1997 S.L., ch. 51
10-04-06(10)	The change removes a chapter number reference that was repealed by 1997 S.L., ch. 105
10-06.1-12	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-06.1-13	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-05	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-10(3)(4)(5)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-10	Section 10-19.1-77 was repealed by 1997 S.L., ch. 103
10-19.1-11	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-23	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-61	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-75.2(2)(3)	Section 10-19.1-80 was repealed by 1997 S.L., ch. 103
10-19.1-99(2)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-100(4)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-101(2)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-103(4)	Chapter 10-22 was repealed by 1997 S.L., ch. 103
10-19.1-106(2)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-108(1)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-110.1	The change corrects an incorrect cross-reference
10-19.1-112	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-113.1	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-129	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-131	Section 10-19.1-131 is repealed because it is identical to Section 10-19.1-151, created in 1997 S.L., ch. 103
10-30-05	Chapters 10-22 and 10-23 were repealed in 1997 S.L., ch. 103
10-30.1-04(1)	Chapters 10-20 and 10-21 were repealed by 1985 S.L., ch. 147, and Chapters 10-22 and 10-23 were repealed by 1997 S.L., ch. 103
10-30.5-04	The change removes a chapter number reference that was repealed by 1997 S.L., ch. 105
10-32-07(2)(3)(4)	Section 10-32-45 was repealed by 1997 S.L., ch. 103
10-32-56(5)(b)	Section 10-32-45 was repealed by 1997 S.L., ch. 103
10-32-107(4)	Chapter 10-22 was repealed by 1997 S.L., ch. 103
10-33-06(5)(j)	The change corrects an erroneous reference in 1997 S.L., ch. 105
10-33-21(24)	Section 59-02-08 was repealed by 1997 S.L., ch. 508
11-10.2-01(3)	The change removes the reference to county judge which was eliminated by 1991 S.L., ch. 326
12.1-32-15(3)(b)	The change removes an incorrect cross-reference
14-02.1-06	The section is repealed because it was declared unconstitutional
16.1-01-07	The change removes a reference to a subsection that was removed by 1987 S.L., ch. 547
16.1-08.1-01(3)	Section 16.1-03-06 was repealed by 1997 S.L., ch. 189

18-08-12	The institution referred to in the statute no longer exists and the new institution referred to was created in 1997
20.1-08-04.6	The change is to correct an error contained in 1997 S.L., ch. 213
23-06.4-03(2)	The change removes the reference to county courts, which were eliminated by 1991 S.L., ch. 326
23-06.5-10(2)	The change removes the reference to county courts, which were eliminated by 1991 S.L., ch. 326
25-03.1-02(12)	Chapters 10-22 and 10-23 were repealed by 1997 S.L., ch. 103
26.1-17-02	Chapter 10-24 was repealed by 1997 S.L., ch. 103
26.1-17-33	Chapters 10-25 and 10-26 were repealed by 1997 S.L., ch. 105
26.1-18.1-02	Section 10-22-01 was repealed by 1997 S.L., ch. 103
26.1-19-04(1)	Section 10-22-01 was repealed by 1997 S.L., ch. 103
26.1-49-03	Chapter 10-24 was repealed by 1997 S.L., ch. 103
28-04-05.1	The change removes the reference to county courts, which were eliminated by 1991 S.L., ch. 326
28-32-22	The section is repealed to remove an effective date clause, generally not codified.
29-12-05	The change corrects a reference to a form for a search warrant but which should be a form for a bench warrant
30.1-15-02	The change corrects a cross-reference to reflect the changes made in 1977 S.L., ch. 295
30.1-29-26	The change reflects a change to a cross-reference made in 1983 S.L., ch. 313
32-03-36	Section 32-03-19 and 32-03-26 were repealed as obsolete in 1997 S.L., ch. 51
36-01-08.1	The change corrects a reference to a term that was changed by 1993 S.L., ch. 355
38-08.1-03	Chapter 10-22 was repealed by 1997 S.L., ch. 103
38-08.1-03.1(3)	Chapter 10-22 was repealed by 1997 S.L., ch. 103
40-51.2-05	Section 40-51.2-10 was repealed by 1997 S.L., ch. 357
40-57.1-05	The change corrects a grammatically incorrect sentence
41-09-16(4)	Chapter 13-03 was repealed by 1997 S.L., ch. 141
43-07-19	Chapter 10-22 was repealed by 1997 S.L., ch. 103
43-17-02(10)	The change clarifies a reference to "physicians assistants"
43-17.1-06(1)	The change corrects a grammatical error
45-10.1-02(1)(h)	The change corrects an erroneous cross-reference
45-15.1-03(1)	The change corrects an error in 1993 S.L., ch. 450, which created Chapter 47-15.1, relating to consumer rental purchase agreements
50-06-01.8(3)	Section 50-03-07 was repealed by 1997 S.L., ch. 403
51-14-03.2	Chapter 13-03 was repealed and replaced by Chapter 13-03.1 in 1997 S.L., ch. 141
53-06.2-11(5)	The change corrects a reference to restrictions on eligible uses of gaming proceeds which were moved from Section 53-06.1-01(6) to Section 53-06.1-11(2) by 1997 S.L., ch. 428
54-40-01(1)	The change corrects a statutory reference from "town" to "city"
57-15-08	The change corrects a reference to city levies for a band or public library which are covered in Chapters 40-37 and 40-38
61-04.1-13	Chapter 10-22 was repealed and replaced by Chapter 10-19.1 in 1997 S.L., ch. 103
61-04.1-14	Chapter 10-22 was repealed and replaced by Chapter 10-19.1 in 1997 S.L., ch. 103
61-21-47	The change is the result of an Attorney General's opinion regarding an unintentional change
Chapter 61-24.4	Chapter 61-24.4 was held to be unconstitutional by the North Dakota Supreme Court in 1984
61-35-25	Chapter 10-26 was repealed and replaced by provisions of Chapter 10-33 under 1997 S.L., ch. 103

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 "For the purposes of studying and reviewing the financial transactions of this state; to assure the collection and expenditure of its revenues and moneys in compliance with law and legislative intent and sound financial practices; and to provide the legislative assembly with formal, objective information on revenue collections and expenditures for a basis of legislative action to improve the fiscal structure and transactions of this state" (North Dakota Century Code (NDCC) Section 54-35-02.1)

In setting forth the committee's specific duties and functions, the Legislative Assembly said "It is 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, to confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state." (NDCC Section 54-35-02.2)

Committee members were Representatives Mike Timm (Chairman), Ole Aarsvold, Rex R. Byerly, John Dorso, Gereld F. Gerntholz, Richard Kunkel, Andrew G. Maragos, Stacey L. Mickelson, Jim Poolman, Bob Skarphol, Francis J. Wald, and Gerry L. Wilkie and Senators Evan E. Lips, Duane Mutch, Ken Solberg, Harvey D. Tallackson, and Dan Wogsland. Representative Tony Clark was a member of the committee until his resignation on October 24, 1997.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

During the 1997-98 interim, the State Auditor's office and independent accounting firms presented 78 audit reports. An additional 81 audit reports were filed with the committee but were not formally presented. The committee's policy is to hear only audit reports of major agencies and audit reports containing major recommendations. However, an audit report not formally presented can be presented at the request of a committee member.

The committee has the following duties and responsibilities:

1. Receive annual audit report from State Fair Association (NDCC Section 4-02.1-18).
2. Receive annual audit report from any limited liability company that produces agricultural ethanol alcohol or methanol in this state and which receives a production subsidy from the state (NDCC Section 10-32-156).

3. Receive report on the writeoff of patients' accounts at the Developmental Center at Westwood Park, Grafton (NDCC Section 25-04-17).
4. Receive annual audited financial statement and report from the North Dakota low-risk incentive fund (NDCC Section 26.1-50-05).
5. Receive annual report from the Department of Human Services on the writeoff of recipients' or patients' accounts (NDCC Section 50-06.3-08).
6. Receive biennial performance audit of the divisions of Job Service North Dakota (NDCC Section 52-02-18).
7. Determine necessary performance audits by the State Auditor (NDCC Section 54-10-01).
8. Determine frequency of audits of state agencies (NDCC Section 54-10-01).
9. Determine when the State Auditor is to perform audits of political subdivisions (NDCC Section 54-10-13).
10. Order the State Auditor to audit or review the accounts of any political subdivision (NDCC Section 54-10-15).
11. Study and review audit reports submitted by the State Auditor (NDCC Section 54-35-02.2).
12. Receive report from the Information Services Division on state entity noncompliance with statewide information technology policies and standards (NDCC Section 54-44.2-12).
13. Receive annual report from the director of the Workers Compensation Bureau and the chairman of the Workers Compensation Board of Directors (NDCC Section 65-02-03.3).
14. Receive report from the director of the Workers Compensation Bureau and the auditor regarding the biennial performance audit of the Workers Compensation Bureau (NDCC Section 65-02-29).
15. Receive report from the director of the Workers Compensation Bureau, the chairman of the Workers Compensation Board of Directors, and the auditor regarding the biennial performance audit of the Workers Compensation Bureau (NDCC Section 65-02-30).

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 PLLP, Certified Public Accountants and Consultants, for an audit of the State Auditor's office for the years ended June 30, 1997 and 1996. The firm presented its audit report at the committee's October 7, 1997, meeting. In accordance with the

terms of the contract between the Legislative Council and Eide Helmeke PLLP, the firm reviewed the performance review and audit procedures and practices of the State Auditor's office. The findings and recommendations made as a result of the audit conducted by Eide Helmeke PLLP on the State Auditor's office were that:

1. Amounts be rounded to at least the nearest dollar when appropriate.
2. Local government audit planning forms and memorandums be reviewed to provide adequate planning and system documentation and eliminate duplicate procedures.
3. Permanent audit files be reviewed and only pertinent audit information be included in audit files.
4. Consideration be given to changing workpaper referencing to enable reviewers and staff to efficiently identify and reference a grouping within an audit area. In addition, it was suggested that on smaller engagements and files and in certain workpaper sections, referencing may not always be necessary or useful.
5. A past audit adjustment form or procedural step be included in all audit programs.

The report also indicated that all prior findings had been resolved.

Suggested Guidelines for Performing Audits of State Agencies

The committee reviewed information on guidelines that have been developed by prior Legislative Audit and Fiscal Review Committees for audits performed by the State Auditor's office and independent certified public accountants. The guidelines require that audit reports include specific statements and recommendations regarding:

1. Whether expenditures were made in accordance with legislative appropriations and other state fiscal requirements and restrictions.
2. Whether revenues were accounted for properly.
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 offices.
6. Whether there was compliance with 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 preceding periods.

10. Whether all activities of the agency were encompassed within appropriations of specific amounts.
11. Whether the agency has implemented the Statewide Accounting and Management Information System, including the cost allocation system.
12. Whether the agency has developed budgets of actual anticipated expenditures and revenues on at least a quarterly basis and compares on at least a quarterly basis actual expenditures and revenues on the accrual basis to budgeted expenditures and revenues.

During report presentations, the State Auditor's office and independent certified public accountants reviewed findings and recommendations relating to the 12 specific guidelines developed by the committee.

Conclusions

As a result of the State Auditor's office and independent certified public accountants' presentations and the committee's interest in the above areas, the committee took the following actions:

1. Suggested that the State Auditor's office provide copies of management letters to committee members. The State Auditor's office started providing committee members with either copies of the management letters or summaries of the recommendations contained in the management letters.
2. Suggested that the State Auditor's office include FTE information in future audit reports. At a later meeting the committee further refined its suggestion to also include information on how much salaries and wages funding is spent on actual filled FTE positions and how much salaries and wages funding relating to vacant FTE positions is spent for other purposes.
3. Rejected the June 30, 1997, North Dakota University System audit report until additional information was provided to the committee on how the deficit fund balances identified in the report would be resolved. At its next meeting the committee received reports from the University of North Dakota, Minot State University, and Valley City State University on the progress made toward the elimination of the deficit fund balances, at which time the committee approved the report.
4. Recommended that the State Auditor's office present any commodity group audit report containing findings and recommendations to the Agriculture Committees and Appropriations Committees of the next legislative session.

5. Rejected the Potato Council audit report for the two years ended June 30, 1996, due to a lack of information on the status of the implementation of the recommendations contained in the audit report. A representative of the Potato Council attended the next committee meeting and provided the committee with information on the status of the recommendations contained in the audit report, at which time the committee approved the report.
6. Determined that it would be beneficial for the members of the Appropriations Committees to be informed of reportable conditions contained in agency audit reports. The committee received a staff report on the possible contents of a report to the Appropriations Committees on audit findings and recommendations. The committee recommended that the State Auditor's office prepare and present a report to the Appropriations Committees and each member of the Legislative Audit and Fiscal Review Committee, at the beginning of the legislative session, of significant audit findings and recommendations contained in the audit reports and performance audits presented to the Legislative Audit and Fiscal Review Committee during the previous interim.
7. Recommended that future financial audit reports of the Mill and Elevator Association include information on the amounts of bonuses paid to mill employees under any profit-sharing agreements.
8. The committee considered the possibility of having all state-controlled or sanctioned commodity groups have a uniform collection form with a monthly check issued to the State Treasurer and then having the State Treasurer issue separate checks to each commodity group. In addition, the committee considered the possibility of providing for the auditing of handlers and exempting the commodity groups from Central Personnel and Central Purchasing. The committee received staff reports on a comparison of commodity group assessments, late filing penalties, and auditing procedures and a report on the South Dakota commodity checkoff process. The committee considered, but did not recommend, a bill draft providing for a centralized commodity group collection process, the auditing of handlers, and the exemption of commodity groups from Central Personnel Division and Central Services Division requirements.
9. Suggested that the State Auditor's office request an Attorney General's opinion regarding the application of the nepotism statute as it applied to the finding contained in the

June 30, 1997, University of North Dakota audit report. At its last meeting, the committee received the Attorney General's opinion stating that the nepotism statute applies only to the person or group of persons with ultimate control over the hiring, dismissal, and salaries of the employees of any given department or agency.

Comprehensive Annual Financial Report

North Dakota Century Code Section 54-10-01 requires the State Auditor to provide for the audit of the state general purpose financial statements and a review of the material included in the Comprehensive Annual Financial Report (CAFR). The CAFR contains the audited financial statements for state agencies, including elected officials. The committee received and reviewed the state's June 30, 1996, and the June 30, 1997, CAFRs. The committee received information on how to best use the information contained in the CAFR.

Performance Audits

North Dakota Century Code Section 54-10-01 provides that the State Auditor is to provide for performance audits of state agencies as determined necessary by the State Auditor or the Legislative Audit and Fiscal Review Committee. Section 54-10-01 provides that a performance audit is to be done in accordance with generally accepted auditing standards applicable to performance audits.

The committee received the following performance audits during the 1997-98 interim:

1. State Procurement Practices-Information Technology Projects - The audit was conducted at the request of the Legislative Audit and Fiscal Review Committee. The purpose of the audit was to provide the committee with information on information technology projects. The audit did not generate any findings or recommendations. As a result of the performance audit, the committee requested and received a staff report addressing the creative ways agencies and institutions acquire assets and services.
2. State Procurement Practices - The audit was conducted at the request of the Legislative Audit and Fiscal Review Committee. The purpose of the audit was to determine agency compliance with and the assessed adequacy of significant procurement laws, policies, and procedures. At a later meeting of the committee, a report was requested and received from the Office of Management and Budget on the status of the recommendations contained in the state procurement practices performance audit. The status report indicated that progress was being made on all of the recommendations contained in the performance audit.

3. State Procurement Practices-North Dakota University System - The audit was conducted at the request of the Legislative Audit and Fiscal Review Committee. The purpose of the audit was to determine agency compliance with and the assessed adequacy of significant procurement laws, policies, and procedures. The audit focused on the University of North Dakota, North Dakota State University, Minot State University, and North Dakota State College of Science.
4. Job Service North Dakota - The audit was conducted in accordance with NDCC Section 52-02-18, which provides for a biennial performance audit of the divisions of Job Service North Dakota. The audit consisted of a review of the efficiency and effectiveness of the unemployment insurance benefits program, the efficiency and effectiveness of the reemployment services function, analyzing staff levels and workloads, and determining the adequacy of Job Service North Dakota's computer system.
5. Workers Compensation Bureau - The audit was conducted in accordance with NDCC Sections 65-02-29 and 65-02-30, which provide for a biennial performance audit of the Workers Compensation Bureau. The audit consisted of a review of the claims department, legal services and legal billing practices, internal performance measures, policyholder services division, loss prevention division, fraud division, and performance of the Workers Compensation Board.
6. State of North Dakota's Personnel Systems-Central Personnel Division - The audit was conducted at the request of the Legislative Audit and Fiscal Review Committee. The purpose of the audit was to determine if the structure of the Central Personnel Division meets the needs of the state. In addition, a limited review of state agencies was conducted to determine if state agencies have adequate personnel systems in place to provide for compliance with significant laws, rules, and regulations.
7. Status of recommendations contained in the child support enforcement program performance audit - One of the 14 recommendations was fully implemented, four were partially implemented, and nine were not implemented.
8. Status of recommendations contained in the North Dakota agricultural mediation program performance audit - Five of the nine recommendations were fully implemented, two were partially implemented, one was not implemented, and one was no longer applicable.
9. Status of recommendations contained in the Department of Public Instruction performance

audit - Nine of the 18 recommendations were fully implemented, five were partially implemented, and four were not implemented.

A copy of each of the performance audit reports is on file in the Legislative Council office.

Other Reports

The committee also received the following reports from the State Auditor's office:

1. Report on the audit process for state agencies - The report contained information on the different types of state audits and the function of the State Auditor's office as it relates to audits presented to the Legislative Audit and Fiscal Review Committee. The report also contained a list of audits performed by independent certified public accounting firms.
2. General controls audit on the Information Services Division - The purpose of the audit was to assess the adequacy of the control environment and the control procedures of the Information Services Division. In addition, the audit determined if the Information Services Division stated control procedures provide reasonable assurance that the control objectives were achieved.
3. Single Audit Report for the years ended June 30, 1996 and 1995 - The statewide single audit is the state's audit of all federal funds received by state agencies or institutions during fiscal years 1996 and 1995. The report includes a schedule of federal assistance, a report on internal control, and findings and questioned costs.
4. University of North Dakota Computer Center general controls audit - The report provides interested persons with information sufficient to understand the general controls in place within the University of North Dakota Computer Center during the time period beginning July 1, 1996, and ending October 9, 1997.
5. Statewide Accounting and Management Information System audit - The report provides interested persons with an understanding of the application controls in place within the Statewide Accounting and Management Information System during the time period beginning July 1, 1996, and ending October 9, 1997.
6. Higher Education Uniform Accounting System audit - The report provides interested persons with an understanding of the application controls in place within the Higher Education Uniform Accounting System as of April 29, 1998.
7. State Agency Audit Followup Report - The report indicated which prior audit recommendations had not been implemented within the six-month followup time period.

8. Possible future performance audits - The report presented a list of possible future performance audits.

Recommendations

Due to the small number of child support enforcement program performance audit recommendations that were either fully or partially implemented, the committee requested that the State Auditor's office perform another review of the status of the recommendations after the new computer system for the child support enforcement program is operational. The committee also requested that a report on the status of the recommendations be provided to the Legislative Audit and Fiscal Review Committee.

As a result of the performance audit on state procurement practices-information technology projects the committee requested and received a staff report on possible changes to the North Dakota Century Code relating to the acquisition of assets and services by state agencies and institutions. After reviewing the staff report and the performance audit, the committee considered and recommends House Bill No. 1046 to prohibit state agencies and institutions from entering into contracts for services to be provided to the agency or institution in the current biennium if the contract provides for the payment for the services to extend beyond the current biennium, unless an exception is specifically provided by law.

In regard to the report on possible future performance audits, the committee prioritized the following performance audits:

1. A performance audit of contracts for services entered into by state agencies and institutions of higher education. The audit could review the agency and institution management of contracts, whether or not the contracts for services were efficiently and effectively used by state agencies and institutions, and whether or not the agency or institution has a system in place to monitor performance and compliance with the contract.
2. A performance audit of the Department of Transportation. The audit could review and determine if the agency is spending its funding in an effective and efficient manner.

BEGINNING FARMER REVOLVING LOAN FUND

The committee reviewed the need to maintain the beginning farmer revolving loan fund as a separate fund within the Bank of North Dakota. The committee learned that the beginning farmer revolving loan fund was created in 1983 through the transfer of \$5 million of Bank of North Dakota profits into the beginning farmer revolving loan fund and that the revolving loan fund was to make low interest rate loans to beginning farmers. In 1991 the law was changed to provide that the biennial

appropriation for the beginning farmer revolving loan fund was to be used for interest buydowns on beginning farmer loans made by the Bank of North Dakota.

The committee received a staff report indicating that based on the December 31, 1997, audit report of the beginning farmer revolving loan fund the following assets totaling \$16,276,449 would be transferred from the beginning farmer revolving loan fund to the Bank of North Dakota if the revolving loan fund was transferred into the Bank:

Cash and cash equivalents	\$1,902,766
Loans (net of allowance for loan losses of \$308,026)	12,412,411
Prepaid interest	1,527,207
Interest receivable	434,065
Total assets	\$16,276,449

The committee found that merging the beginning farmer revolving loan fund into the Bank would eliminate the need for a separate audited financial statement for the fund. In addition, the committee found that there would be a fiscal advantage to merging the beginning farmer revolving loan fund into the Bank of North Dakota due to streamlining of administrative functions and reduced audit fees of approximately \$2,500 per year.

The committee learned that the revolving loan fund is currently used to make loans after all of the appropriated funds have been used. The committee also learned that merging the revolving loan fund into the Bank would eliminate the flexibility of providing below-market interest rate loans through the fund after the appropriated interest buydown funds are gone. The Bank could still make beginning farmer loans, but the interest rate would be at the market rate. The proposed change would also create a need for increased funding of \$921,500 to \$1,200,000 to meet the needs of the program in future bienniums.

Recommendation

The committee considered and recommends House Bill No. 1047 which provides for the transfer of the assets, liabilities, and fund equity of the beginning farmer revolving loan fund to the Bank of North Dakota on July 1, 1999. The bill also provides that the Bank is not required to provide loans of this nature if the Legislative Assembly does not provide an appropriation for beginning farmer loans.

HIGHER EDUCATION INTERNAL SERVICE FUNDS

As a result of a finding and recommendation contained in the June 30, 1996, North Dakota University System audit report the committee requested an Attorney General's opinion on the legality of the University of North Dakota's charging of indirect costs to

internal service funds. The opinion stated that it is not unlawful for the University of North Dakota to allocate indirect costs to internal service funds. As a result of the Attorney General's opinion the committee requested and received, from the Attorney General, provisions that could be added to the North Dakota Century Code in order to require the complete disclosure of all internal service funds to the Legislative Assembly and to disclose how the funds within the internal service funds are spent. The committee learned that the suggested changes would require each college and university, under the control of the Board of Higher Education, to prepare an annual financial statement on all internal service funds of the institution.

The committee learned that the North Dakota University System, in cooperation with the State Auditor's office, developed a policy regarding the charging of indirect costs to internal service funds. The committee learned that if the new policy is complied with it will resolve the internal service fund problems identified by the State Auditor's office.

Recommendation

The committee considered, but did not recommend, a bill providing for the complete disclosure of all internal service funds to the Legislative Assembly and to disclose how the funds within the internal service funds are spent. The bill would have required each college and university under the control of the Board of Higher Education to prepare an annual financial statement on all internal service funds of the institution. The committee determined that the policy developed by the University System and the State Auditor's office should be given a chance to resolve any problems before statutory changes are made.

LOCAL GAMING ENFORCEMENT GRANT DISTRIBUTION

Due to a repeated audit finding and related recommendation regarding the timing of the disbursement of local gaming enforcement grants by the Attorney General's office, the committee considered the possibility of changing the timing of the disbursement of gaming enforcement grants by the Attorney General's office. The committee determined that the grant disbursements could be based on the prior quarter's adjusted gross proceeds instead of the current quarter's adjusted gross proceeds in order to allow the Attorney General's office to make the last grant distribution of the biennium on a timely basis.

Recommendation

The committee recommends Senate Bill No. 2050 to provide for local gaming enforcement grants to be distributed based on the prior quarter's adjusted gross proceeds instead of the current quarter's adjusted gross proceeds. The committee determined that this change

would allow the Attorney General's office to make the last grant distribution of the biennium in a timely manner and avoid future audit findings and recommendations relating to the timing of the local gaming enforcement grant disbursements.

LAKE AGASSIZ REGIONAL COUNCIL

The committee requested that the State Auditor's office review the most current financial audit report of the Lake Agassiz Regional Council and interview the staff of the Lake Agassiz Regional Council regarding the council's formation of a nonprofit corporation. The committee learned that the Lake Agassiz Regional Council did not form a new nonprofit corporation but did rename its existing nonprofit corporation. The committee also learned that the majority of the Lake Agassiz Regional Council's programs had been contracted out to the nonprofit corporation. In addition the committee learned that written contracts did not exist for the program transfers between the Lake Agassiz Regional Council and the nonprofit corporation. Based on these findings the committee requested the Attorney General to determine:

1. If the Lake Agassiz Regional Council inappropriately formed a separate nonprofit corporation;
2. If the Lake Agassiz Regional Council inappropriately transferred powers and duties to a separate nonprofit corporation; and
3. If the Lake Agassiz Regional Council inappropriately transferred funds or moneys to a separate nonprofit corporation.

Based on the findings of the Attorney General's investigation the committee learned that the transfer and assignment of staff, assets, and bank accounts by the Lake Agassiz Regional Council to the Lake Agassiz Regional Development Corporation was inappropriate. The committee learned that the Attorney General forwarded copies of the investigation report to the city attorneys and the county state's attorneys of the cities and counties participating in the regional council.

Recommendation

Based on the finding that the Lake Agassiz Regional Council inappropriately transferred and assigned staff, assets, and bank accounts to the Lake Agassiz Regional Development Corporation, the Legislative Council chairman, based on the committee's recommendation, requested the Attorney General to ask the county state's attorneys, city attorneys, and county commissioners of political subdivisions affiliated with the Lake Agassiz Regional Council to take such action as may be necessary to dissolve the Lake Agassiz Regional Development Corporation and transfer its assets back to the Lake Agassiz Regional Council. In addition, the Legislative Council chairman urged state agencies to cease financial activity with the Lake Agassiz Regional Development Corporation and the Lake Agassiz Regional Council until the issue is resolved.

DEPARTMENT OF HUMAN SERVICES ACCOUNTS RECEIVABLE

North Dakota Century Code Sections 25-04-17 and 50-06.3-08 require that the Developmental Center at Westwood Park, Grafton, and the Department of Human Services present detailed reports to the Legislative Audit and Fiscal Review Committee of writeoffs of accounts receivable and the status of accounts receivable for each fiscal year.

The committee accepted detailed reports on the amounts of accounts receivable written off during the 1997-98 interim. The amounts are as follows:

	Fiscal Year 1997	Fiscal Year 1998
State Hospital	\$4,881,407.40	\$7,759,453.00
Developmental Center	180,950.99	221,066.30
Human service centers	61,750.24	85,185.02
Total	\$5,124,108.63	\$8,065,704.32

The committee requested and received a report on the aging of the department's accounts receivable, collection efforts utilized by the department on amounts to be written off, the department's agreement with Indian Health Service, the department's policy regarding the provision of services when the ability to pay does not exist, and the *White v. Califano* court case.

In addition, the committee encouraged the Department of Human Services to pursue any legal actions necessary to recover, from the federal government, all amounts written off by the department which relate to services provided to individuals eligible for reimbursement through Indian Health Service. The committee also suggested that future requests for accounts receivable writeoffs separately show all charges relating to Indian Health Service.

OTHER COMMITTEE ACTION

The committee also requested and received:

1. An Attorney General's opinion that had been requested at the committee's last meeting of the prior interim. The opinion stated that the December 1993 issuance of \$9,173,000 of nonrecourse lease revenue bonds by the University of North Dakota (UND) Aerospace Foundation and the related lease of the equipment by the University of North Dakota pursuant to the foundation's bond issue are not in violation of the constitutional debt limitation contained in Article X, Section 13 of the constitution.
2. A status report on the investments held by the North Dakota Development Fund, Inc.
3. A staff report on the payment of moving expenses for new state employees.

4. A status report on the investments held by Technology Transfer, Inc.
5. A status report on the 1997-99 biennium appropriation for foundation aid program payments.
6. A report on community development block grant loan writeoffs, the status of community development block grant loans, and an aged loan listing by region.
7. A staff report on eligibility requirements for participation in the state bonding fund, state fire and tornado fund, risk management fund, and public employees retirement system.
8. A staff report on the revenues deposited into the Governor's special fund.
9. A staff report on the Minnesota statute creating a centralized debt collection unit.

The committee also requested that the UND Aerospace Foundation provide committee members with a list of assets, a list of 1099s and W-2s issued during 1997, and information on all 1997 activities of the UND Aerospace Foundation which do not relate to aerospace.

The committee learned that in the past, audit reports had not been considered public information until after the reports were presented to this committee. The committee learned that due to changes made to the open records law by the 1997 Legislative Assembly, the State Auditor's office requested the Attorney General's office to determine when audit reports were required to be released to the public. The committee learned that based on the Attorney General's office, audit reports become public information after the report is through the quality control process of the State Auditor's office and no significant changes are anticipated.

Pursuant to NDCC Section 10-32-156, the committee was to receive the annual audit report from any limited liability company that produces agricultural ethanol alcohol or methanol in this state and which receives a production subsidy from the state. Pursuant to NDCC Section 26.1-50-05, the committee was to receive the annual audited financial statement and report from the North Dakota low-risk incentive fund. Any insurer or group of insurers may establish a corporation or limited liability company to own and operate the North Dakota low-risk incentive fund. The fund may be used for making loans to low-risk businesses for primary sector business projects in the state. Pursuant to NDCC Section 54-44.2-12, the committee was to receive a report from the Information Services Division on state entity noncompliance with statewide information technology policies and standards.

During the interim, the committee did not receive any reports from limited liability companies that produce agricultural ethanol alcohol or methanol, the North Dakota low-risk incentive fund, or the Information Services Division on state entity noncompliance with statewide information technology policies and standards.

Recommendations

The committee determined that it would be desirable to have a centralized debt collection agency within the state instead of having each agency do its own debt collections. The committee recommends House Bill No. 1048 to create a centralized debt collection unit within the State Treasurer's office. The centralized debt collection unit would be available to state agencies and institutions for the provision of debt collection services.

The committee recommends House Bill No. 1049 to provide that state agency and institution financial audit reports, financial-related audit reports, and performance audit reports prepared by the State Auditor's office or a private firm under contract with the State Auditor's office are confidential until the reports are presented to the Legislative Audit and Fiscal Review Committee.

LEGISLATIVE MANAGEMENT COMMITTEE

The Legislative Council delegated to the Legislative Management Committee the Council's authority under North Dakota Century Code (NDCC) Section 54-35-11 to make arrangements for the 1999 legislative session. Legislative rules are also reviewed and updated under this authority. The Legislative Council designated the committee as the Legislative Ethics Committee under NDCC Section 54-35-02.8, with the responsibility to consider or prepare a legislative code of ethics. The Legislative Council delegated to the committee: (1) the duty of the Legislative Council under NDCC Section 54-03-26 to determine the computer usage fee for legislators; (2) the power and duty of the Legislative Council under NDCC Section 54-35-02 to determine access to legislative information services and impose fees for providing such services and copies of legislative documents, and to control the use of the legislative chambers and permanent displays in Memorial Hall; (3) the authority under NDCC Section 54-06-26 to establish guidelines for use of state telephones for essential personal purposes; (4) the authority of the Legislative Council under NDCC Section 46-02-04 to determine the contents of contracts for printing of legislative bills, resolutions, and journals; and (5) the responsibility for administering 1989 Session Laws, Chapter 25 (appropriations for improvements to the legislative wing of the Capitol grounds). The Legislative Council assigned to the committee the study directed by Senate Concurrent Resolution No. 4017 (legislative employee compensation).

Committee members were Representatives John Dorso (Chairman), Merle Boucher, Tom D. Freier (until his resignation from the Legislative Assembly on April 6, 1998), Pam Guleson, William E. Kretschmar, and Mike Timm (who was appointed to replace Representative Freier) and Senators William G. Goetz (until his resignation from the Legislative Assembly on July 10, 1997), Tony Grindberg (who was appointed to replace Senator Goetz), Aaron Krauter, Tim Mathern, Gary J. Nelson, and David E. Nething.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. The committee distributed a 1997 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. Portions of this report refer to the results of the survey.

Floor Procedures - Reading Titles of Bills

The committee discussed the practice of reading titles of bills in each house. The Constitution of North Dakota requires every bill to be read on two separate natural days, but allows the readings to be by title only unless a reading at length is demanded by one-fifth of the members present. Before 1984, when this provision was enacted, the constitution required every bill to be read—the first reading could be by title, but the second reading had to be at length. Over the years, the practice had been to read the titles of the bills, and have the journals reflect that the bills were read so as to avoid a challenge to the validity of a law because it was not "read" during passage. This practice was based on adoption of the journal entry rule by the North Dakota Supreme Court in 1919.

The practice of reading titles varies in each house. In the Senate, the Secretary of the Senate summarizes the title on second reading. In the House, the Chief Clerk of the House reads the complete title. In a number of instances, however, by motion the House waives the reading of the title and records this waiver in the journal.

The committee recommends that the House adopt the practice followed in the Senate—recording in the journal that the title was read but summarizing the title rather than reading the code numbers and all the verbiage in the title. This is to avoid the possibility of a successful argument that a bill is ineffective because its title was never "read" (in its entirety) because the reading of the title was waived as indicated by the journals.

Journal Contents - Engrossing and Enrolling Reports

Over the years the Legislative Management Committee has reviewed the contents of the journals in an effort to reduce the size of the journals and improve their readability. Substantial progress has been made in reducing the size of the journal through eliminating items of little historical value, consolidating reports and language, and reformatting items.

The committee reviewed the practice of including in the House journal "House Engrossing Reports" and "House Enrolling Reports" that list bills and resolutions that have been engrossed or enrolled. The Senate journal has not included these types of reports since the Senate and House Committees on Enrolled and Engrossed Bills were abolished in 1986. Although Section 13 of Article IV of the Constitution of North Dakota provides that each house is to keep a journal of its proceedings, that section only requires the journal to identify the fact that the presiding officer has signed a bill that has passed or a resolution that has been adopted by the Legislative Assembly. With respect to legislative rules, Senate and House Rules 335 provide that all

Senate or House bills, as appropriate, are deemed properly engrossed before final passage.

The committee recommends that engrossing reports no longer be included in the House journal because House Rule 335 provides that all House bills are deemed properly engrossed before final passage.

The committee recommends that enrolling reports no longer be included in the House journal because House Rule 352 provides that all House bills and resolutions that have passed both houses must be enrolled and presented to the presiding officer for signature and the journal identifies when the presiding officer signed bills and resolutions.

Journal Contents - Delivery of Bills to the Governor

The committee reviewed the practice followed in some instances of recording the hour and minute bills are delivered to the Governor. Section 9 of Article V of the Constitution of North Dakota requires the Governor to return a vetoed bill within three days, Sundays excepted, when the Legislative Assembly is in session. In 1989, Joint Rule 209 was adopted to clarify the computation of the three-day time period for the Governor to return vetoed bills. The rule provides that the Governor has three calendar days to return a vetoed bill. As a result of Joint Rule 209, only the day of presentation is relevant because the Governor has three "calendar" days rather than 72 hours.

The committee recommends that the journals no longer refer to the hour and minute when a bill is delivered to the Governor. This is intended to eliminate a possible argument that the Legislative Assembly recognizes a 72-hour rule rather than a calendar day rule in determining the length of time for a valid veto during the session.

Journal Contents - List of Lobbyists

The committee reviewed the requirement in Senate and House Rules 203(1) that a list of registered lobbyists be printed in the Senate and House journals on the 35th legislative day. In recent sessions, the Secretary of State has provided lists of registered lobbyists on a daily basis to each house. As a result of discussions with personnel from the office of the Secretary of State, the Secretary of State agreed to include an up-to-date list of registered lobbyists on that office's web page throughout the legislative session, and the Legislative Council would maintain on the legislative branch web page a link to the lobbyist information.

The committee recommends amendment of Senate and House Rules 203(1) to provide that a list of currently registered lobbyists be printed in the journals on the adjournment of the legislative session rather than on the 35th legislative day. The recommended language allows the list to be printed on the last legislative day or as an addendum to the journals after the Legislative Assembly has adjourned. This change recognizes that lists of

registered lobbyists are available to legislators and others throughout the session, and for historical purposes, the journals would include a list of all lobbyists registered during that session, rather than just as of the 35th legislative day.

Orders of Business

The committee compared the practice of considering items on the consent calendar at the end of the day to the orders of business under Senate and House Rules 301. These rules require consideration of bills and resolutions on the consent calendar under the 10th order of business, before the second reading of bills and resolutions in the house of origin. In addition, Joint Rule 207(5) requires the consent calendar to be considered immediately before consideration of bills and resolutions on second reading.

The committee recommends amendment of Senate and House Rules 301 to move consideration of the consent calendar from the 10th to the 15th order of business and consideration of unfinished business from the 15th to the 10th order of business. This would move consideration of the consent calendar to an order of business after second reading of bills and resolutions from the other house, without changing the customary orders of business involving first and second reading of bills and resolutions. Unfinished business is used very little, and its movement to the 10th order would not disrupt traditional orders. In addition, the committee recommends repeal of Joint Rule 207(5) because the orders of business adequately cover the time for consideration of the consent calendar.

Number of Permanent Journals

The committee reviewed the number of permanent journals prepared after the session. Senate and House Rules 204 provide for 30 sets of journals to be bound in hard covers for distribution as provided in the rules. The committee surveyed the recipients of the bound journals and inquired as to the necessity of continuing to prepare these sets. In 1997 the approximate cost of setting aside and binding the permanent journals and the permanent journal indexes was \$8,600.

The committee recommends amendment of Senate and House Rules 204 to provide for 27 rather than 30 sets of the permanent journals. The change would eliminate the set to the Lieutenant Governor and two sets to the Legislative Council, as suggested by those recipients.

Transmittal of Measure to Other House

The committee reviewed the provisions providing for immediate consideration or automatic transmittal of measures. Senate and House Rules 338 provide for immediate consideration of bills and resolutions on the calendar after the 55th legislative day. Senate and House Rules 346 provide for transmittal of a bill or

resolution to the other house at the end of the session after the 49th legislative day.

The committee recommends amendment of Senate and House Rules 346 to provide that after the 58th legislative day, the Secretary of the Senate or the Chief Clerk of the House is to transmit the bill or resolution to the other house immediately after the second reading of that bill or resolution unless the majority or minority leader has given notice of intention to move the reconsideration of that bill or resolution. This is in addition to the current provision that after the 49th legislative day the bill or resolution is to be transmitted to the other house immediately upon adjournment of that day's session unless action on the measure is pending due to a motion to reconsider or unless the majority or minority leader has given notice of intention to move reconsideration of that measure. This additional provision for automatic transmittal is intended to eliminate the need for a motion for immediate transmittal after the 58th legislative day.

Motion to Reconsider a Question

The committee considered an argument raised during the 1997 session that the requirement for a two-thirds vote of the members-elect for reconsideration after the end of the "next" legislative day under Senate and House Rules 347 would not apply until a day after a motion to reconsider is not made (thus, allowing a motion to be made every day under a majority vote requirement). The committee determined that this interpretation is not the traditional interpretation and would negate the usual understanding that reference to "next" legislative day means the day after the vote on the measure rather than the day after the vote on a motion for reconsideration.

The committee recommends amendment of Senate and House Rules 347 to provide that the two-thirds vote requirement for reconsideration after the end of the next legislative day refers to the next day following the action on the measure.

Receipt of Vetoed Bills

The committee discussed the procedure to follow on receipt of vetoed bills. Section 9 of Article V of the Constitution of North Dakota provides that the Governor is to return "for reconsideration" any vetoed item or bill to the house in which it originated and that house is to immediately enter the Governor's objections upon its journal. Section 458 of *Mason's Manual of Legislative Procedure* provides that when an executive returns a bill to a legislative body with objections, the further consideration of the measure is not itself a reconsideration in the parliamentary sense. During the 1997 session two procedures were used—a motion to reconsider the vetoed measure and place it on the calendar under the 11th order of business, and placement on the 11th order after receipt of the communication from the Governor (without a motion to reconsider).

The committee recommends creation of Senate and House Rules 354.1 to provide that upon receipt of a vetoed bill and objections, the Secretary of the Senate or Chief Clerk of the House is to place the bill on the 11th order of business on the calendar. The purpose of the proposed rule is to clearly indicate that a motion for reconsideration is not necessary or appropriate, e.g., what if a motion to reconsider did not pass even though the constitution requires return "for reconsideration."

Legislative Guests

The committee reviewed the rules allowing guests on the floor. Senate Rule 205 limits a member to one guest on the floor at a time, during the time guests are restricted on the floor. House Rules 205 and 359 limit a member to one guest per day on the floor during the time guests are restricted on the floor and requires guests to be seated with the member. Under Senate and House Rules 205, both houses restrict the guests on the floor from 30 minutes before the house convenes through the session for that day. During the 1997 session, the House amended House Rule 205 to provide that the sergeant-at-arms, in addition to clearing the floor 30 minutes before the House convenes, is to clear the floor from 12:00 noon to 1:00 p.m. on any legislative day.

The committee recommends amendment of Senate and House Rules 205(3) to require the sergeants-at-arms to clear the floor 60 minutes before the respective house convenes on any legislative day. This increase provides an additional time members can work at their desks without interruption.

Committee members expressed concern that House members are requesting guest passes from other House members so that entire school groups can be seated on the floor. One method the committee considered to limit the disruption caused by moving guests on and off the floor was to restrict the area in which guests can be seated. After viewing the proposed rules amendment, the committee determined that guests should be seated with their legislative sponsors if guests are to be permitted on the floor. The idea for reserving space continued but under the rationale that visiting dignitaries could be seated in those areas. In addition, a seat close to the Speaker's podium was viewed as appropriate for allowing the Speaker to relinquish the chair and easily return to a seat on the floor to speak on a subject.

The committee recommends amendment of House Rule 361 to reserve the first row of seats in the middle two sections of the House floor and to reserve for the Speaker of the House the seat the Speaker reserved during the 1997 session.

Delayed Bill Sponsors

The committee reviewed Senate Rule 403, which refers to the name of the original sponsor of a measure approved for introduction by the Delayed Bills Committee. The House deleted reference to "original" sponsor in 1994, to avoid a question of whether

sponsors could be changed after approval of the Delayed Bills Committee or otherwise. The Senate also approved deleting this word, but it was retained through a clerical error in 1995 and 1997.

The committee recommends amendment of Senate Rule 403 to delete reference to the "original" sponsor's name and thus reaffirm the change first approved in 1994.

Bill Introduction Deadlines

Traditionally, bill introduction deadlines fall on the 5th, 10th, and 15th legislative days—Mondays—when the Legislative Assembly convenes on Tuesday. The 55th Legislative Assembly convened on Monday, January 6, 1997, rather than the traditional Tuesday. For the 1997 session, the bill introduction deadlines were changed to the 6th, 11th, and 16th legislative days so the various bill introduction deadlines would continue to fall on Mondays.

The committee recommends amendment of Senate and House Rules 402 to change the bill introduction deadlines from the 6th, 11th, and 16th legislative days to the 5th, 10th, and 15th legislative days. The 56th Legislative Assembly will convene on Tuesday, January 5, 1999, and this recommendation is made to ensure that each bill introduction deadline will continue to fall on Monday.

Divided Committee Reports

The committee discussed the use of divided committee reports. Senate and House Rules 602 provide that in case all the members of any committee cannot agree upon any report, the majority and minority may each make a report and any member dissenting from both the majority and minority may also present a report. Committee members discussed the effect of allowing one member to make a report, regardless of the practicality of the success of that report on the floor of the chamber. The committee determined that more than one member should be required for a report so as to reduce the possibility of frivolous reports.

The committee recommends amendment of Senate and House Rules 602 and House Rule 601(1) to provide that in case all the members of any committee cannot agree upon any report, the majority and minority may each make a report, and the minority report must be signed by at least two members of the Senate committee or three members of the Senate Appropriations Committee, or three members of the House committee or four members of the House Appropriations Committee, who voted against the majority report.

Resolutions Crossover Day

Joint Rule 203 provides a bill that has passed one house may not be sent to the other house for concurrence after the 34th legislative day, and a resolution requesting a Legislative Council study may not be sent to the other house for concurrence after the

40th legislative day. The committee discussed whether there should be a deadline for sending any type of resolution to the other house for concurrence. No reason was advanced to continue to exclude certain resolutions from a crossover deadline. A reason for establishing a deadline is to reduce the volume of proposals scheduled on the calendar late in the session.

The committee recommends amendment of Joint Rule 203 to provide that a resolution that has passed one house may not be sent to the other house for concurrence after the 40th legislative day, except a resolution approved for introduction after the deadline for introduction of that type of resolution. This deadline would depend on the type of resolution, e.g., a general resolution may not be introduced after the 18th legislative day and a resolution requesting a Legislative Council study or proposing amendment of the United States Constitution may not be introduced after the 31st legislative day.

Executive Agency and Supreme Court Bills

The committee discussed the effect of agencies requesting legislators to be listed as sponsors of agency bills. The committee reviewed statistics on the number of bills introduced beginning with the 1993 session (before the rules change) through the 1997 session. There has been a reduction of 17 percent in the number of bills introduced from 1993 through 1997, and the reduction in the number of agency bills introduced has been 61 percent. Of 193 agency bills introduced in 1995, 33 were sponsored by legislators, and of the 121 agency bills introduced in 1997, 18 were sponsored by legislators. Only two percent of all bills introduced were agency bills with individual sponsorship.

Committee members expressed concern, however, over another practice the statistics revealed. The number of bills prefiled for early introduction has gone down by 22 percent for the House and 43 percent for the Senate. Thus, the decrease in the number of prefiled bills is disproportionately greater than the general reduction in the total number of bills introduced. Of concern, however, is the fact that although the number of prefiled bills has gone down, the number of House bills introduced by the first introduction deadline has increased by 23 percent and the number of Senate bills introduced by the first introduction deadline has decreased by only 11 percent. Agencies appear to present their proposals to individual legislators for individual sponsorship rather than prefile those proposals for introduction, e.g., an agency requests a legislator to sponsor a bill and provides that bill to the legislator, and that legislator introduces that bill usually during the time period in which legislators may sponsor an unlimited number of bills (before the 6th legislative day in the House and the 11th legislative day in the Senate).

This practice results in agencies determining the house of introduction by contacting legislators from the

preferred house and could lead to an overbalance of bills in one house because agencies are not responsible for balancing the workload of both houses. Also, fewer bills are available for being scheduled for hearing during the first two weeks of the session which results in more bills having to be scheduled for hearing during the remaining time before crossover. Committee members also discussed the purposes of the agency introduction privilege—spacing legislative workload and reducing the need for legislators to miss committee hearings to testify before other committees with respect to agency proposals. Also discussed was the effect of the Governor's 1994 directive to executive agencies to obtain individual sponsors of their proposals.

In response to these statistics and the committee's concerns, a letter was sent to executive branch agencies and the Supreme Court urging the agencies to use the agency introduction privilege rather than asking individual legislators to introduce agency bills after the prefiling deadline. A letter was also sent to the Governor pointing out the statistics showing that agencies going to individual legislators to introduce bills has affected the ability of the Legislative Assembly to schedule bills early in the session and requesting the Governor to encourage agencies to use the agency introduction privilege rather than burdening legislators with the responsibility of appearing before committees solely to defer to agency representatives.

Printing of Measures

The committee reviewed Joint Rule 603, which provides for 500 copies of each bill and 400 copies of each resolution to be printed. The employees in the bill and journal room during the 1997 session suggested that the number of printed resolutions be increased to equal the number of printed bills because of the demand for each.

The committee recommends amendment of Joint Rule 603 to provide for 500, rather than 400, copies of resolutions to be printed. This should reduce the need for special orders to print resolutions on a regular basis.

Use of Committee Rooms

The committee was informed of requests by legislators to reserve legislative committee rooms for scheduled use by private groups. Joint Rule 803 provides that during a legislative session committee rooms may be used only for functions and activities of the legislative branch, but a state agency may be granted permission by the Secretary of the Senate or the Chief Clerk of the House to use a room at times and under conditions not interfering with the use of the room by the legislative branch. With respect to use during the interim, NDCC Section 48-08-04 applies and provides that committee rooms may not be used without authorization of the Legislative Council, or its designee.

The committee discussed the difficulty of bringing every request to the Legislative Council or applying

unwritten policies. Under current practice, the Legislative Council retains jurisdiction over the Harvest Room and the Roughrider Room and responsibility for use of the other committee rooms is transferred to the Office of Management and Budget (Facility Management Division). A written policy would provide notice regarding permitted uses and would provide guidelines for the Legislative Council staff and the Facility Management Division in managing use of committee rooms.

The committee recommends a policy governing approval of use of committee rooms during the interim similar to that governing use of the chambers. The first priority is for the legislative branch. A state agency may use committee rooms for official purposes of the agency. Any other group or organization may use committee rooms as necessary for educational and informational meetings that have a reasonable relationship to the legislative process only if the group or organization arranges for security, janitorial, and other services with the Office of Management and Budget and either is sponsored by a state agency or signs a facilities use agreement as required under the guidelines for use of legislative chambers and displays in Memorial Hall. Committee rooms may not be provided for use by a group or organization if the planned function would interfere with the business or activities of the legislative branch, if the purpose of the meeting is to advocate the introduction of legislation or to encourage or oppose the enactment of legislation or any decision on a matter before the Legislative Assembly or Legislative Council or any legislative committee, or if there are other suitable facilities on the Capitol grounds or in a privately operated facility that may or may not charge a fee for that use. The Legislative Council staff may arrange with the Office of Management and Budget to manage the scheduling of committee rooms. Any use contrary to the policy is subject to prior approval from the Legislative Management Committee.

Legislative Rules Book

The committee approved a proposal to reprint the Legislative Rules Book and incorporate rules changes approved at the organizational session, with appropriate grammatical, style, obsolete reference, and numbering changes to integrate new rules; reorder and renumber rules as appropriate; and reflect current procedures.

Other Rules Proposals Considered

The committee reviewed several other proposed rules amendments. These included (1) amendment of Senate and House Rules 347 to require the title of a bill or resolution to be summarized when a motion to reconsider is made with respect to a bill or resolution (to give notice to members and allow time to search voting records and to respond); (2) amendment of Senate and House Rules 329 to provide for automatic referral to the Appropriations Committee of a bill or resolution that

should have been referred under the rules but was approved on second reading before that referral (which would have eliminated the current flexibility of messaging a passed measure to the other house without rereferral).

LEGISLATIVE INFORMATION SERVICES

Personal Computer Usage Fee

During the 1995-96 interim, the Legislative Management Committee developed a policy on use of personal computers by legislators. The policy describes statutory restrictions on use of personal computers, governs use of privately owned personal computers to access legislative information systems, and governs use of state-owned personal computers. After the 1997 session, the Legislative Council delegated to the committee its authority under NDCC Section 54-03-26 to establish a computer usage fee, payment of which allows a member of the Legislative Assembly who is assigned a computer to use that computer and its associated equipment and software for any use that is not in violation of NDCC Section 16.1-10-02.

The committee reviewed the policy adopted during the 1995-96 interim to determine how that policy could be revised to include the personal use option allowed under Section 54-03-26. The committee determined that eight conditions should govern a legislator's use of a computer under the personal use option: (1) not using the computer for any political purpose prohibited by Section 16.1-10-02; (2) recognizing that sufficient capacity needs to remain on the computer for software necessary to access North Dakota's legislative information system; (3) recognizing that legislative software cannot be removed and capacity must remain for upgrades to that software; (4) recognizing that any personal use not require additional memory or disk space; (5) recognizing that the legislator is responsible for the cost of installing and maintaining nonlegislative software; (6) recognizing that the Legislative Council staff is not responsible for installing or supporting nonlegislative software; (7) recognizing that the legislator may be responsible for paying costs in reinstalling legislative software that does not function properly as the result of nonlegislative software; and (8) recognizing that the Legislative Council staff may remove any nonlegislative software in order to properly install or operate legislative software.

The committee included these eight conditions as a personal use option under the policy. The committee set a monthly fee of \$10 as the fee for the personal use option. During the interim, 61 legislators selected the personal use option.

Notebook Computers for Legislators

After the 1995 legislative session, 60 IBM ThinkPad 755CD notebook-style personal computers were purchased and during the 1995-96 interim 15 IBM ThinkPad 760ED notebook-style personal computers were leased for distribution to legislators. This number

was viewed as the upper limit for which support and assistance could be given through the 1997 session. ThinkPads with built-in CD-ROM drives were chosen for legislators due to their features, past experience with the reliability of IBM hardware, and the ability to obtain local support and maintenance on short notice (due to the special needs of legislators during a session).

After the 1997 session, the committee reviewed the feasibility of distributing personal computers to all legislators. Because approximately 50 percent of the legislators had experience with personal computers, the committee determined support and assistance could now be directed to providing computers to legislators who did not have computers during the 1997 session. Early distribution of computers was viewed as a means to allow legislators to be trained on the use of the legislative software sufficiently in advance of the 1999 session to be proficient in using the computers.

The committee reviewed information on IBM, Compaq, Dell, Gateway, Micron, and Toshiba notebook-style computers that were capable of operating current legislative systems and software as well as the software with contemplated changes for the next four years. The committee also viewed demonstrations of notebook-style computers. The committee selected the Gateway Solo 9100, which has a Pentium 166 processor, a 13.3-inch active matrix display, a resolution of 1024 by 768, a modular hard drive, and a modular combination floppy and CD-ROM drive inside the chassis. Sixty Gateway computers were purchased for distribution to legislators.

In June 1998, the committee reviewed a schedule for use and acquisition of notebook-style computers. The committee approved the replacement of three IBM ThinkPad 360C computers, replacement of 60 IBM ThinkPad 755CD computers, and reassignment of 15 IBM ThinkPad 760ED computers from legislators to the desk forces and legislative interns. The committee approved the acquisition of 87 notebook-style computers which would allow each legislator to receive a notebook-style computer. The decision to replace the IBM ThinkPads was made as part of the Legislative Assembly's information technology strategic plan to provide every legislator with a computer that would be able to take full advantage of the 1997-98 enhancements to the Legislator's Automated Work Station (LAWS) system, e.g., split-screen display of amendments and text of bills, and planned software upgrades for the next four years. In addition, newer computers would allow more efficiencies due to Pentium processor speed and greater disk capacity.

The committee reviewed information on notebook-style computers with at least the features of the Gateway Solo 9100. The committee viewed demonstrations of computers manufactured by Gateway, Compaq, Dell, Fujitsu, and IBM. The committee selected the Gateway Solo 2500, which has a Pentium II 233 processor, a 13.3-inch display, a resolution of 1024 by

768, and a separate but integrated combination floppy and CD-ROM drive inside the chassis. The Gateway Solo 2500 can be ordered with either a touchpad pointing device or a pointing stick pointing device and legislators were given the option to select the touchpad pointing device before the Legislative Council staff placed the order for the manufacture of the computers.

The committee considered a number of options for the disposition of the 63 IBM ThinkPad 360C and 755CD computers, which would have all software deleted other than the Windows 95 operating system because of licensing requirements of the software. Under NDCC Section 54-44-04.6, a state agency must transfer surplus property to the Office of Management and Budget for transfer at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property. Any property valued at more than \$3,000 not transferred to state agencies, political subdivisions, and nonprofit organizations must be sold under sealed bids or at public auction, or if the property is valued at less than \$3,000, through negotiation at fair value.

The first question was whether to use the computers as a trade-in or credit for acquiring the replacement computers. The value placed on the ThinkPad computers by prospective vendors ranged from \$100 to \$150 for the 360C computers and \$200 to \$250 for the 755CD computers. Under these proposals, the computers would have been "cleaned up" for resale under warranty protection. Because of the limited value of the trade-in or credit against the purchase price of the replacement computers, the committee decided not to use the IBM ThinkPad computers for any trade-in or credit value.

Committee members were interested in providing an opportunity for legislators to acquire the computers for continued use in improving their technical skills. The committee surveyed all legislators in an attempt to determine the level of interest in acquiring the IBM ThinkPad computers. The survey question explained that all software would be deleted from the computers other than the Windows 95 operating system, some computers required service, no warranty protection or service would be provided, and the approximate price would be \$350, which was higher than the value determined by the Office of Management and Budget. Survey results indicated 65 legislators were interested in acquiring the computers.

A number of state agencies requested priority consideration if the computers were transferred as surplus property. Under surplus property disposal procedures, a disposing agency may note any interest by another agency for the items being transferred and may establish a fee for the transferred property.

The committee determined that the computers should be transferred to the Office of Management and Budget for disposal in accordance with the surplus property law, due to concerns about the condition of the computers.

Computer Use During Interim

One reason notebook-style computers were selected for legislators is the ability to use those computers away from the Capitol. Legislators are provided Internet access and e-mail capability through use of a 1-800 number to the Legislative Council's client server.

Legislators with state-provided computers receive e-mail notice of committee meetings and a postal meeting reminder notice, and meeting notices, agendas, and minutes are available through the Legislative Council's server and legislators can replicate them for viewing off-line or view them directly from the legislative branch web page.

The committee became concerned when legislators expressed difficulty in using the dial-in network service to connect to the Legislative Council server. The components necessary for completing a successful dial-up connection are the modem and communications software, the wiring at the location where the dial-up is originating, the circuit from the dial-up location to a central office, transfer of the call from the telephone company to the 1-800 service, delivery of that call to the Information Services Division's equipment in the Capitol, wiring in the Capitol and delivery to the server, and the application running the server. After extensive testing by the Information Services Division, AT&T, and U S West, it appeared points of failure were generally the circuit from the dial-up location to the central office (local lines), the inside wiring at the caller's location, or the computer's modem. Local lines are voice grade and U S West guarantees only a 9.6 modem speed over a voice grade line. All entities involved suggested that if a legislator has trouble maintaining a connection to the server, the legislator inform the Legislative Council staff for testing of the components involved.

As the result of requests from a number of legislators with state-provided computers, the committee surveyed legislators' use of e-mail. The survey results indicated that 5 of 27 senators and 15 of 63 representatives were not using the e-mail system effectively. To aid those legislators who require additional time to be comfortable with e-mail notice and transmittal of materials, the committee authorized the Legislative Council staff to offer each legislator the option this interim of also receiving postal delivery of notices, postal delivery of minutes, or both, in addition to the e-mail delivery.

A few legislators requested use of private e-mail addresses for legislative purposes so they could use their regular business or private computers rather than state-provided computers. The committee determined that private e-mail addresses should not be added as forwarding addresses; otherwise, a current list of service providers would need to be maintained, action would have to be taken whenever legislators changed their Internet service providers, and legislators would not gain experience with using the state-provided computers to work with legislative computer systems.

WinPopUp

WinPopUp was installed on legislators' computers during the 1997 session as a "quickie" messaging system between legislators. This system, however, had an erratic effect on the LAWS system, i.e., it has locked up the system, and a number of legislators complained about messages popping up while they were working on other things. The committee determined that WinPopUp should be removed from computers when those computers are serviced or distributed or when software is upgraded.

Legislative Assembly Computers

In June 1998, the committee reviewed a schedule for use and acquisition of computers and printers for legislative session employees. The committee approved the reassignment of 20 desktop computers from leadership offices and the secretarial service area to committee clerks, retention of 13 mainframe terminals for use in the telephone room, replacement of 41 mainframe terminals used by the desk forces and committee clerks with personal computers, reassignment of 20 local printers in the leadership offices and secretarial service area to the Legislative Council and replacement with newer local printers, replacement of five mainframe printers used in committee clerk and Appropriations Committee areas with network/mainframe printers, and reassignment of six network/mainframe printers from the desk forces and page rooms to committee clerk and Appropriations Committee areas. To complete this schedule, the committee approved the acquisition of 6 network/mainframe printers for the desk forces and the page rooms, 20 local printers for the leadership offices and secretarial service area, and 20 desktop computers for the leadership offices and secretarial service area. The effects of the plan are to replace mainframe terminals with personal computers in the committee clerk area and provide the most current printer technology and desktop computer capability in the leadership offices and the secretarial service area.

LAWS System

During the 1987-88 interim, the Legislative Management Committee authorized four legislators in each house to use computer terminals in place of bill racks. The legislative applications available to those legislators were designated the LAWS system. The system contained four basic components—bill status, committee hearings, daily calendars, and personal services (which included telephone messages received by the telephone attendants).

The LAWS system has been enhanced and been made available to more legislators over the years. Enhancements include display of the current text of measures being considered on the calendar through use of the voting system; use of e-mail to send messages to other legislators with workstations; and storage of telephone messages in caller sequence. During the

1991 session, 8 members of the Senate and 16 members of the House had access to the system. During the 1993 session, 17 members of the Senate and 33 members of the House had access.

During the 1993-94 interim, the committee approved a LAWS personal computer pilot project under which one member from each caucus received a notebook-style personal computer for use during the 1995 session and the 1995-96 interim. Fifty other legislators used terminals to access the LAWS system, with 17 terminals on the Senate floor and 33 terminals on the House floor.

After the 1995 session, 75 notebook-style personal computers were acquired for use by legislators, thus expanding the LAWS system to 75 legislators during the 1997 session—25 in the Senate and 50 in the House. During the 1995-96 interim, the committee approved enhancement of the LAWS system by installing a graphical user interface, which allows use of the mainframe system through features available on personal computers, e.g., icons, pull-down menus, and radio buttons, and software that allows display of full text of statements of purpose of amendments and use of proportional spacing in bills, journals, and other legislative documents.

The committee reviewed this controlled growth in the system and in the access to the system by legislators. Of interest was the request by a number of legislators that the system allow the display of amendments along with the text of each bill being amended. This could be done with a split-screen feature, but would be practical only with screens having a diagonal size of at least 13 inches and a display resolution of 1024 by 768, which would require replacing some of the notebook-style computers used by legislators in order for those legislators to take advantage of the enhancement. The committee approved enhancing the LAWS system to provide split-screen capability to allow viewing of the text of amendments next to bills.

Legislative Branch World Wide Web Site

The Internet is a worldwide network of computer networks that exchange information. Many state legislatures provide information on their members, committees, and legislative proposals through the World Wide Web, which is a graphical interface to the Internet. Some states provide information through gopher connections, which provide only text, not graphics. During the 1995-96 interim, the Legislative Management Committee authorized development of a North Dakota Legislative Branch World Wide Web site. The address of the home page is <http://www.state.nd.us/lr/>.

As initially developed, the North Dakota Legislative Branch home page contained biographies and photographs of legislators, standing and interim committee membership, notices of interim committee meetings, and information on Legislative Council studies, legislative deadlines, how to contact a legislator, how a bill becomes a law, and how to testify before a legislative

committee. During the 1997 session, bill status information was available through this site upon payment of a \$400 subscription fee.

After the 1997 session, the Legislative Branch home page was expanded to include the 1997 Session Laws and 1997 bill status information that could be readily made available through the web page. During the interim, the information has been further enhanced to include interim committee meeting agendas, minutes, memorandums, and bill drafts; the text of the North Dakota Century Code and the Constitution of North Dakota; information on subscription services; and Internet links to other legislative entities. During the 1999 session, 1999 bill status information will be available without charge, including actions, text of all versions of bills and resolutions, text of the daily journals, and committee hearing schedules. The committee determined that any additional information to users outside the legislative branch would be provided under contract with the North Dakota University System, which is described under **On-Line Bill Status System Access**.

Legislative Information CD-ROM

The committee reviewed the feasibility of providing access to the 1997 bill status information after the system was taken down after June 30, 1997. Access to the on-line system has always been for a fee; the subscription fee of \$400 during the 1997 session was for access for six months only. If access were continued after June 20, there would be a question of whether a subscriber would have to pay the monthly access charge and a per second CPU charge otherwise imposed on entities accessing the mainframe system.

As a method of continuing access to bill status information, the committee reviewed a proposal for providing bill status information, full text of all versions of House and Senate bills and resolutions, full text of daily journals, and the Session Laws on CD-ROM.

The committee authorized the manufacture for 400 North Dakota legislative information system CD-ROMs for distribution free to legislators, Legislative Council staff use, and subscribers to the on-line bill status information system, and for sale to others at a price of \$10 each. As finally pressed, the CD-ROM also contains information from the Legislative Branch web page, e.g., information on legislators, legislative committees, Legislative Council studies, and the legislative process.

On-Line Bill Status System Access

The bill status system began in 1969 as a Legislative Council computerized in-house report that provided 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 on the status of bills and resolutions for use by legislative personnel and outside users. Although most outside users are state agencies,

a number of other entities have gained access through arrangements with the Legislative Council and the Information Services Division. In 1997, 62 entities paid a \$400 subscription fee and obtained access to this system through the Legislative Branch web page.

The committee reviewed the policy of making access to the on-line bill status system through the Internet on a subscription basis. A review of the web sites of 49 state legislatures revealed that 45 states provide some type of information with respect to bill text or status. The information ranged from a listing of prefiled bills, to the text of bills, to a summary of each bill and its current status. Four states offered information on a subscription basis in addition to the information available without charge, e.g., a legislative tracking service or a "real-time" subscription service.

The committee reviewed the feasibility of a two-part bill status service—a no-charge service available on the Legislative Branch web page which is updated daily, and a subscription service providing a real-time information service and a tracking service. The real-time information would be taken from the same system used to provide real-time information to legislators. The tracking service would be the service North Dakota State University provides to subscribers who identify specific measures (and information is provided for those measures rather than for all measures). That system was developed by University System personnel in cooperation with the Information Services Division and the Legislative Council staff.

The committee determined that contracting with a third party to provide bill status information to users outside the legislative branch would allow the Legislative Council staff to focus on developing legislative information systems and providing service to legislators rather than handling subscription services and dealing with outside users. Also, providing information on the Legislative Branch web page without charge would promote public access to legislative information.

The committee accepted a proposal of the North Dakota University System to provide bill status information and a legislative tracking service to users outside the legislative branch. The University System will provide bill status information and the legislative tracking service, including help desk support, to the University System and entities other than state agencies, and the Information Services Division will provide help desk support to state agencies obtaining access to bill status information through the Legislative Branch web page, the bill status system, and the legislative tracking service. The Legislative Council staff will provide services to users within the legislative branch and maintain the information in its bill status system. With respect to the bill status system, the University System set a subscription fee of \$300 for a one-user account. With respect to the legislative bill tracking system, the University System set a subscription fee of \$300 for a one-user account with two tracking lists (a tracking list is

a set of bills tracked as a group) and a \$30 fee for each additional tracking list. These fees are for access from the first day of the session through June 30, 1999, and apply to users outside state government.

Subscription Fees for Printed Documents

Beginning with the 1989-90 interim, the Legislative Procedure and Arrangements Committee and subsequently the Legislative Management Committee has reviewed the cost of providing various printed documents to persons outside the legislative branch. Subscription fees have been established that, generally, approximate the cost of printing a set of the relevant documents during the previous legislative session, e.g., the cost of printing the documents is divided by the number of sets of documents printed. State agencies and institutions are not charged the fees, nor are representatives of the media as determined under Joint Rule 802.

Bill Status Report Subscription

The printed version of the bill status system provides information on the progress of bills and resolutions, the sponsors of measures, and an index to the subject matter of measures. In 1991 the number of printed reports distributed without charge was substantially reduced (state agencies no longer received a printed bill status report from the bill and journal room) and a subscription fee was first established. Twenty-four entities paid a \$220 subscription fee in 1997 (two paid an additional \$110 to receive the reports by mail). The committee determined that printed bill status reports should continue to be made available through the bill and journal room only to those who subscribe to the 1999 bill status report and pay a \$310 subscription fee, \$420 if mailed (a state agency can print its own report through arrangements with the Information Services Division).

Legislative Document Distribution Program

Starting with the 1983 session, the Legislative Assembly has provided bills, resolutions, journals, and bill status reports to academic, special, and public libraries throughout the state. The program consists of sending on a weekly basis, through United Parcel Service, copies of introduced bills and resolutions, daily journals, and bill status reports. The documents were sent to 18 libraries in 1997.

Since the 1989-90 interim, the Legislative Management Committee has determined that participating libraries should pay the approximate cost of printing their bill status reports and the Legislative Assembly should continue to absorb the cost of the other documents plus the cost of shipping the materials. The subscription fee was \$220 in 1997, with a \$25 late fee.

The committee approved continuation of the program for the 1999 session, with a subscription fee of \$310, and a \$25 late fee if the subscription is after the deadline for subscribing.

Photocopied Bills and Resolutions Subscription

Under Senate and House Rules 404, any statewide organization or association paying a subscription fee established by the committee may receive a copy of each introduced bill or resolution. No one subscribed to this service during the 1997 session. The committee established a fee of \$700 for this service during the 1999 session.

Bills, Resolutions, and Journal Subscriptions

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted the policy that the bill and journal room should mail a small number of bills and resolutions at no charge to a requester. If the request is for a large number or for all of the bills and resolutions introduced, the requester should pay the postage. During the 1991-92 interim, the Legislative Management Committee determined that anyone who requests a set of bills, resolutions, or journals should pay a fee to cover the cost of printing a set of bills, resolutions, and journals and the cost of mailing these documents. During the 1997 session, 89 entities subscribed to pick up a set of bills and resolutions from the bill and journal room and 5 paid to receive the set by mail; 55 entities subscribed to pick up a set of journals and 4 paid to receive a set by mail; and 23 entities subscribed to receive the journal index.

The committee established the following fees with respect to receiving a copy of every bill and resolution introduced and printed or reprinted and a copy of the daily journal of each house during the 1999 session: \$125 for a set of bills and resolutions, \$235 if mailed; and \$65 for a set of daily journals of the Senate and House, \$175 if mailed. The fee for the journals includes final covers after the session adjourns. The committee established a subscription fee of \$25 to receive the index to the Senate and House journals for the 1999 session.

The committee continued the policy that anyone can still receive no more than five copies of a limited number of bills and resolutions without charge.

Committee Hearing Schedule and Daily Calendar Subscription

The committee decided to continue the practice of making committee hearing schedules and daily calendars available at no charge. The committee also determined that if a request is received for the mailing of daily calendars or committee hearing schedules, the policy followed during the 1997 session should continue and a fee should be imposed to cover the cost of mailing. During the 1997 session, eight entities paid to receive the hearing schedules by mail and two entities paid to receive the calendars by mail. The committee established a subscription fee of \$55 for mailing a set of daily calendars of the Senate and House and a subscription fee of \$30 for mailing a set of the weekly hearing schedules for Senate and House committees.

USE OF CHAMBERS AND MEMORIAL HALL

Since 1981, the Legislative Council has delegated to the committee the responsibility under NDCC Section 54-35-02(8) to control the legislative chambers and any permanent displays in Memorial Hall. In exercising this responsibility, the committee has adopted guidelines for use of the legislative chambers and displays in Memorial Hall.

Under the guidelines, last approved by the committee in January 1996, the first priority for use of the chambers is for the legislative branch. When the Legislative Assembly is not in session, the chambers may be used by other groups or organizations if certain requirements are met. A state agency may use the chambers for official purposes of that agency. Any other group or organization may use the chambers only for mock legislative sessions. Any use cannot interfere with legislative branch activities; the sponsor of the function must arrange for services or equipment through the Office of Management and Budget; the sponsor must assume full responsibility for the care of the chambers; and prior approval must be obtained from the Legislative Management Committee or from the director of the Legislative Council.

During its review of the guidelines, the committee approved requests for use of one or both chambers and some committee rooms by the North Dakota Intercollegiate State Legislature, North Dakota High School Activities Association, the Silver-Haired Education Association, and the North Dakota Family Alliance.

Under the guidelines, any display in Memorial Hall is to be reviewed annually. Since removal of two statues in 1984, Memorial Hall does not contain any permanent display.

TELEPHONE USAGE GUIDELINES

Under NDCC Section 54-06-26, a state official or employee may use a state telephone to receive or place a local call for essential personal purposes to the extent that use does not interfere with the functions of the official's or employee's agency. When a state official or employee is away from the official's or employee's residence for official state business and long-distance tolls would apply to a call to the city of residence, the official or employee is entitled to make at least one long-distance call per day at state expense. A state agency may establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

The committee makes no recommendation for guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS

Background

Under NDCC Section 46-02-04, the Legislative Council is authorized to determine the contents of contracts for printing legislative bills, resolutions, and journals. The State Purchasing Division prepares the requests for bids for the printing of these items in accordance with the requirements set by the committee.

Contract Contents

The committee determined that the consolidated contract for printing bills and resolutions and for printing daily journals, and for providing bill and journal room services, should be continued for the 56th Legislative Assembly. This type of contract was first entered for the 55th Legislative Assembly.

When the committee reviewed the proposed contract for printing bills and resolutions, the contract printer for the 55th Legislative Assembly suggested that an escrow account in the amount of \$10,000 to \$15,000 be allowed as an alternative to the performance bond in the amount of 50 percent of the previous contract amount for these printing and bill and journal room services. It was pointed out that the major printing cost would be early in the session when the bills and resolutions are being printed. Any failure should not incur much additional cost to obtain another printer due to the competition for the contract. Any failure later in the session should not cause a substantial loss because most printing had been completed. This option also would lower the cost to the printer and thus should be reflected in the contract bid.

With respect to the contract for the 56th Legislative Assembly, the committee increased the number of copies of each resolution to be printed to 500 rather than 400, which also requires amendment of Joint Rule 603. The committee also included a provision for wrapping the permanent journals and journal indexes. The Secretary of State had made this suggestion to aid in the distribution of these items. The contract also allows the vendor to provide an escrow account in the amount of \$15,000 instead of providing a performance bond in the amount of \$75,000.

The committee accepted the bid by Quality Printing Service, Bismarck, for printing bills, resolutions, and journals on recycled paper and operating the bill and journal room during the 1999 session.

APPROPRIATION FOR IMPROVEMENTS TO THE LEGISLATIVE WING

Background

The major legislative wing renovation project dates back to the 1977 Legislative Assembly, which authorized construction of the judicial wing/state office building. In recent years, various projects have been undertaken to continue the renovation of the legislative wing.

1993-94 Interim

During the 1993-94 interim, the Legislative Management Committee reviewed five proposals to improve the acoustics of the Brynhild Haugland Room. That committee approved the installation of a sound-absorbent surface on the ceiling over the table area and the installation of a curtain in front of the folding doors on the stage. These improvements were completed after the 1995 session.

1995-96 Interim

During the 1995-96 interim, the Legislative Management Committee authorized the purchase of bookcases for the Fort Union, Fort Totten, Peace Garden, and Prairie Rooms for storage of legislators' three-ring binders when not used by the legislators; authorized the installation of electrical and data wiring in the Harvest Room, Roughrider Room, Sakakawea Room, and House Conference Room for use of personal computers by committee members, legislative fiscal analysts, and executive budget analysts. That committee also determined that the local area network for legislators would be a wired network, and authorized the installation of a recessed, popup grommet at each legislator's desk in the chambers.

1997-98 Interim

During the 1997 session, the committee's consulting architect interviewed desk force employees and the presiding officers for suggestions on improving the work area in each chamber.

Front Desk and Well Renovation

Funds were appropriated in 1989 for remodeling the front desk area in the House chamber, but the project was postponed until full computerization of the front desk was completed. As a result of the interviews during the 1997 session, the committee's consulting architect prepared plans to renovate the front desk area in each chamber.

For the Senate, the proposal was to move the Secretary of the Senate's desk area out two feet while maintaining the end position of that desk, lower the front podium for better visibility, add a workspace area behind the desk force and in front of the President's desk, build files on both sides of the front desk area against the wall to eliminate the printer stands and file cabinets, and lower the employees' area by two steps and the President's area by two steps. As a means to provide access under the Americans with Disabilities Act, the proposal also provided for a removable ramp to provide wheelchair access from the rear floor area to the front well work area. The committee toured the Senate chamber and determined that in the Senate, the renovation of the front desk area would include lowering the front podium, providing an adjustable lectern for the Secretary of the Senate, building files on both sides of the front desk area against the wall, replacing the former

page seating (converted to file drawers) at the front desk with workspace for the desk force, and providing the temporary access ramp. The committee awarded the remodeling contract for the Senate chamber at a price of \$34,371.

For the House, the proposal was to recess the Speaker's desk back approximately five feet to give a better view of all members of the chamber, lower the front podium for better visibility, extend both ends of the middle desk to approximately five feet from the wall, add a workspace area behind the desk force and in front of the Speaker's desk, build files on each side of the front desk area along the wall to eliminate the printer stands and file cabinets, lower the front desk area by two steps for the employees and by two steps for the Speaker, eliminate the front row work desk, and recarpet the front well area. As a means to provide access under the Americans with Disabilities Act, the proposal also provided for a removable ramp to provide wheelchair access from the rear floor area to the front well work area. The committee toured the House chamber and determined that the House well area should be renovated as proposed, but also providing an adjustable lectern for the Chief Clerk and wiring jacks for television cameras on tripods on the Speaker's level and in the front well area. The committee awarded the remodeling contract for the House chamber at a price of \$51,061.

The committee also approved an additional \$5,645 to provide for replacement of electrical wiring and installation of additional conduits and ductwork under the House rostrum, smooth floor areas missing the original tile as the result of reworking the House well area, and reupholster ornamental chairs and benches.

Chamber Carpeting and Chairs

As a result of the planned renovation of the front desk area in each chamber, the committee discussed the need to replace the carpeting in the chambers. The carpeting in each chamber was installed during the 1979-82 renovation project. The carpet was showing signs of wear and tear, and with respect to the House front desk area, matching carpet to cover the front desk work area was not available.

The chairs used by legislators in the chambers were acquired in 1968 and recovered in 1980. In recent sessions, a number of chairs have needed to be repaired, the fabric of a number of chairs was torn and worn, and the foam rubber padding was disintegrating.

The committee approved the replacement of carpet in the chambers. The committee determined that the color scheme of carpeting in the chambers should be similar to the current color of the carpet—blue in the House and burgundy in the Senate—but with a subdued pattern to include the color of the chairs in the chamber. The committee awarded the contract for carpet in the Senate and House chambers at a price of \$56,157.

The committee reviewed seven styles of chairs provided by local office supply companies. The

committee determined that a replacement chair should have a seat width of at least 21 inches, a dark five-leg pedestal, a fabric back, fabric arms, loop or closed arms, a pneumatic lift, swivel tilt back, and tilt tension adjustment.

The committee approved the replacement of the chairs in each chamber, in accordance with the requirements selected by the committee and in the colors to match the color of the carpet in the chamber so as to draw out the brass in each chamber. In addition to the chairs, the committee approved recovering the benches and ceremonial chairs to match the new chairs. The committee awarded the contract for chairs and benches in the Senate and House chambers at a price of \$106,739.

As was done in 1969, members of the 55th Legislative Assembly were given the option to purchase one of the old chairs, and the remaining chairs were transferred to the Surplus Property Division for disposition.

Gateway Ropes

The committee authorized new velvet ropes, at a cost of \$2,018, to replace the current velvet ropes used to prevent entrance beyond the brass rails and the string cord used to prevent access to the entire chambers during the interim. The replacement ropes match the new color schemes in the House and Senate.

Committee Room Displays

The committee accepted an offer of the North Dakota Dry Bean Council to provide a framed Northarvest Print for display in the Harvest Room. Because the State Historical Society was involved with developing the displays in committee rooms, the committee requested the print be sent to the State Historical Society for its recommendation as to the appropriateness of the print being displayed among the period themes currently displayed in the Harvest Room.

1999-2000 Interim

The committee received an estimate of \$19,527 to renovate the 249 balcony seats and six backs in the House and the 191 balcony seats and six backs in the Senate and to replace the fabric with fabric matching the chairs in the chambers.

Committee members discussed the need to refinish the legislators' desks in the chambers. Many desks need to be refinished to smooth out the veneer and replace rough edges and worn spots. Also, wood molding has been damaged or is missing in a number of areas in both chambers. This project was viewed as complementary to any project to replace the audio system in each chamber. The committee received an estimate of \$60,800 for refinishing the legislators' desks in both chambers.

The committee discussed recent failures of the audio system. Of primary concern was the age of the current

system and the fact that if one microphone fails, it usually causes the entire section in which the microphone is located to fail. The committee reviewed a proposal for replacing the audio system. The proposal included placing a sound system module and microphone at each legislator's desk. The estimated cost was \$90,000 for the Senate chamber and \$160,000 for the House chamber.

The committee requested the Legislative Council staff to review options for replacing the audio system and to present this information to legislative leaders during the 1999 session for appropriate action.

SESSION ARRANGEMENTS

Reimbursement for Attending Council Meeting

In 1996 the Legislative Management Committee recommended that new members be reimbursed expenses for attending the final Legislative Council meeting in November. This was viewed as a method of encouraging new members to meet with legislators and allowing caucuses to meet and to elect their leaders on the eve of the Legislative Council meeting in November. With the early election of leaders, leaders could hire their employees and make the early decisions necessary for arranging for the organizational and legislative sessions.

Although the caucuses have established different policies regarding whether to continue with the early election procedure, the committee determined that it is important for new members to become acquainted with issues to be considered by the Legislative Assembly and attending the Legislative Council meeting would be invaluable for acquiring this knowledge.

The committee recommends that new members be reimbursed expenses for attending the final Legislative Council meeting in November. Caucuses may make use of this opportunity for early election of leaders, and notice of whether caucuses are to be held is to be provided to all legislators and new members.

Legislators' Supplies

The committee approved continuation of the policy that each legislator receive 500 sheets (one ream) of regular stationery and 500 envelopes; that the Speaker, each leader, and each assistant leader also receive 500 sheets of Monarch stationery (with 500 envelopes); and that the leaders receive as much regular stationery (and envelopes) as needed and other legislators can request an additional ream of stationery and 500 envelopes. The committee approved use of 24-pound laser print paper, similar to that used during the 1997 session, for stationery due to its design for laser printers, copiers, and plain paper fax machines.

The committee approved continuation of the policy of providing a letter file to each legislator on request.

The committee approved an option that a legislator may receive a photo identification card from the Office of Management and Budget. Current identification cards do not contain a photo of the legislator and some

problems have been experienced in properly identifying legislators who desire access to the Capitol after hours.

Legislators' Expense Reimbursement Policy

Section 26 of Article XI of the Constitution of North Dakota provides that payment for necessary expenses of 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. During the 1985 session, reimbursement was made pursuant to 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. During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted a policy that allowed these items as reimbursable lodging expenses during a legislative session: electricity and heat, water (including garbage collection and sewer charges), basic telephone service, and telephone installation charges; rental of furniture and appliances and transit charges for moving rental furniture and appliances; and repairs to structure, plumbing or electrical repairs, and repairs to furniture and appliances damaged during a legislator's tenancy. During the 1991-92 interim, the Legislative Management Committee decided that repairs for damage occurring during the legislator's tenancy should not be reimbursed, and this revised policy was followed during the 1993-97 sessions. The committee recommends the legislative expense reimbursement policy for the 56th Legislative Assembly be the same as that followed for the 55th Legislative Assembly, but recognizing that since 1997 legislators may receive up to \$650 per month as reimbursement for lodging.

Legislators' Photographs

The committee approved the invitation to bid for Legislative Assembly photography services. With respect to the House, the proposal provided for two color pictures of two poses of 103 individuals; color touchup of the final pose; one composite color picture 44 by 56 inches, proofed, framed, and ready to hang; and 103 copies of the composite picture 11 by 14 inches in size. With respect to the Senate, the proposal provided for two color pictures of two poses of 55 individuals; color touchup of the final pose; one composite color picture 31 by 39 inches, proofed, framed, and ready to hang; and 55 copies of the composite picture 11 by 14 inches in size. The committee continued the option for oak frames for the small composite, available for purchase by individual legislators. The photographs of legislators are to be taken during the organizational session in 1998 and the photographs of the legislative officers are to be taken during the first week of the regular session.

Four firms submitted bids, ranging from \$3,000 to \$5,591.72. The committee awarded the contract to the

lowest bidder—Anderson Photography, Crosby—who was also the photographer for the 54th and 55th Legislative Assemblies.

Journal Distribution Policy

The committee recommends continuation of the policy initiated in 1995 that the desk force inform legislators that a legislator may have daily journals sent to as many as three persons, but any additional sets require approval of that legislator's leader. Because journals are available on the Legislative Branch web page, legislators providing journals will be requested to ask the person to whom journals are to be sent whether that person has Internet access. The intent is to encourage those persons with Internet access to use that access, which reduces labor and postage costs.

Television Coverage

During the 1989 session, Bismarck-Mandan Cable TV engineered and delivered a live and tape-delayed evening presentation of the North Dakota Senate. A camera was positioned on alternating sides of the gallery, and viewers were given the opportunity to observe the legislative process. During the 1991 and 1993 sessions, Bismarck-Mandan Cable TV, through Community Access Television (a nonprofit corporation responsible for programming the public access channel of Bismarck-Mandan Cable TV), provided television coverage of the Senate and House of Representatives on alternating weeks. During the 1995 session, Meredith Cable (formerly Bismarck-Mandan Cable TV) and Community Access Television provided similar coverage and also distributed nine copies of tapes of the floor sessions to the nine largest cities in the state for rebroadcast by local cable companies on the next day. During the 1997 session, Dakota Cable Communications (formerly Meredith Cable) and Community Access Television provided coverage of the Senate and House on alternating weeks. Because of funding limitations, no tapes were made for rebroadcast by local cable companies around the state.

The committee authorized Dakota Cable Communications and Community Access Television to continue to provide coverage of the 56th Legislative Assembly under an arrangement similar to that provided during the 1997 session. During the committee's consideration of this coverage, Community Access Television indicated cable companies in the state's major cities would be contacted to determine whether they would supply tapes or funds to receive tapes of floor sessions for delayed broadcast on their systems.

Legislative Sound System Access

The committee received correspondence concerning requests from the Secretary of State, Attorney General, Superintendent of Public Instruction, and the University System office for connections to the audio system in the House and Senate chambers. There are four audio

systems in the legislative chambers—a public address system, a wireless system for hearing-impaired members, a system providing audio feeds to the press, and a system providing external hookups. The external hookup system includes a 100-watt amplifier, to which 52 speakers are connected. Of those 52 speakers, two are in the Governor's office area and eight are in the Office of Management and Budget. Information indicated this system is near capacity. The committee requested the executive branch to prepare a proposal for providing executive branch agencies and other entities access to the legislative audio system. The intent of the request was for the parties seeking access to present a proposal for obtaining that access without cost to the legislative branch or further involvement by legislative entities in approving access for specific users.

The Facility Management Division provided a number of options for increasing access to the legislative audio system. Options included providing RealAudio software and a feed to the Internet through a web server, installing a low-power radio broadcasting system, expanding the current system by adding another amplifier, providing telephone access through the Capitol PBX, providing telephone access through a separate system, and providing a closed-circuit television broadcast. The division's two primary proposals were for installation of a new amplifier in the tower to which speakers would be wired or use of a server to provide RealAudio access through the state intranet. The estimated cost of a new amplifier was \$3,040 and RealAudio access could be provided through available equipment and software without charge. With access through personal computers with RealAudio software, the speakers in the Governor's office and the Office of Management and Budget will be disconnected.

The committee accepted the proposal by the Facility Management Division and the Information Services Division to make available audio of the floor sessions through RealAudio on the state intranet and the Internet, when possible.

Incoming WATS Lines

During the 1985 and 1987 sessions, four incoming WATS lines were provided for residents in the state to contact legislators or obtain information concerning legislative proposals. In 1989 the number of incoming WATS lines was increased to six. The number of calls received during recent sessions has declined—60,896 in 1991, 62,320 in 1993, 41,668 in 1995, and 31,541 in 1997. One rationale for the decrease in the number of calls may be the increased use of personal computers, with e-mail capabilities, by constituents to contact their legislators. One concern over use of e-mail, however, is that constituent views are entered in the LAWS system by telephone attendants and e-mail messages are not.

Even with the reduction in the number of calls, more time may be spent by telephone attendants in ensuring all information is entered in the LAWS system for

legislators receiving the telephone messages. As reported by the telephone attendants, most callers do not know their legislative district or who their legislators are, and many callers do not know the number of the bill on which they want to comment (many also request messages be given to several legislators even though the policy is that messages may be given only to three legislators, preferably those from the caller's district). Also, the LAWS system has been enhanced to provide legislators with the e-mail address of the caller and whether the caller's preference for the legislator's vote relates to the bill, an amendment, or the Governor's veto override. These enhancements will require telephone attendants to take more time with each caller in order to obtain the information.

Callers do not receive a "busy" signal if all lines are in use. In place of a busy signal, callers hear a message thanking them for calling the Legislative Assembly, describing hours of the session (8:00 a.m.-5:00 p.m. Monday through Friday), and stating all lines are busy, but their calls are important so please try again. Similar messages are in place for calls after hours and during the interim.

The committee reviewed a number of options to reduce "busy" signals callers may receive, even though the number of callers has substantially declined during recent sessions. One option is to provide a message suggesting either calling back later or staying on the line to contact the next available attendant (calls would be answered in the order received). Another option is to provide a message stating all lines are busy, but a message may be left by spelling your last name, giving your telephone number and mailing address, and whether you are for or against a bill and the bill number. A third option is to provide a message giving two options—one for staying on the line to contact the next available attendant and one for leaving a message for legislators from the caller's district.

The committee recommends no change in the number of incoming WATS lines. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

The committee recommends that if all lines are busy, a caller will be given two options—one for staying on the line and one for leaving a message for legislators from the caller's district. With this new feature, callers should have a better experience with personal attention, either by holding for the next available attendant or by leaving a message. This message feature will be available 24 hours a day, 7 days a week. In addition, the ability to leave messages should result in a dispersal of the workload of the telephone attendants, because the messages can be retrieved during periods when all telephone attendants are not answering calls.

It is unknown the extent messages will not be able to be given to legislators or entered in the LAWS system because of incomplete information. The committee recommends reviewing the extent of this potential problem after the first month of the session to determine

whether the option to leave a message should be deleted so telephone attendants will answer all calls and directly obtain information from callers.

Pay Telephones

The committee reviewed the location of pay telephones in the legislative wing. U S West installs the pay telephones at no cost to the state and attempts to recover its cost from usage of the services. There are three pay telephones on each side of the hall at the west end of the Capitol on the ground floor, three pay telephones across from the legislative supply room behind the Senate chamber, three pay telephones located across the hall from the Harvest Room, and two pay telephones located adjacent to the Sakakawea Room. Of these 12 telephones, only the two across from the Harvest Room recover their costs. Because U S West planned on discontinuing service on those telephones that do not recover costs, the committee reviewed options to remove the telephones or continue to retain the telephones and cover the losses incurred by U S West.

The committee recommended to the Information Services Division that the pay telephones and TDD telephone across from the Harvest Room be retained, that one pay telephone in the west area on the ground floor be retained, and the remaining pay telephones be removed.

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 reviewed a proposed agenda for orientation and training of session employees immediately before the convening of the 56th Legislative Assembly. The training has been expanded from that provided before other sessions. Committee members expressed support for continuing to expand the training, especially for the employees using personal computers, to further enhance the ability of the Legislative Assembly to start the legislative process as early as possible.

The committee approved the agenda and authorized the Legislative Council staff to conduct training sessions for various session employees.

The committee recommends that session employees be hired to begin work at various times before the convening of the Legislative Assembly, depending on the nature of an employee's duties and the training required of the employee. The recommended starting dates range from November 19 to January 4, depending on the position.

Bill and Journal Room Services

The committee reviewed the impact of providing bill and journal room services as part of a combined contract to print bills, resolutions, and journals. This combination contract was first entered for the 55th Legislative Assembly. Bill and journal room services were provided by the contractor at a total cost of \$39,160.

As described under **CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS**, the committee determined that the combined contract should be continued for the 56th Legislative Assembly. Under the combined contract, the contractor is required to provide a basic level of service similar to that provided during the 1997 session.

The basic level of service is for at least one person to organize and operate the bill and journal room Monday through Friday from December 14 through January 4, 1999, excluding Christmas Day and New Year's Day; for the bill and journal room to be open between 7:30 a.m. and 5:30 p.m. on days either house is in session; for at least one person to be in the bill and journal room any time either house is in session after 5:30 p.m.; and for distribution of documents as soon as possible, according to a schedule in the contract. The contract also requires the contractor to provide photocopy and facsimile (fax) services to third parties, upon payment of a fee set by the contractor and retained by the contractor.

As reported under **CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS**, the committee accepted the bid by Quality Printing Service, Bismarck, for operating the bill and journal room and printing bills, resolutions, and journals during the 1999 session. The bid for operating the bill and journal room was \$440 per day for 82 days—14 days before the Legislative Assembly convenes (beginning December 14, 1998), an estimated 66 legislative days, and two business days during the February recess.

Secretarial Services

The committee reviewed the cost of the contract with A.S.A.P. Secretarial Service concerning the secretarial services provided during the 1997 legislative session. The Legislative Assembly privatized secretarial services in 1995 rather than continuing to operate a joint secretarial pool. During the 1993 session, the Senate and House employed the equivalent of 10.5 stenographers and typists at a cost of \$56,629.20, not including the cost of the two chief stenographers and payroll clerks (\$14,326.59). During the 1995 session, the Legislative Assembly contracted with Jan's Secretarial Service, which provided nine secretaries and a supervisor for a total cost of \$46,053.50. During the 1997 session, A.S.A.P. Secretarial Service provided seven employees and one supervisor for a total cost of \$41,462.50.

A.S.A.P. Secretarial Service requested additional compensation for expending over 230 hours transcribing 40 tapes of the House Industry, Business and Labor

Committee and the contract did not specify that transcribing committee tapes was part of the work. The committee requested information on whether the secretarial service's employees were paid additional pay for that work. No further action was taken on the request.

The committee recommends continuation of secretarial services to the Legislative Assembly on a private contract basis. The committee authorized the Legislative Council staff to prepare specifications, including the suggested base level of service of seven employees and one supervisor and solicit bids for secretarial services on a per day basis for 66 legislative days for the 56th Legislative Assembly. The committee received three bids for providing secretarial services. The bids ranged from \$614.80 to \$784.56 per day. After reviewing the bids, the committee recommends accepting the lowest bid (the bid by Interim Personnel, Bismarck) for providing secretarial services during the 1999 session.

The committee reviewed the *Policy Regarding Secretarial Services to Legislators* approved by the Legislative Council in November 1996. The policy points out that secretarial service employees are not legislative employees, describes secretarial services as being available between 7:30 a.m. and 5:30 p.m., provides for 24-hour turnaround of most projects, and provides the procedure for any comment or complaint regarding the service. The policy is included in the legislators' information packets distributed during the organizational session. No changes were suggested and the committee recommends continuation of the 1996 policy as the policy applicable to secretarial services during the 1999 session.

Legislative Internship Program

Since 1969 the Legislative Assembly has sponsored a legislative internship program in cooperation with the School of Law and graduate school at the University of North Dakota and the graduate school at North Dakota State University. The 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 committee met with representatives of the universities and reviewed the status of the program. Representatives of the universities affirmed continued interest in the program. The committee approved continuation of the program for the 1999 Legislative Assembly at the same number as authorized in 1997 (12—8 from the School of Law, 2 from the graduate program at the University of North Dakota, and 2 from the graduate program at North Dakota State University), with 10 interns assigned to committees and 2 assigned to the Legislative Council office.

The committee increased the stipend received by an intern from \$4,725 to \$5,075 (\$1,350 per month) for the 3.5-month program.

Legislative Tour Guide Program

For the past 11 legislative sessions a tour guide program has coordinated 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. Since 1987 two tour guides have been hired each session due to the heavy workload in scheduling tour groups. The committee approved the continuation of the legislative tour guide program for the 1999 session.

Doctor of the Day Program

The committee accepted an offer by the North Dakota Medical Association to continue the doctor of the day program during the 1999 session. The formal blood pressure and cholesterol screenings offered to legislators once during the 1997 session will be expanded to include two screenings, once in early January and again toward the end of the session to allow legislators to compare early-session and late-session readings.

Chaplaincy Program

In cooperation with the Bismarck and Mandan Ministerial Associations, the House and Senate have chaplains open daily sessions with a prayer. Each chaplain receives a daily stipend of \$25. The committee reviewed the procedure in effect since 1985 which gives legislators until the end of December to schedule out-of-town clergy to deliver prayers during the session. The associations alternate as coordinator of the program. The Mandan Ministerial Association coordinated the program during the 1997 session, and the committee invited the Bismarck Ministerial Association to coordinate the program during the 1999 session. The committee also requested the Legislative Council staff to notify all legislators before the convening of the session that they have until December 31, 1998, to schedule out-of-town clergy to deliver daily prayers during the 1999 session.

Organizational Session Agenda

The committee approved a tentative agenda for the 1998 organizational session. Although based on the agenda for the 1996 organizational session, a major addition is the time set aside Tuesday afternoon and Wednesday morning for legislators who have been assigned personal computers to receive training on the e-mail, Internet, and word processing software, and the time set aside Wednesday and Thursday afternoon for legislators who have been assigned personal computers to receive training on use of the LAWS system. This

LAWS training will be repeated Monday, January 4, 1999, the day before the 56th Legislative Assembly convenes in regular session.

State of the State Address

During the 1997 session, the House and Senate convened in joint session at 1:15 p.m. on the first legislative day. Five escort committees were appointed to escort various officials, former officials, and spouses into the chamber—one for the Lieutenant Governor and her spouse, one for the Chief Justice, one for former governors and their spouses, one for former chief justices and their spouses, and one for the Governor and his spouse. The joint session was called to order at 1:30 p.m. and the Governor presented his state of the state address.

The committee authorized the Legislative Council staff to contact the Governor for presentation of the state of the state address on the first legislative day of the 1999 session (January 5, 1999).

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 to a joint session on the second legislative day of the 1999 session (January 6, 1999).

Tribal-State Relationship Message

During the 1983-84, 1985-86, and 1987-88 interims, representatives of the Indian tribes in North Dakota requested permission to appear before the Legislative Assembly to describe their perspective of the status of the relationship between the tribes and the state of North Dakota. As a result of invitations extended by the Legislative Procedure and Arrangements and the Legislative Management Committees, a spokesman from the tribes addressed each house of the Legislative Assembly during the first week of the 1985-97 legislative sessions.

The committee authorized the Legislative Council staff to extend an invitation to representatives of the Indian tribes to make a presentation to each house of the 1999 Legislative Assembly on the third legislative day.

Legislative Compensation Commission Report

The committee requested that the report of the Legislative Compensation Commission be a written report submitted to the presiding officer of each house. The practice of submitting a written report rather than an oral report was started in 1993.

Agricultural Commodity Promotion Groups Report

The committee reviewed NDCC Section 4-24-10 and its requirement that 12 agricultural commodity promotion groups file a uniform report at a public hearing before the standing Agriculture Committee of each house. The

report must be filed between the 1st and 10th legislative day of the regular session. The committee designated Friday, January 8 (the fourth legislative day), as the day for a joint hearing by the Senate and House Agriculture Committees to receive this report.

SESSION EMPLOYEE COMPENSATION STUDY

Senate Concurrent Resolution No. 4017 directed a study of legislative employee compensation. As part of this study, the committee also considered session employee positions.

Session Employee Positions

The committee reviewed the number of employee positions during the 1995 and 1997 sessions, the impact computerization has had on both houses, and the impact resulting from creating a generic "legislative assistant" position in 1997 to allow easy transfer of an employee from one job function to another as necessary.

The committee reviewed a legislative session employee position plan that provided for four fewer positions in the Senate and four fewer positions in the House during the 1999 session. For the Senate, the plan provided for one assistant sergeant-at-arms (rather than two), two page and bill book clerks (rather than three), three telephone attendants (rather than four), and no parking lot attendant (rather than one). For the House, the plan provided for three page and bill book clerks (rather than six) and two assistant sergeants-at-arms (rather than three). The House would employ the "third" assistant sergeant-at-arms as supply room coordinator, rather than employ another person as coordinator. The supply room coordinator alternates between the houses, and in 1997 the Senate employed its "third" assistant sergeant-at-arms as supply room coordinator as the first step in the process of assigning one assistant sergeant-at-arms this responsibility rather than employ an additional person as supply room coordinator. The estimated savings in compensation resulting from the proposed reductions was \$32,422 (not including savings resulting from reduced workers' compensation and Social Security contributions). In total, the plan provided for 39 Senate employee positions and 46 House employee positions.

The rationale for reduction of assistant sergeant-at-arms and page and bill book clerk positions was based on the increased number of legislators who will be using computers in the chambers and the fact that all legislators have private phones on the floor and more mail and correspondence is being transmitted through their computers and through fax machines operated by the telephone pages. This increased use of computers has reduced the sets of bill books in the chambers, reduced the sets of journals in the chambers, increased use of e-mail to send messages, and increased use of the LAWS system to receive telephone messages. Even with the reductions, there would be 9 employees in the

Senate and 11 employees in the House available during floor sessions for handling sergeant-at-arms or page responsibilities.

The rationale for proposing the reduction of one telephone attendant position was the substantial reduction in calls received in recent legislative sessions. In addition, callers will have the option of leaving messages and this should result in a leveling of workload throughout the day. The committee determined that the number of telephone attendants should be maintained to ensure proper service is provided in responding to telephone messages left under the telephone message feature described under **Incoming WATS Lines**.

The rationale for proposing the reduction of one parking lot attendant position was that most legislators arrive and leave during the same time periods; signs at both ends of the parking lot clearly indicate that the lot is reserved for legislators; during floor sessions and committee hearings little activity occurs in the parking lot; and Facility Management Division personnel maintain the lot. The committee determined that both parking lot attendant positions should be maintained because of the need to provide assistance to some legislators and to provide continuous parking lot supervision. The committee recommends the parking lot attendants should coordinate their schedules to ensure continuous parking lot supervision during appropriate times of the day.

The plan also recognized that during the 1999 session the Senate rather than the House would employ the payroll clerk and the chief telephone attendant, and the House rather than the Senate would employ the supply room coordinator and the parking lot attendant (as described above).

The committee recommends that the Employment Committees provide for 41 Senate employee positions and 46 House employee positions. The recommended positions include one (rather than two) assistant sergeant-at-arms and two (rather than three) page and bill book clerks in the Senate and two (rather than three) assistant sergeants-at-arms and three (rather than six) page and bill book clerks in the House.

Session Employee Compensation

The committee reviewed session employee compensation levels during the 1995 and 1997 sessions, with a view toward addressing the fact that no general increases have been made since 1991 and a number of positions require technical training and supervisory skills.

The committee recommends a seven percent across-the-board pay increase, rounded to the nearest dollar, for all positions. A general increase was last provided in 1991. As a result of this recommendation, compensation would range from \$7.75 to \$12.75 per hour (based on a 40-hour week).

The committee also recommends that the compensation of certain legislative session employees be increased to recognize supervisory, technical, and

communication skills. Of particular concern was the ever-increasing technical skills required of committee clerks as the result of continual computerization of their duties, e.g., committee clerks require training in use of the bill status system, committee hearing system, committee report system, amendment system, and of word processing software to prepare minutes. The skills recognition adjustments would range from an additional \$1 to \$11 per day. As a result of this additional adjustment, compensation would range from \$62 to \$102 per day.

North Dakota Century Code Section 54-03-10 requires the compensation of Legislative Assembly employees to be set by concurrent resolution. The committee recommends that the concurrent resolution establishing employee positions not include specific names or identify specific individuals. This type of resolution was first adopted in 1997 as a means to avoid special action to hire an employee after adoption of the resolution. By designating positions, rather than naming employees, a report by an Employment Committee that names an employee is sufficient to identify that employee, the position, and the compensation level. The committee also recommends that the concurrent resolution establishing employee positions authorize the Employment Committees to convert full-time positions to part-time positions, as appropriate. In addition, the committee recommends that the concurrent resolution provide for a generic position for employees not requiring technical skills and authorize transfer of those employees to work assignments as needed. The positions that will become "legislative assistants" were positions formerly classified as assistant sergeant-at-arms, supply room coordinator, desk page, page and bill book clerk, telephone page, and parking lot attendant.

LEGISLATIVE ETHICS COMMITTEE

North Dakota Century Code Section 54-35-02.8 requires the Legislative Council to appoint an ethics committee to consider or prepare a legislative code of ethics. Since 1995, the Legislative Council has appointed the Legislative Management Committee as the Legislative Ethics Committee.

During the 1995-96 interim, the Legislative Management Committee reviewed North Dakota laws affecting legislative ethics. That committee also recommended legislative rules declaring a legislative ethics policy, urging members to maintain ethical standards and recognize the importance of standards contained in the rules, urging members to apprise themselves of constitutional provisions and statutes that prohibit conduct for which criminal penalties may apply, and requiring the Legislative Council to conduct classes on legislative ethics and laws governing the activities and conduct of public officials. The Legislative Council is to conduct the classes during the organizational session and at other times as deemed appropriate. The

55th Legislative Assembly adopted those rules as Joint Rules 1001 through 1004.

The committee makes no recommendation regarding changes to the legislative code of ethics.

MISCELLANEOUS MATTERS

Meeting With Legislative Compensation Commission

The committee met with members of the Legislative Compensation Commission to discuss recommendations relating to legislative compensation. The commission is recommending proposed legislation to increase legislators' interim per diem by \$12.50, from \$62.50 to \$75, which is a level similar to that of surrounding states.

Legislative Redistricting Activities

Under Public Law 94-171, the Bureau of the Census invited states to participate in Phase 1 of the Census 2000 Redistricting Data Program. Phase 1 provided for identifying geographic areas for specific tabulations of population during the 2000 census. North Dakota participated in a similar program for the 1990 census in order to receive population information for census blocks in certain areas of the state. During the 1995-96 interim, the Legislative Management Committee approved participation in Phase 1.

The committee discussed whether the state should participate in Phase 2 of the Census 2000 Redistricting Data Program. Participation would require placement of precinct boundaries and legislative district boundaries on maps of the entire state. The Census Bureau then would provide demographic information for those precincts and legislative districts as part of the 2000 census.

The committee initially declined to participate in Phase 2 of the program and informed the Redistricting Data Office of the Census Bureau. The committee determined that information on precincts would not be relevant to North Dakota because legislative districts are based on census blocks, census tracts, and political subdivisions, and that information would be available from the 2000 census without participating in the program. After this decision, the Governor's liaison to the Census Bureau urged the committee to participate in Phase 2 because of the value of receiving new demographic information on existing legislative districts. The committee reconsidered its action and approved participation in Phase 2 of the program. As a result, the Census Bureau will receive legislative district maps and will provide 2000 census demographic information on adults in those districts. This information can be used as a starting point in determining the extent of redistricting needed after the 2000 census.

The committee reviewed legislative activities leading up to the legislative redistricting process after the 1990 census. The 1989 Legislative Assembly passed Senate Concurrent Resolution No. 4025, directing a Legislative Council study of the state of the law with respect to

legislative redistricting in order to prepare for redistricting activities after the 1991 session.

The committee recommends Senate Concurrent Resolution No. 4005 directing a Legislative Council study of the state of the law and technology with respect to legislative redistricting. This resolution is similar to the 1989 resolution and would initiate the process for legislative preparation for redistricting activities after the 2000 census.

Legislative Records Retention Policies

The committee reviewed NDCC Section 44-04-17.1, which defines records as including preliminary drafts and working papers, and NDCC Section 54-46-07, which declares all records made or received by state officials in the course of their public duties to be property of the state and, as such, prohibits their destruction or disposal except as provided by law. Basically, records may not be destroyed unless in accordance with a records management program. Although there was concern that having a written policy may result in inadvertent violations, the need for a policy was viewed as important to avoid questions as to whether any scrap of paper could be considered a preliminary draft or working paper and thus could not be thrown away.

The committee recommends a records retention policy for the Legislative Assembly and a records retention policy for the Legislative Council. Each policy contains a records retention schedule recommended by the State Records Management Division of the Office of Management and Budget.

Legislative Assembly records are classified as either records relating to introduction and consideration of legislative proposals, correspondence received by legislators and legislative employees, miscellaneous information provided to legislators and legislative employees by the Legislative Council staff, and records relating to personnel administration. Records relating to legislative proposals are to be transferred to the Legislative Council upon completion of the records or upon adjournment of the Legislative Assembly. Legislators or employees who receive correspondence or other information provided to the Legislative Assembly, to legislators, or to employees are to retain the records as long as the records have any administrative value or usefulness. Records having historical value are to be transferred to the Legislative Council upon adjournment of the Legislative Assembly or retained in the Legislative Assembly area of the State Capitol. Personnel records are to be transferred to the Legislative Council upon completion of those records or upon adjournment of the Legislative Assembly or retained in the Legislative Assembly area of the State Capitol. Records retained by legislative officers or employees must be retained according to the records retention schedule.

Legislative Council records are classified as having administrative, fiscal, legal, or historical value. Records

having administrative value are to be retained as long as the record is useful for the purpose of the Legislative Council. Records having fiscal value are to be retained as long as they have administrative value or can be used for audit purposes. Records having legal value are to be retained as long as the right or obligation is enforceable. Records having historical value are to be maintained by the Legislative Council or transferred to the state archives or other appropriate officer for archiving. Personnel records are to be retained in accordance with the records retention schedule. The director of the Legislative Council is authorized to make the final determination of the value of a record in the possession of the Legislative Council and the proper retention period of the record.

Sponsorship of Legislative Council Measures - Recommendation

The committee discussed whether to continue the recommendation, first made during the 1993-94 interim, to place legislators' names on bills and resolutions recommended by interim committees. Individual names were on Legislative Council bills and resolutions through the 1975 legislative session, when it was determined bills were becoming identified with individual legislators rather than with the Legislative Council. Thus, the policy was discontinued until the 54th Legislative Assembly. Among the reasons for placing individual names on Legislative Council bills and resolutions during the 1995 and 1997 sessions was the argument that names of individual legislators would increase the level of support by those legislators for interim committee bills and resolutions.

The committee reviewed statistics concerning the approval rate of Legislative Council measures. During the 1997 session, 78 percent of the 36 Legislative Council measures that did not contain the names of individual legislators and the 36 measures that had bipartisan sponsorship were approved; 70 percent of the 10 measures that listed only sponsors from the majority party were approved; and 50 percent of the 2 measures that listed only sponsors from the minority party were approved. Concern was expressed over the fact that some measures were identified with individuals representing only one political party, and thus those

measures became identified with individual legislators named (and the party represented) rather than with the interim committees.

The committee recommends that the policy providing for individual legislators to be listed as sponsors of Legislative Council bills and resolutions be discontinued. This is intended to return the focus on the merits of the recommendation, rather than the individuals named as sponsors.

Supplementary Rules of Operation and Procedure of the Legislative Council

The committee reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*. The Legislative Council last revised these rules in 1987. The committee reviewed current practices that have become traditional, e.g., the Legislative Council by motion authorizes the Legislative Council chairman to make appointments to interim committees, to make additional assignments to interim committees, and to create additional interim committees as needed. Certain responsibilities also have been traditional, e.g., the Legislative Council chairman approves out-of-state travel by legislators, the Legislative Council chairman has authority to approve personnel matters, and the director and legislative budget analyst and auditor hire appropriate personnel.

The committee recommends revisions of the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council* to include responsibilities of the Legislative Council chairman and Council staff that traditionally have been granted to the chairman and recognized for the staff. In addition, the committee recommends revision of the supplementary rules to provide that attendance by a member of an interim committee may be by interactive video or teleconference call if the chairman of the committee has announced in advance that the meeting will be by interactive video or teleconference call and all members of the committee have an opportunity to participate through the alternative medium. This provision is intended to ensure attendance in person and reduce the possibility of "attending" meetings through alternative mediums and using the "savings" as a political issue.

REGULATORY REFORM REVIEW COMMISSION

The Regulatory Reform Review Commission is established by North Dakota Century Code (NDCC) Section 49-21-22.1. The commission is established to review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between 1995 and 1999. Also, the commission may review the effect of taxation laws on North Dakota telecommunications law during the same time period.

The Regulatory Reform Review Commission was assigned one study, Senate Concurrent Resolution No. 4055 directs the Legislative Council to study the potential for expansion of extended area telecommunications service.

Under NDCC Section 49-21-22.1, the commission consists of one member of the Public Service Commission who has responsibility for telecommunications regulation, two members of the Senate appointed by the President of the Senate, and two members of the House of Representatives appointed by the Speaker of the House. Commission members during the 1997-98 interim were Representatives Mick Grosz (Chairman) and Eliot Glassheim; Senators John M. Andrist and Joel C. Heitkamp; and Public Service Commissioner Bruce Hagen.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

NORTH DAKOTA TELECOMMUNICATIONS LAW

Before 1983 telecommunications companies in North Dakota were regulated by the Public Service Commission as traditional public utilities. In 1983 cooperatives and small telephone companies were removed from the ratemaking jurisdiction of the commission. In 1985 the Legislative Assembly revised this exemption to remove local service of cooperatives and small companies from the commission's ratemaking jurisdiction. In 1985 the commission was given authority to deregulate telecommunications services. The commission was required to find that the service, company, or transaction was of limited scope or was subject to effective competition to be deregulated.

There have been several amendments to the telecommunications law since 1989, when major deregulation of the telecommunications industry began.

1989 Senate Bill No. 2320

The Regulatory Reform Review Commission was created in 1989 to review the deregulation of the telecommunications industry resulting from enactment of 1989 Senate Bill No. 2320. The commission originally consisted of the three Public Service Commissioners,

two members of the Senate, and two members of the House of Representatives.

Senate Bill No. 2320 exempted telecommunications companies and services from rate or rate of return regulation by the Public Service Commission unless a telecommunications company notified the commission that it wanted to be regulated in this manner. For telecommunications companies with over 50,000 end users, the election not to be exempt from rate or rate of return regulation was a one-time, irrevocable decision. Although the Legislative Assembly exempted essential telecommunications service and nonessential telecommunications service (service that is not included within the definition of essential telecommunications service) from rate or rate of return regulation by the commission, essential telecommunications service is still subject to a price cap based upon the essential telecommunications price factor. Essential telecommunications service includes service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area.

1989-90 Interim and 52nd Legislative Assembly

During the 1989-90 interim, the commission reviewed the Public Service Commission's determination of the essential telecommunications price factor, Minnesota's incentive regulations, and recommendations of interested parties. Even though the commission did not recommend any legislation, in 1991 the Legislative Assembly enacted three main bills that primarily affected Title 49 (no changes were made to the substantive provisions of 1989 Senate Bill No. 2320).

1991 House Bill No. 1556

This bill required telecommunications companies and rural telephone cooperatives offering telephone call identification services to allow a caller to withhold display of the caller's telephone number from the person receiving the telephone call placed by the caller.

1991 House Bill No. 1095

This bill required a person who makes telephones available to the public for intrastate telephone calls on that person's premises to ensure that the telephones allow the consumer to use access code numbers ("800," "950," or "10XXX 0+") to obtain access to the provider of operator services desired by the consumer, at a charge no greater than that charged for calls placed using the presubscribed provider of operator services.

1991 House Bill No. 1557

This bill required mutual aid telecommunications cooperatives and telecommunications cooperative associations to have the approval of two-thirds of the

membership of the cooperative or association to sell a physical plant if the value of the plant is more than five percent of the value of the cooperative or association. In addition, the enabling statute for the commission, NDCC Section 49-21-22, was amended to transfer responsibility for providing staff services for the commission from the Legislative Council to the Public Service Commission.

1991-92 Interim and 53rd Legislative Assembly

The study of telecommunications law by the commission during the 1991-92 interim resulted in two main recommendations incorporated into 1993 Senate Bill No. 2440. The first related to the banking of essential telecommunications price factor changes and the second related to uniform long-distance rates. These recommendations came after the commission reviewed the Public Service Commission's determination of the essential telecommunications price factor and the Public Service Commission's decision that ordered equal access (intraLATA) and unbundling for the purpose of offering service on an equal and open nondiscriminatory basis. In 1993 the Legislative Assembly enacted four bills that primarily affected Title 49.

1993 Senate Bill No. 2440

This bill changed the definition of "essential telecommunications price factor" for purposes of telecommunications regulation from the annual change in a company's input cost index reduced by 50 percent of that company's productivity incentive adjustment to a factor determined annually which is the lower of 41.6667 percent of the percentage change of the average annual gross national product price index or the percentage change of the average annual gross national product price index minus 2.75 percentage points for group I telecommunications companies or a factor determined annually which is the lower of 52.0834 percent of the percentage change of the average annual gross national product price index or the percentage change of the average annual gross national product price index minus 2.0625 percentage points for group II telecommunications companies. Group I telecommunications companies are those companies with over 50,000 subscribers and group II telecommunications companies are companies with 50,000 or fewer subscribers. The bill also revised the distinction between essential telecommunications services that are regulated or subject to the essential telecommunications price factor cap and nonessential services that are not subject to the essential telecommunications price factor cap. The bill also revised the definition of telecommunications services that are not subject to the telecommunications deregulation law, such as coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment, inside wire and premise cable installation and maintenance, and directory services that are not

essential, such as "yellow pages" advertising and bold-face or color listings in "white pages."

1993 Senate Bill No. 2317

This bill exempted a public utility operated as a nonprofit, cooperative, or mutual telecommunications company or a telecommunications company having fewer than 3,000 local exchange subscribers from regulation under NDCC Chapters 49-02 and 49-21. However, these public utilities were still subject to Sections 49-21-01.4, 49-21-08, 49-02-02(7), 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10 regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies.

1993 Senate Bill No. 2385

This bill, effective through July 31, 1999, provided that dialing parity on an intraLATA basis, otherwise known as 1+ intraLATA equal access, may not be required to be provided by any company providing local exchange service. This bill reversed a Public Service Commission ruling that forced U S West to open its "short haul" long-distance markets to other telephone companies.

1993 Senate Bill No. 2393

This bill reduced to one the number of Public Service Commissioners on the commission and required the Legislative Council to provide staff services rather than the Public Service Commission.

1993-94 Interim and 54th Legislative Assembly

The study of telecommunications law by the commission during the 1993-94 interim resulted in the recommendation of two bills—Senate Bill Nos. 2078 and 2079. The commission made these recommendations after reviewing federal legislation and reviewing the North Dakota Supreme Court decision *MCI Telecommunications Corp. v. Heitkamp*, 523 N.W.2d 548 (1994). This case related to a challenge of 1993 Senate Bill No. 2385, which provided that dialing parity on an intraLATA basis may not be required to be provided by any company providing local exchange service. The statute withstood challenge on special law and unlawful delegation of legislative authority grounds. The 1995 Legislative Assembly enacted four bills that primarily affected Title 49.

1995 Senate Bill No. 2078

This bill included pay phones within regulation for the purpose of requiring access code numbers to the operator services desired by the consumer.

1995 Senate Bill No. 2079

This bill reestablished the commission until 1999.

1995 House Bill No. 1274

This bill required telecommunications companies to allow callers on a per line basis to withhold display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller. The bill required telecommunications companies to provide this option without charge on a per call basis and without charge on a per line basis to residential customers and business customers with special needs.

1995 House Bill No. 1459

This bill increased the size of a telecommunications company not subject to regulation by the Public Service Commission from a company having fewer than 3,000 local exchange subscribers to a company having fewer than 8,000 local exchange subscribers. As a result of this bill, only the three largest telephone companies are subject to price regulation—U S West, Souris River Telecommunications in Minot, and the North Dakota Telephone Company in Devils Lake.

1995-96 Interim and 55th Legislative Assembly

The study of telecommunications law by the commission during the 1995-96 interim resulted in the recommendation of 1997 House Bill No. 1067. The commission made this recommendation after reviewing the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56; and meeting with the Taxation Committee and reviewing the effect of taxation laws on North Dakota telecommunications law. The Act was the first major change to the federal telecommunications law since 1934 (the major change provided by the Act is the opening of local exchange markets to competition). House Bill No. 1067, which failed to pass, was meant to implement the federal Telecommunications Act of 1996. The 1997 Legislative Assembly did not enact any bill that primarily affected Title 49.

Federal Telecommunications Act of 1996

The commission received testimony on the federal Telecommunications Act of 1996. The basic concept behind the Act was to bring the benefits competition had brought to the long-distance market to the local exchange market. The Act allows competition in local exchange markets, and when there is competition, allows the regional Bell operating companies to enter into the interLATA long-distance market.

The Act provides for the development of competitive local exchange markets. There are three avenues for competition with the local exchange carrier: resale, lease or purchase of network elements, or overbuilding. The main rule is that each telecommunications carrier has the duty to allow interconnection. In addition, all local exchange carriers have the duty to offer resale. Each incumbent local exchange carrier has five main duties, which include the duty to negotiate, provide for

interconnection at any technically feasible point and of at least equal quality, provide for unbundled access to network elements, provide for resale at wholesale rates, and provide for collocation for the physical location of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. The Act allows states to authorize their public utilities commissions to establish access and interconnection obligations of local exchange carriers.

The Act allows for special protections for rural telephone companies. All local exchange carriers in this state are rural telephone companies, except U S West. The duties of an incumbent local exchange carrier do not apply to a rural telephone company until the company has received a bona fide request for interconnection, services, or network elements, and the state public utilities commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with federal universal service. A rural telephone company may petition the state public utilities commission for a suspension or modification of the duties of a local exchange carrier or an incumbent local exchange carrier. The state public utilities commission must grant the petition if the commission determines it is necessary to avoid significant adverse economic impact on users of telecommunications services, to avoid imposing a requirement that is unduly economically burdensome, or to avoid imposing a requirement that is technically infeasible and is inconsistent with the public interest, convenience, and necessity.

The particulars of interconnection between an incumbent local exchange carrier and a competitor may be determined one of three ways: negotiation, mediation, or arbitration. Any interconnection agreement adopted by negotiation must be submitted for approval to the state public utilities commission.

The state commission may mediate or arbitrate an agreement. The Act provides for arbitration standards and procedures. The standard for arbitrating just and reasonable rates for interconnection and just and reasonable rates for network elements for unbundled access must be based upon the cost of providing the interconnection or network element and may include a reasonable profit.

The Act provides for a federal universal service fund. Universal service is the concept that every person should have a telephone. The Act creates a joint board that determines federal universal service support. Under the Act, only eligible telecommunications carriers may receive high-cost area federal universal service funds. An eligible telecommunications carrier is required to offer services that are supported by the federal universal service fund. In addition, the Act provides for discounts for educational providers and libraries.

Under the Act, the state public utilities commission is required to designate a common carrier as an eligible telecommunications carrier for a service area designated

by the state commission. The state commission may in the case of an area served by a rural telephone company, and must in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state public utilities commission is required to find that the designation is in the public interest.

If no common carrier will provide the universal services, the state public utilities commission with respect to intrastate service must determine which common carrier or carriers are best able to provide the services and is required to order the carrier or carriers to provide the service. The state public utilities commission is required to permit an eligible telecommunications carrier to relinquish its designation if there is more than one eligible telecommunications carrier in the service area.

Under the Act, a Bell operating company may provide interLATA services if the company has filed an approved statement of generally available terms and has met a 14-point competitive checklist. A Bell operating company may file a statement of generally available terms with the state public utilities commission. The state commission may not approve the statement unless the statement complies with the pricing standards for interconnection and network element charges and the duties of interconnection. The Bell operating company may enter the interLATA market if the company is providing access and interconnection pursuant to an agreement with a facilities-based carrier and meets the 14-point competitive checklist.

The commission received testimony on the universal service fund discounts for schools and libraries. The original funding for schools and libraries was set at \$2.5 billion. This amount was reduced to \$625 million for a trial period of six months. The Federal Communications Commission created a nonprofit organization for the administration of the universal service fund for schools and libraries. The organization is called the Schools and Library Corporation. The federal funds for schools and libraries are distributed on a first-come, first-serve basis. A minimal amount will be reserved for distribution on a need basis. A portion of access charges will be used to pay for connecting schools, libraries, and hospitals with telecommunications technology. State universal service funds will not be required for these purposes. Interexchange carriers may add the extra cost on to customers' bills as a surcharge. The universal service funding for schools and libraries is a telephone tax.

Universal Service and Access

The federal Telecommunications Act of 1996 provides for the creation of a federal universal service fund to provide universal services to rural and high-cost areas. States may adopt their own state universal service fund. The Federal Communications Commission

decided the percentage of universal service support provided by the federal mechanism was to be 25 percent of the cost for providing universal service to high-cost areas; however, this decision is not final. Eligible telecommunications carriers in this state will receive the 25 percent split for the portion of the local exchange which is used for interstate service from the federal universal service fund regardless of the formation of a state fund. This would leave 75 percent for the state to fund through a state universal service fund. According to one study, a state surcharge of an estimated 27 percent in addition to the federal surcharge of an estimated 2.7 percent would be required for a state universal service fund. One study indicates an intrastate responsibility on this state's consumers of as much as \$62 million. The commission sent a letter to the Federal Communications Commission and the joint board on universal service which requested a higher federal share of universal service costs to be paid by the federal fund.

The Public Service Commission held a hearing to determine the price methodology for universal service, although it will make no finding until the Federal Communications Commission acts. The universal service fund cost hearings were for U S West. If the state selects a model, the Federal Communications Commission requires that the selected model must be used for the state universal service fund, if and when the fund is implemented. Rural carriers may have a different cost methodology applied than what is applied to U S West.

The universal service cost hearing was not for determining costs in the local exchange market. The benchmark is a mark of affordability for a new customer. The \$31 benchmark set by the Federal Communications Commission does not deal with the issue of allocation. If the Federal Communications Commission determines that the split for universal service costs should be 75 percent for the state, this state may elect to be responsible for 75 percent of the amount of costs over \$31.

The commission received testimony on a state universal service fund. The National Exchange Carrier Association administers seven state programs that are administered similarly to the federal program. The administrative charge for the administration of a universal fund depends on the complexity of the fund. The goal is to keep administrative charges less than one percent. No one has terminated the use of the National Exchange Carrier Association for the administration of a universal service fund after using the administrative services. Some states have developed a state universal service fund after the enactment of the federal Telecommunications Act of 1996 to fund high-cost areas. These states include Idaho, Minnesota, Montana, Nebraska, Oklahoma, Utah, and Washington. Idaho's and Washington's legislation requires a study and a report of recommended legislation. These states differ in how specific their law is in giving the public utilities commission the power to create and administer a state universal

service fund. Some states have given great authority to the public utilities commission to create a fund that is directly compatible with the federal fund.

The commission discussed a state universal service fund. It would be difficult to create a state universal service fund without knowing the portion the state must pay. Enabling legislation for the Public Service Commission to create a fund would give the commission, instead of the Legislative Assembly, power over a major issue. The Public Service Commission has the authority to do everything it needs to do to create a universal service fund, except it does not have the authority to tax.

The universal service fund is an explicit subsidy. In creating a universal service fund, implicit subsidies that are presently providing universal service would need to be removed. Implicit subsidies must be removed if there is going to be competition. If there is competition, a local exchange carrier with implicit subsidies in its prices may be targeted for competition. The competitor will be able to charge less than the incumbent. If the incumbent lowers its prices, it loses any implicit subsidies. The time for the removal of implicit subsidies must be at the same time as the addition of explicit subsidies or there will be a windfall. The universal service fund is meant to replace implicit subsidies with explicit subsidies. It is argued that local service is subsidized by universal service fund payments, rate averaging, higher business rates, access payments, and other federal programs.

Access fees are collected for the service provided by a local exchange provider to an interexchange carrier in connecting toll calls. There was debate as to whether there are any subsidies in access. It was argued that it costs more to begin and terminate a toll call in North Dakota. The commission was informed access fees should not be reduced. The commission was informed access should be based on cost.

After the creation of a universal service fund, there will be a surcharge that will remove the need for an implicit subsidy through access prices. Customers who did not use long distance very often will pay more under universal service than they did with high access.

The commission was informed access charges are central to rural companies so that these companies can recover costs. The commission was informed that the rural telephone cooperatives recommend leaving intra-state access at present levels to accomplish a policy of universal service. The federal universal service support that exists for rurals will not be changed before 2001. If access rates decrease, rural companies will need a supplemental income source. The state can implement programs to provide this through a state universal service fund.

The commission was informed residential rates appear low. This becomes more apparent when one assumes business rates are high and access rates are high. It is unknown whether U S West is charging a below-cost rate for local service because there has not

been a recent cost study. It appears that there has been a dramatic reduction in the cost of providing telecommunications services in the last five years. There have not been any recent reductions in rates in U S West's territory.

U S West local service rates are based on a state-wide average. If U S West were able to deaverage these rates, they could provide lower prices in the cities to meet competitive pressures. It is important to break down costs over a sufficiently small enough area because if the area is large, there will be substantial implicit subsidies in that area.

Competition

There are three avenues for competition: resale, lease or purchase of network elements, and overbuilding. The first wave of competition comes through resale. The second wave of competition comes through the unbundling of network elements. The third wave of competition comes through facilities-based competition.

Competition will come to a market if it is easy to compete. The commission was informed there needs to be a facilities-based competitor providing a substantial market share before there is true competition. Facilities-based competition requires a substantial investment. The deregulation of the trucking industry worked well because a person could get into the trucking business for \$5,000, and a person could get out of the trucking business easily because trucks are easily marketable. These concepts do not apply to telephone companies. If a company builds a facility and it fails, that company cannot recoup its losses easily through selling its facilities.

Rurals

The commission was informed that competition may not work in rural cooperative areas. In rural cooperative areas, for there to be competition, the customers who own a cooperative would have to lease services to another company so that the other company could sell them back to the same customer.

Competition would most likely come from competitors taking large business accounts (cherry picking). If rural companies lost the top five percent of customers, they would lose 22 to 28 percent of revenues. If they lost the top 20 percent of customers, they would lose 80 percent of revenues. A natural monopoly may be the most efficient way to serve areas in which both companies would fail if there were competition. A natural monopoly requires some controls on price so that service is affordable.

U S West

The commission received testimony on a report from Ostrander Consulting on the level of competition faced by U S West and on what would be sufficient competition

for deregulation. The Ostrander report concluded that in this state resale is not competition. At the time of the report there were no facilities-based local exchange competitors in this state. The report concluded that competition must be evaluated on a facility-by-facility basis.

State law allows the Public Service Commission to deregulate U S West. If the Legislative Assembly does not make any legislative changes, the Public Service Commission could still function as to the deregulation of U S West. If U S West were deregulated too early, it would be an unregulated monopoly in the local exchange market. Prices could be increased and customers would have no recourse. There would be no check on pricing by competition or by the Public Service Commission. If prices are artificially low because of subsidies, prices would have to rise for there to be competition. If prices are artificially low, competition will never come to the local exchange telecommunications industry. If U S West is deregulated and if U S West raises prices, competition would be better able to undercut the incumbent and enter the market. AT&T lost one-half of the market share before being completely deregulated by the federal government. Until AT&T lost a sufficient amount of the market share, i.e., there was competition, the other companies offering long distance tracked the prices AT&T offered to the public. Competition was not present until other companies were strong enough to offer something better than AT&T.

The commission was informed other companies are building facilities in U S West territory and cherry picking large business customers. According to a representative of U S West, U S West should be allowed to reciprocate. The federal law does not protect U S West from cherry picking. There is protection in state law for U S West because they can increase rates to meet revenue needs through an application to the Public Service Commission.

New Entrants

The commission received testimony on competition from the wireless industry. The commission was informed it has been two and one-half years since the passage of the federal Telecommunications Act of 1996 and there is no competition in North Dakota. Wireless service could provide competition in rural portions of this state as an eligible telecommunications carrier. Western Wireless is capable of providing service throughout this state. Wireless service could reduce the subsidies needed for universal service because wireless service has a lower cost of service in some areas of the state. This assumes universal service subsidies are based on the most cost-effective provider. The lower cost service is based on a fixed wireless unit at the home of the consumer. The lower cost figures are based upon forward-looking costs. The use of a forward-looking cost model is only an issue if wire line companies have not recovered the cost of their facilities. The recovery for

stranded investment is an important issue with the rural cooperatives.

The commission was informed that the Public Service Commission would determine whether to allow Western Wireless to become an eligible toll communications carrier. The Public Service Commission would take into account whether the market can handle two competitors and if consumers will benefit from competition in making this decision. The hearing for Western Wireless to become an eligible telecommunications carrier was on October 29, 1998, and may have been the first hearing of its kind in the nation.

For Western Wireless to become an eligible telecommunications carrier, a service area needs to be defined. The issue in designating a service area is whether the service area should mirror that of the competitor's or be competitively neutral. A wireless company would be required to serve existing dead spots in a service area if designated as a telecommunications carrier for that service area.

Western Wireless receives funding from a state rural improvement fund in Nevada. Western Wireless provides local exchange service in Nevada. The service provided in Nevada is not measured, but flat rate. There is access to the Internet and facsimile transmissions. There is an expanded local calling area.

The primary focus of wireless is on voice transmission. Security is an issue with analog wireless service, but not with digital service. In Nevada, in which wireless universal service is a reality, analog service is provided. The wireless industry is developing the capability to provide high-speed data service. Wireless can transmit data at 9.6 baud. Wireless may go as fast as 56 baud with proper equipment and design. Wireless is designed for mobile application, not high speed. High-speed data transmission would require a new system and spectrum would become an issue if there were heavy use. There is enough spectrum to provide data and voice transmission to every American. A digital voice channel does not need as much spectrum as analog.

Competition by the wireless industry would provide duplication of services and a loss of income for the incumbent rural provider. If there are two eligible telecommunications carriers in an area, both will receive subsidies, but only for their customers. The overall subsidy would remain the same.

The commission received testimony on competition from McLeodUSA. McLeodUSA makes a profit by providing extra services through Centrex. McLeodUSA combines many customers under one Centrex system. McLeodUSA purchases a common block of 20 lines from U S West and uses one Centrex line for five customers. McLeodUSA leases the lines from U S West at retail price. In addition to local service, McLeodUSA offers long-distance service and is working on enhanced services and cable television. McLeodUSA focuses on small businesses. McLeodUSA is the largest customer of U S West.

The commission was informed as to McLeodUSA's business in Bismarck. McLeodUSA will provide services to any residential or business customer in Bismarck. The goal of McLeodUSA is to become a facilities-based carrier in Bismarck as fast as possible. McLeodUSA will continue to build facilities as long as it continues to gain customers. Everyone pays the same basic rates for local service from McLeodUSA; however, a customer may receive other services for a fee.

The commission received testimony on competition from AT&T. The commission was informed AT&T has tried resale and although resale is successful in bringing in customers, AT&T lost money on local exchange resale. For resale to work, the wholesale price needs to be set low enough so there is a large enough profit margin. The commission was informed that even though the Public Service Commission is involved with the setting of the price for resale, the resale prices are not low enough to encourage competition. When competition was imposed on AT&T under the consent decree, there was a required discount of 55 percent. Under the Telecommunications Act of 1996, discounts for local exchange services have been as low as four to eight percent and average around 20 percent in U S West territory. Competition in the long-distance market took 14 years.

The commission was informed U S West has forced into arbitration and taken to court every interconnection agreement. These agreements will expire before they take effect. The regional Bell operating companies have not been penalized for delaying the implementation of the federal Telecommunications Act of 1996.

The commission was informed incremental costs are the correct measure of cost for access because the cost of the local loop is caused by a customer subscribing to a local exchange carrier for local service. The additional service to call outside the exchange area is incremental. The more common telephone call is a local call. If one believes incremental costs are the true costs, then any payment above incremental costs would be a subsidy. The cost for providing access for an intraLATA toll call under total long-run incremental cost determination is quite small. Local exchange carriers charge between 3 and 18 cents for local access. If the rate charge for access is 18 cents, almost 17.6 cents of the cost of local access would be above incremental cost. This number is based upon the incremental cost of access to the switch.

The commission was informed overbuilding requires a workable agreement with the incumbent local exchange company. All forms of competition require cooperation from the incumbent local exchange company. Overbuilding requires the least amount of cooperation; however, it requires the most time and money.

If overbuilding is the only way there may be competition, one way to encourage overbuilding competition

would be to allow U S West to raise its rates. If U S West's access rates are above cost and U S West is allowed to raise its prices for local service, then U S West will have a windfall and be allowed to price gouge; however, price gouging by U S West may bring in competition. A viable competitor needs to be better or cheaper. High prices by U S West would allow competitors to be cheaper than U S West.

The commission received testimony on competition from Consolidated Communications Networks, Inc., which plans to provide facilities-based competition in Dickinson and Belfield. By the end of the year, Consolidated Communications Networks, Inc., expects to have approximately seven percent of the Dickinson market. Consolidated Communications Networks, Inc., is an Internet and personal communications service provider. Consolidated Communications Networks, Inc., does most of its business with businesses.

Price Cap

North Dakota is one of the first states to have a price cap instead of rate of return regulation. The price cap is used to regulate a monopoly. According to a representative from U S West, U S West needs to raise residential service rates and de-average pricing. This cannot be accomplished with the continuation of price caps.

In 1993, the price cap X factor was statutorily set at 2.5 percent. The X factor is a replacement for competition in figuring the price cap. According to a study by the Federal Communications Commission, it may need to be raised to approximately 6.5 percent. An error of 3.25 percent will cause an annual error of roughly \$1 million per year in local service. The Federal Communications Commission recently performed a study that reported the productivity factor is approximately 6.5 percent nationwide. To investigate the X factor properly, it would require an extensive review of U S West records.

A study would take approximately six months and cost approximately \$50,000 to \$70,000. The cost for a study would depend upon the type of study. To find numbers that are reasonably legitimate as they relate to nonregulated services in North Dakota, the Public Service Commission could bootstrap onto the Federal Communications Commission hearings.

Requests for Legislation

The commission received testimony on requests for legislation. McLeodUSA requested that the Legislative Assembly encourage overbuilding with fiber line. U S West requested computer- and data-related services be exempt from regulation; flexibility in raising prices to offset toll and switched access reductions; an extension of the 1+ dialing access law to the year 2000; regulatory parity; establishment of responsibilities of eligible telecommunications carriers; and repeal of certain statutes.

EXTENDED AREA SERVICE STUDY

Extended area service is a service by which a subscriber of one exchange may call a subscriber in another exchange without paying a toll fee or separate charge for the call. Usually the costs of extended area service are spread over the rates paid by all the subscribers in the involved exchange. In addition, once extended area service is implemented, it is typically mandated for all subscribers within an exchange. Alternatives to extended area service include:

1. A uniform calling area. This type of calling plan allows a customer to call within a predetermined mileage radius of the customer's local exchange on a mandatory participation, flat-rate basis.
2. A discounted toll calling plan. This type of calling plan allows a customer for a flat-rate fee to purchase various blocks of time at a certain percentage discount from regular rates for calling exchanges within a reasonable distance of the customer's home exchange.
3. A measured extension to flat-rate local service. This type of calling plan allows a customer to purchase measured service at a lower rate.

In many states, the process for determining extended area service is consumer driven. For example, in Indiana the process begins with a consumer who files a petition, after which a study is completed by the public utility agency to see if there is a sufficient community of interest, after which cost studies are completed by the local exchange carrier and the public utility agency. An election is held and upon approval by a majority of the customers an area of extended service is created.

In this state the process for determining extended area service is telephone company driven. Telephone companies may extend service on their own volition. The Public Service Commission does not have jurisdiction over a nonprofit, cooperative, or mutual telecommunications company or a telecommunications company having fewer than 8,000 local exchange subscribers so as to dictate extended area service. As for other telecommunications companies, the Public Service Commission has jurisdiction over complaints on the terms, conditions, and prices in these companies' price schedules. These companies are required to file a new price schedule before the creation of an extended area service that results in a price change.

In 1997 the Legislative Assembly considered, but did not pass, Senate Bill No. 2395. This bill would have given the Public Service Commission the power to create local calling areas that include Bismarck, Devils Lake, Dickinson, Fargo, Jamestown, Minot, or Williston. The Public Service Commission was to determine the

boundaries of the calling areas after hearings in at least four different regions of this state and after considering the community of interest to be served.

The commission received testimony on extended area service. There are no Public Service Commission rules for extended area service. There are numerous extended area service routes in this state and there have been many proposals to expand extended area service. There are many issues that make expansion difficult. The development of extended area service has been a matter of public pressure. Historically, extended area service was adopted, after a poll of telecommunications customers, if that poll resulted in a two-thirds vote for extended area service. The development of the existing extended area service routes may have happened 30-50 years ago and may not match the current community of interest standards.

The newest extended area service route is between Minot and the Minot Air Force Base. A flat rate was offered to the Minot Air Force Base for calls made to Minot. This option was not popular because customers wanted to call "free." Extended area service to and from the Minot Air Force Base did not result in an increase in the number of telephone calls; however, the time per call has increased. The increased time has required some increase in capacity.

Under extended area service, a minority of customers make the majority of calls. Extended area service produces a change in the revenue stream, i.e., it shifts economic burdens. Extended area service would reduce access income for local exchange carriers. Extended area service affects interexchange carriers because they have less business. Extended area service also affects competition.

Measured service is an alternative to extended area service; however, measured service requires the addition of special computers to measure the cost and provide switching capability.

Conclusion

The commission makes no recommendation concerning extended area service.

Recommendation

The commission recommends House Bill No. 1050 to extend the duration of the Regulatory Reform Review Commission to the year 2003. Because of ongoing changes at the federal level, the commission will meet after the biennial meeting of the Legislative Council in November 1998 to consider a state universal service fund, if final decisions are made at the federal level.

TAXATION COMMITTEE

The Taxation Committee was assigned six studies. House Concurrent Resolution No. 3044 directed a study of the impact of tax-exempt property on school districts. Senate Concurrent Resolution No. 4050 directed a study of taxation and regulatory incentives for the lignite industry to improve its competitive position in the energy marketplace. House Concurrent Resolution No. 3052 directed a study of the property tax exemption for charitable organizations. House Concurrent Resolution No. 3037 directed a study of the feasibility and desirability of providing property tax relief through alternative state and local revenue sources. The chairman of the Legislative Council directed the committee to study the assessment of agricultural property and inundated lands and directed a study of the application of the farm building property tax exemption.

Committee members were Representatives Wesley R. Belter (Chairman), Grant C. Brown, Chris Christopherson, William E. Gorder, Mick Grosz, Ralph L. Kilzer, Kenneth Kroeplin, Edward H. Lloyd, Ronald Nichols, Alice Olson, Dennis J. Renner, Earl Rennerfeldt, Arlo E. Schmidt, and Ben Tollefson and Senators Randel Christmann, Layton Freborg, Meyer Kinnoin, Ed Kringstad, Randy A. Schobinger, Vern Thompson, and Herb Urlacher.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

TAX-EXEMPT PROPERTY IMPACT ON SCHOOL DISTRICTS STUDY

Background

The existence of tax-exempt property within a school district affects the school district in two ways—by limiting the amount of property tax revenue the maximum school district levy will generate (but not in all cases) and by excluding the value of exempt property from the equalization factor under the foundation aid allocation formula.

School districts with unlimited levying authority are not restricted in property tax dollars by the existence of tax-exempt property. The Fargo School District has statutory authority for unlimited levies under North Dakota Century Code (NDCC) Chapter 15-51. Under NDCC Section 57-15-14, any school district with a population of more than 4,000 may be granted unlimited levying authority upon approval by a majority vote of electors, and a school district with fewer than 4,000 population may be granted authority to levy any specific number of mills approved by a vote of 55 percent or more of electors.

School districts that have not been granted unlimited levying authority or authority to levy an excess levy are subject to a general fund levy limitation of 185 mills on the dollar of taxable valuation of property in the district

under NDCC Section 57-15-14. A school district subject to this limitation which levied fewer than 185 mills for the prior school year may increase its levy by up to 18 percent in dollars from the prior school year, up to the 185-mill limitation. If a school district has an increase of 20 percent or more in total assessed valuation of property over the prior year, and as a result of the increase the district is to receive less in state foundation aid payments, that school district may levy any specific number of mills more in dollars than was levied in the prior year to make up for the loss of foundation aid revenue but may not exceed the 185-mill limitation.

School districts at or near the general fund 185-mill limitation have been eligible for optional percentage levy increases in dollars in the years since 1981. From 1981 through 1996, taxing districts were allowed a percentage increase in dollars over the base year levy in dollars. Under NDCC Section 57-15-01.1, as amended in 1997, during taxable years 1997 and 1998, a county, city, township, or school district eligible for federal funds on a matching basis as a result of a disaster declared by the President of the United States may levy an amount in dollars equal to the amount required to match federal funds up to an increase of two percent more than the amount levied in dollars by the district in the base year. Except for this authority to match federal disaster funding, taxing districts that are levying at levels in excess of statutory mill levy limits are authorized to maintain the amount levied in dollars in the base year but have no authority to increase levies without voter approval.

Many school districts in the state are levying an amount exceeding 185 mills for general fund purposes as a result of the compounding of percentage increase allowances during taxable years 1981 through 1996. However, the levy under NDCC Section 57-15-01.1 is not a levy in mills but is a levy of a specific amount in dollars which is converted to mills by the county auditor. The significance of this distinction is that when a levy limit is based on dollars levied in a prior year, that amount is unaffected by increases or decreases in the taxable valuation of property within the district. If a district is levying under this authority, an increase in valuation in the district with the same number of dollars levied will result in a lower mill rate but no change in the amount of property taxes collected, and a decrease in valuation will result in a higher mill rate but no change in taxes collected.

When a school district levy is limited to the statutory number of mills, the maximum amount a district can levy rises and falls with the taxable valuation of property within the district. It is within these districts that exemptions from property taxes have the most significant direct effect on property taxes.

An alternative to an unlimited levy is an excess levy under NDCC Chapter 57-16. If the governing board of

the school declares that funds available at the maximum levy otherwise allowed by law are insufficient, the question may be placed on the ballot of increasing the legal limitation by a specified percentage of up to 75 percent. An excess levy may be authorized for up to five years and may be extended indefinitely in five-year increments by unanimous approval of the governing board of the school district.

School districts have authority to levy for various special fund purposes. School districts may levy without limitation for board and lodging or transportation allowance for high school students sent to another high school district, high school tuition, judgments, compromise of a judgment for injury, asbestos removal, special assessments, and bond sinking and interest funds. Upon approval by a vote of 60 percent or more of qualified electors, a school district may levy up to 20 mills for a building fund. A school district may levy up to three mills for a special reserve fund. School districts may levy for support of a junior college or off-campus educational center, municipal or regional airport authority, plant pest control, railroad purposes, asbestos abatement, and long-distance learning technology.

School districts levy more property taxes than all other taxing districts combined. For taxable year 1995, school district property taxes exceeded \$230 million and comprised 54.5 percent of all property taxes collected in the state.

The effect of the existence of tax-exempt property on school district tax revenues depends upon how the maximum levy for the district is determined. However, all taxing districts' taxpayers are affected by the existence of tax-exempt property. In districts with a limitation of a number of mills, reduced taxable valuation due to tax-exempt property means a higher number of mills must be imposed against each parcel of property. In districts in which the levy is unlimited or limited based on dollars levied in a previous year, the number of tax dollars raised could be spread against a greater amount of property if tax-exempt property were added to the tax rolls.

Foundation aid allocations are determined under NDCC Chapter 15-40.1 and the appropriation made for that purpose by the most recent Legislative Assembly. The foundation aid allocation formula for school districts includes a variety of factors. The formula includes an equalization factor, applied to reduce the payment to the school district. For the 1996-97 school year and thereafter, 32 mills is multiplied times the latest available net assessed and equalized valuation of property in the school district and the resulting amount is subtracted from the payment to be made to the school district. For years after 1996-97, the number of mills in the factor must be adjusted by determining a percentage by dividing the number of mills used in the computation in the previous year by the state average school district general fund mill levy plus 40 percent of the percentage increase in foundation aid distributions and multiplying

the amount times the state average school district general fund mill levy.

Because the equalization factor is multiplied times the assessed valuation of property in the taxing district, the more taxable property that exists in the district the greater the amount deducted from foundation aid payments for the district. Property that is not on the tax rolls generates no revenue for a school district, unless payments in lieu of taxes are received, and does not decrease foundation aid to the district.

Property tax exemptions exist for numerous kinds of property under many kinds of ownership. Thirty-nine subsections of NDCC Section 57-02-08 provide specific exemptions for different classifications of property. Several other provisions of law exempt property from taxation. However, it is exemptions granted at the discretion of city or county governing bodies that are of greatest concern to school district officials, who provided the impetus for 1997 legislation that was defeated and for introduction of the study resolution leading to this study. Discretionary exemptions allowable by cities and counties include exemptions for new residential property, day care property, pollution abatement improvements, residential and commercial property improvements, and exemptions or payments in lieu of taxes for new and expanding business.

House Bill No. 1318 (1997), introduced on behalf of the North Dakota School Boards Association, would have allowed school districts the opportunity to decide whether property tax exemptions or payments in lieu of taxes for new business would be granted to the extent of the school district property tax levy. The bill failed to pass and the decision on whether to grant exemptions or payments in lieu of taxes for new business remains in the discretion of the governing body of the city or county.

Senate Bill No. 2322 (1995) was enacted to provide that during deliberation on a property tax exemption or option to make payments in lieu of taxes for new business, a city or county must include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each affected school district and a representative appointed by the Board of Township Supervisors of each affected township. This law was adopted with an expiration date of July 31, 1997, and no attempt was made during the 1997 legislative session to extend the expiration date.

Committee Consideration

The North Dakota School Boards Association supported 1997 House Bill No. 1318 to allow school districts to opt out of property tax exemptions or payments in lieu of taxes granted by cities and counties. The association supports introduction of similar legislation in 1999. Association representatives stressed that it is not the intention of the association to obstruct economic development efforts, but rather to allow school districts to make their own decisions on exemptions to

the extent of their property tax levies. The association does not seek authority to veto tax exemption decisions of cities or counties. They said that school districts are the appropriate body to decide whether to grant exemptions from school levies, and that school districts may experience greater immediate impact from economic development than other political subdivisions. They said school districts levy the majority of property taxes in dollars because school districts have greater need for revenues. They said a city or county may be able to forego property tax revenue for several years, and may base property tax exemption decisions on that fact. They said a city or county granting an exemption may not consider that economic development may cause an increase in students, which immediately impacts the school district budget.

School board representatives believe that some type of property tax incentive is necessary to successfully compete for new and expanding business opportunities. They are concerned that the school board is left out of the decisionmaking process and another entity may grant an exemption or payments in lieu of taxes that could last for up to 20 years with no real participation in the decision by the school board.

The North Dakota Industrial Development Association opposed allowing school districts to opt out of property tax exemptions for new businesses. A representative of the association said that North Dakota has a great need for economic development and the concept of providing tax incentives is that the community invests now to receive benefits later. An association representative said economic development professionals do not consider it a property tax revenue loss when a new project is established with a property tax exemption because if the project did not exist there would be no additional tax base. Eventually property will become taxable, so the association views new businesses established with property tax exemptions as a net gain.

An Industrial Development Association representative said there was concern in early stages of economic development efforts that businesses would take advantage of exemptions and, after the exemptions expired, would leave the state or community. It has not been proven that businesses have taken advantage of exemptions in that fashion. Businesses that have been granted exemptions were carefully evaluated by local officials and have proven to be solid corporate citizens of their communities. The association surveyed city economic development officials and found no example of a business that had taken advantage of an exemption and then moved elsewhere. In the survey, local economic development officials supported the economic development tools that have been provided by state law, particularly emphasizing the importance of property tax exemptions. Economic development officials suggested that allowing school districts to opt out of property tax exemptions would dilute the incentives that could be offered to new

business. They suggested that the city or county is the appropriate decisionmaking authority for property tax exemptions because economic development professionals are involved at those levels of government.

The Greater North Dakota Association opposed allowing school districts to opt out of property tax exemptions granted by cities or counties. The association supports allowing a school district representative as a nonvoting member of a city or county governing body in considering property exemption decisions.

The North Dakota League of Cities opposed granting school districts authority to opt out of property tax exemption decisions made by cities or counties. A league representative said the Legislative Assembly gave authority to grant property tax exemptions in recognition of the importance of economic development to the state. He said the Legislative Assembly chose to have cities and counties make the decisions about granting exemptions because cities and counties are in the best position to weigh the benefits and assess the costs of a project and the needs of the community.

The North Dakota Association of Builders, the North Dakota Home Builders Association, and the Bismarck-Mandan Development Association expressed support for preserving the existing status of property tax exemption decision authority.

Bill Draft Consideration

The committee considered a bill draft to provide school districts authority over whether school district property tax levies would apply to property for which the city or county has granted a property tax exemption or payments in lieu of taxes as a new or expanding business under NDCC Chapter 40-57.1.

Some committee members said school districts should have decisionmaking authority over property tax exemption decisions to the extent of the school district property tax levy. However, the majority of committee members did not support recommending the bill draft and expressed the opinion that North Dakota's economy seems to be growing, and there is evidence that much of the growth is attributable to local economic development efforts. Committee members said diluting authority over exemption decisions would diminish the tools available to local economic development officials and would make it difficult for a taxpayer to know to whom complaints should be made about exemption decisions. Committee members said extending this authority to school districts would also serve as an argument that the authority should be extended to all political subdivisions having taxing authority.

Recommendation

The committee recommends Senate Bill No. 2051 to give school districts and townships the right to each have a member participate as a nonvoting, ex officio member of the governing body of the city or county when the

governing body is considering granting of an exemption or the right to make payments in lieu of taxes for a new or expanding business under NDCC Chapter 40-57.1. The bill is identical to 1995 Senate Bill No. 2322, which was in effect through July 31, 1997, except that the bill creates permanent law. The bill is intended to allow school districts and townships to participate in discussions about property tax exemption decisions, to make city or county officials aware of any special concerns of the school district or township.

LIGNITE INDUSTRY STUDY

Background

Coal Severance Tax

The coal severance tax was enacted as a temporary law in 1975 and was essentially reenacted in 1977, again as a temporary law. In 1979 the coal severance tax became permanent law. Under the 1975 law, the coal severance tax rate was set at 50 cents per ton plus an amount determined by an escalator clause that provided for an increase in the tax of one cent per ton for every three-point increase in the index of wholesale prices for all commodities as prepared by the United States Department of Labor, Bureau of Labor Statistics. The 1977 Legislative Assembly increased the base rate of the tax to 65 cents per ton plus the amount determined under an escalator clause, equal to one cent per ton for each one-point increase in the index of wholesale prices for all commodities. In 1979 the coal severance tax base rate was increased to 85 cents per ton with an escalator of one cent per ton for every four-point increase in the index of wholesale prices for all commodities. It was provided that, even though the wholesale price index may decline, the rate of severance tax would not be reduced. The coal severance tax rate formula remained in place and the rate reached a high of \$1.04 per ton until passage of 1987 House Bill No. 1065, which reduced the general coal severance tax rate to 75 cents per ton, eliminated the escalator provision, and imposed an additional separate tax of two cents per ton, with the proceeds of the separate tax allocated to the lignite research fund. The 77 cents per ton rate of tax has been unchanged since 1987.

The coal severance tax is in lieu of sales or use taxes. Any coal that is exempt from the severance tax is subject to sales and use taxes unless a sales or use tax exemption exists. Severance tax exemptions are provided for coal used primarily for heating buildings and coal used by the state or any political subdivision. Coal used for heating privately owned buildings is not exempt from the sales tax. A severance tax exemption was created in 1985 for coal used in agricultural processing or sugar beet refining plants located in North Dakota or adjacent states. Other 1985 legislation provided that the severance tax rate is reduced by 50 percent if the coal is to be burned in a cogeneration facility. Coal mined for

out-of-state shipment is subject to a reduced tax rate from July 1, 1995, through June 30, 2000.

Coal shipped into North Dakota for use in a coal conversion facility would not be subject to North Dakota's severance tax. Passage of 1997 House Bill No. 1467 provided that such coal would be subject to a special sales tax of six cents per million BTUs, and that revenue from the special sales tax would be allocated in the same manner as coal severance tax revenues. This tax has been challenged in a lawsuit filed by Montana coal producers, and the lawsuit was pending at the time of this report.

An exemption from the state's share of coal severance or sales taxes was created under 1997 House Bill No. 1467 for coal burned in smaller generating stations in this state or an adjacent state. This exemption does not apply to the coal development trust fund share of revenue, but the bill allows political subdivisions to individually give up their share of tax revenues on such coal.

All severance taxes, penalties, and interest collected by the Tax Commissioner are transferred to the State Treasurer within 15 days of receipt and are credited to a special fund called the coal development fund. The revenue in the coal development fund is allocated 50 percent to the state general fund, 35 percent to producing counties, and 15 percent to the coal development trust fund. The coal development trust fund is held in trust and administered by the Board of University and School Lands for loans to coal-impacted counties, cities, and school districts. Seventy percent of deposits in the trust fund are to be transferred to the lignite research fund.

Thirty-five percent of the revenue in the coal development fund is allocated to coal-producing counties in the proportion that the number of tons of coal severed in each county bears to the total number of tons of coal severed in the state. Of the 35 percent portion of the coal development fund which is distributed to coal-producing counties, 30 percent is paid by the county treasurer to incorporated cities of the county based upon population, 40 percent is deposited in the county general fund, and 30 percent goes to school districts within the county in proportion to average daily membership. The distribution formula within counties also provides for recognition of impact on surrounding areas not within the county. If the tipple of a currently active coal mining operation in a county is within 15 miles of another county in which no coal is mined, revenue apportioned from that coal mining operation is apportioned according to the same formula as county revenues with inclusion of cities, school districts, and the general fund of the non-coal-producing county within certain geographical limits.

Coal severance tax revenues for the 1997-99 biennium are estimated to be \$45,846,000. Of this amount, the state general fund is estimated to receive \$22,310,000, allocations to political subdivisions are estimated to be \$15,640,000, and the coal development

trust fund is estimated to receive \$6,703,000. The remaining \$1,192,000 will go to the lignite research fund.

Privilege Tax on Coal Conversion Facilities

The privilege tax on coal conversion facilities was enacted as a companion to the severance tax and is imposed by NDCC Section 57-60-02. A coal conversion facility is defined as an electrical generating plant that converts coal into electrical power and has a capacity of 120,000 kilowatts or more or a facility that uses over 500,000 tons of coal per year to be converted into other products. Differing tax rates are imposed on different types of coal conversion facilities.

As enacted in 1975, the coal conversion facilities privilege tax on electrical generating plants was at a rate of one-fourth of one mill per kilowatt hour of electricity produced, and the tax on coal gasification plants was the greater of 2.5 percent of gross receipts or 10 cents per 1,000 cubic feet of synthetic natural gas. In 1983 an additional one-fourth of one mill per kilowatt hour tax was imposed on electrical generating plants. In 1985 the floor on the tax for coal gasification plants was increased from 10 cents to 15 cents per 1,000 cubic feet of synthetic natural gas. In 1987 the basis of the tax for electrical generating plants was changed from kilowatt hours of electricity produced to 60 percent of the installed capacity of each generating unit times the number of hours in the taxable period, and for damaged units a reduced tax rate based on cost of repairs was established to be in effect until the unit is capable of generating electricity. Other 1987 legislation reduced the alternative tax for coal gasification plants from 15 cents to seven cents for each 1,000 cubic feet of synthetic natural gas and provided an exemption for any synthetic natural gas production in excess of 110 million cubic feet per day. In 1989 separate tax treatment was provided for coal beneficiation plants, providing an alternative tax of 20 cents per ton of beneficiated coal or one and one-quarter percent of gross receipts, whichever is greater. In 1991 legislation was enacted to provide a five-year exemption for new electrical generating plants from all but 35 percent of the one-fourth of one mill tax based upon production capacity of the generating unit, and the 35 percent remaining tax is allocated entirely to the county and may be eliminated by approval of the board of county commissioners.

For electrical generating plants, the present conversion tax is at a rate of one-half of one mill on each kilowatt hour of electricity produced for the purpose of sale. For coal gasification plants, the rate of tax is either 2.5 percent of gross receipts or seven cents per 1,000 cubic feet of synthetic natural gas, whichever is greater. A provision enacted in 1985 provides that gross receipts from the sale of a capital asset are not included in gross receipts for purposes of the coal conversion tax. Provisions added in 1985 exempted from gross receipts any financial assistance provided by the federal

government. A 1987 amendment exempted byproducts of the gasification process to a maximum of 20 percent of all gross receipts of the facility. Passage of 1997 Senate Bill No. 2196 increased the maximum gross receipts from 20 to 35 percent to be eligible for the exemption until December 31, 2000, when the limit will revert to 20 percent. Senate Bill No. 2196 also exempted sales of carbon dioxide for oil and gas recovery from the gross receipts tax. Passage of 1997 Senate Bill No. 2339 extended the property tax exemption for a pipeline to transport carbon dioxide to 10 years after initial operation, rather than commencement of construction, and allowed the exemption to apply to a pipeline carrying carbon dioxide outside the state.

Under the coal conversion tax, each coal conversion facility is classified as personal property and is exempt from property taxes except taxes on the land upon which the facility is located. The coal conversion tax is in lieu of property taxes on the facility. The coal conversion tax is also in lieu of taxes on rural electric cooperatives and cooperative electrical generating plants that qualify as coal conversion facilities.

Allocation of coal conversion tax revenues is made annually on or before July 15 of each year. Revenue from one-fourth of one mill of the tax on electrical generating plants is deposited entirely in the state general fund. Revenue from all remaining coal conversion taxes is allocated 35 percent to the producing county and 65 percent to the state general fund.

Revenue allocated to counties from the coal conversion tax is allocated within the county with 40 percent to the county general fund, 30 percent to cities in the county according to population, and 30 percent to school districts in the county on an average daily membership basis.

Total revenue from coal conversion taxes for the 1997-99 biennium is estimated to be about \$30,847,000. That amount would be allocated approximately \$6,133,000 to political subdivisions and \$24,714,000 to the state general fund.

Lignite Research, Development, and Marketing

North Dakota Century Code Section 54-17.5-02 requires the Industrial Commission to consult with the Lignite Research Council in matters of policy affecting the administration of the lignite research fund. In evaluating applications for funding from the lignite research fund for North Dakota's lignite research, development, and marketing program, the Industrial Commission and the Lignite Research Council are required to give priority to those projects, processes, or activities that will preserve existing jobs and production, create the greatest number of new jobs and most additional lignite production and economic growth potential in coal-producing counties or those counties with recoverable coal reserves, attract matching private industry investment equal to at least 50 percent or more of the total

cost, and result in development and demonstration of a marketable lignite product or products with a high level of probability of rapid commercialization.

Under Section 54-17.5-05, the Industrial Commission may issue evidences of indebtedness payable solely from appropriations by the Legislative Assembly from the lignite research fund; revenues or income that may be received by the commission from lignite projects, processes, or activities funded with the proceeds of the commission's evidences of indebtedness; and revenues or income received by the commission from any other source under Chapter 54-17.5. The evidences of indebtedness may be issued to fund research, development, and marketing projects, processes, or activities directly related to lignite and products derived from lignite.

For the 1997-99 biennium, the estimated receipts for the lignite research fund are approximately \$6,245,000. That amount includes about \$1,192,000 from the separate and additional two-cent coal severance tax, about \$4,693,000 from the coal severance tax deposited in the permanent coal development trust fund, and about \$360,000 from interest income. The estimated balance at the beginning of the 1997-99 biennium was approximately \$7,877,000.

Estimated expenditures from the lignite research fund for the 1997-99 biennium are about \$13,430,000. Estimated expenditures included about \$400,000 for a lignite marketing feasibility study and \$13,030,000 for administration and development of the lignite research, development, and marketing program. The Industrial Commission authorized an investment of \$4,200,000 from the fund in the Dakota Gasification Company lignite to anhydrous ammonia project and issuance of tax-exempt bonds to provide \$8,100,000 to the Dakota Gasification Company. The bonds are for 10-year financing with annual principal and interest payments of approximately \$1,085,000 from lignite research fund revenues. The total bond cost to the fund is estimated to be \$11 million.

Regulation of Coal Mining - Coal Exploration

North Dakota Century Code Section 38-12.1-04 provides that the Industrial Commission has jurisdiction over all persons and property necessary to regulate the exploration for coal on state and private lands within the state. The State Geologist is required to act as a supervisor responsible for enforcing the regulations and orders of the commission. The commission may require the furnishing of a reasonable bond conditioned upon the full compliance with state law and rules of the commission prescribed to govern the exploration for coal. In addition, the commission may require the delivery to the State Geologist of basic data collected during the exploration for coal; may require plugging, covering, or reburial to protect environmental quality, general health, and safety and economic values of all holes, pits, or trenches excavated during the course of coal exploration; and may inspect all drilling or exploration sites. The commission

must require reclamation of any lands substantially disturbed in coal exploration, including excavations, roads, drill holes, and the removal of facilities and equipment.

Section 38-12.1-05 prohibits the commencement of operations for drilling for the exploration for coal without first obtaining a permit from the State Geologist. That section also prohibits the removal of more than 250 tons of coal without a permit from the Public Service Commission.

Regulation of Coal Mining - Surface Mining and Reclamation Operations

North Dakota Century Code Chapter 38-14.1 addresses surface mining and reclamation operations. Under that chapter, the Public Service Commission is designated the state regulatory authority for all purposes relating to the federal Surface Mining Control and Reclamation Act of 1977. The commission may issue permits for surface coal mining operations and adopt regulations necessary to carry out Chapter 38-14.1 and the federal Surface Mining Control and Reclamation Act of 1977.

Section 38-14.1-06 allows any person having an interest that is or may be adversely affected, including state agencies other than the Public Service Commission, to petition the commission to hold a hearing for the purpose of having an area designated as unsuitable for surface coal mining operations or to have such designation terminated. The section requires the Public Service Commission to hold public hearings in the locality of the affected area for each petition filed. The commission may designate an area as unsuitable for surface coal mining operations after a hearing if the commission determines that the operations will be incompatible with existing state or local land use plans or programs; affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems; affect renewable resource lands in which the operations could result in a substantial loss or reduction of productivity of long-range water supply or food or fiber products, and the lands include aquifers and aquifer recharge areas; or affect natural hazard lands in which the operations could substantially endanger life and property, and the lands include areas subject to frequent flooding and areas of unstable geology.

Section 38-14.1-14 provides the requirements for permit applications for surface coal mining and reclamation operations. Among other things, the permit application requires the applicant to provide cultural resource information and submit a reclamation plan for the land. In addition, the permit applicant is required to file a performance bond in an amount sufficient to complete the reclamation plan.

Chapter 38-14.3 establishes a surface mining and reclamation bond fund to be maintained at the Bank of North Dakota to provide bonds for the faithful performance of all surface coal mining laws, rules, and permit

conditions and terms. The bond fund is to be administered by the Industrial Commission.

Surface Owner Protection

North Dakota Century Code Chapter 38-18 was enacted in 1975 to provide the maximum amount of constitutionally permissible protection to surface owners from the undesirable effects of development of minerals underlying the surface of their property. A mineral developer is required to give the surface owner written notice of the type of land disturbance or mining operation contemplated by the mineral owner before the Public Service Commission may issue a permit to surface mine the land. The Public Service Commission may not issue a permit to surface mine land unless the permit application is accompanied by statements of consent executed by each surface owner whose land is included within the permit area. The chapter also provides for the payment of surface damage and disruption payments to surface owners and requires a mineral developer to pay the entire cost of the surface reclamation necessitated by that developer's mining operation.

Administrative Rules

More than 300 sections of the North Dakota Administrative Code have been adopted by the Industrial Commission and Public Service Commission regarding coal exploration and surface mining and reclamation. Administrative rules of the State Department of Health and Tax Commissioner also affect coal mining operators. As a result of the passage of 1997 House Bill No. 1410, the State Department of Health cannot adopt administrative rules on air quality affecting coal conversion facilities which are more strict than federal rules or standards under the Clean Air Act (42 U.S.C. 7401 et seq.). As a result of the passage of 1997 Senate Bill No. 2356, the State Department of Health is prohibited from adopting administrative rules on sulfur dioxide air quality which are stricter than federal rules or standards under the Clean Air Act.

Consultant Study of the Lignite Industry

The North Dakota Lignite Energy Council suggested, and the Taxation Committee agreed, that independent consultant analysis was necessary to assess the competitive position of lignite coal in the electric energy industry. A consultant study, funded in equal amounts by the North Dakota Lignite Energy Council and the Legislative Council, was conducted by Dr. David Ramsett, Director, Division of Economics and Public Affairs, University of North Dakota. Dr. Ramsett's report *Competition in North Dakota's Coal-Electric Utility Industry: Lignite vs. Subbituminous Coal*, reached the following major conclusions:

1. Coal is more important than ever to national energy production.

2. Open market competition is here at the wholesale level in electric energy production, and open market competition will soon become the norm at the retail level.
3. The driving force in the nation's coal industry is low sulfur western subbituminous coal produced in Wyoming and Montana.
4. Users of subbituminous coal have enjoyed continuous price reductions due to rising productivity in mining and reduced costs of transportation.
5. Electric power producers must choose the most cost-efficient energy source. Continuing price decreases in the delivered price of subbituminous coal to electric power plants in the region are threatening the economic viability of North Dakota's mine-mouth coal-electric power industry.
6. Coal taxation has become a bigger issue for the North Dakota coal-electric utility industry as the delivered price of subbituminous coal has dropped.
7. North Dakota must evaluate the economic effects of taxing lignite coal because of the economic impact and the state revenue impact of the coal-electric utility industry and the increasing potential that subbituminous coal could be burned in North Dakota power plants.

Dr. Ramsett said significant changes are occurring in the national electric utility industry and industry competition. He said the industry is moving from exclusive regional operation to open market sales. The industry was segregated and is moving to a national sales market, was regulated and is moving to free market competition, and is in transition to a character that cannot be determined at this time but will clearly be significantly different.

States in this region of the country are net exporters of electric power. States in the region are in competition with each other for markets. It is necessary to closely examine competitive factors in surrounding states to assess the continued economic viability of lignite coal. North Dakota is the only state in the region using lignite coal to produce electric power. North Dakota power plants have been located at the mine site to reduce transportation costs. In contrast, all other states in the region use imported subbituminous coal to generate electric power production. The vast majority of this coal is shipped by rail from Wyoming.

Dr. Ramsett said the best means of measuring competitiveness in the coal industry is comparing coal costs per megawatt hour (CCMH). The resulting statistic depends on several variables, including the price of coal delivered to the producing plant, the energy-producing quality of the coal, and the efficiency of the plant burning the coal. Comparing the CCMH for 1991 and 1996 shows that significant changes occurred in regional

competition. The CCMH for North Dakota was relatively stable at \$8.29 in 1991 and \$8.32 in 1996. Other states in the region have experienced declines in CCMH because of importation of subbituminous coal from Wyoming at a greatly decreased cost. The CCMH in Nebraska has decreased from \$8.72 in 1991 to \$7.88 in 1996. Each state in this region has experienced a decrease in CCMH from 1991 to 1997 except North Dakota, which has experienced an increase of 5.7 percent. This compares with decreases of 34.9 percent for Nebraska, 33.1 percent for Missouri, 28.3 percent for South Dakota, and 19.5 percent in the national average CCMH.

Lignite productivity has remained stable from 1992 to 1996. During that time period productivity for subbituminous coal has increased 49.1 percent, leading to a cost reduction of 21.3 percent. Increased productivity in subbituminous coal is attributable to thicker seams of coal, less overburden to remove and replace, larger mines, and improved equipment for subbituminous mining operations.

Another very significant edge for subbituminous coal competitiveness has been deregulation of rail rates, which has substantially reduced shipping costs for coal. Unit trains increased the number of tons that may be shipped. Greater density of track and improved rail technology have also increased the ability to ship coal.

Dr. Ramsett said it is important to remember that North Dakota tax and regulatory policy for the coal industry is not what has created the current economic problems faced by the lignite industry. He said price reductions in subbituminous coal and transportation costs have been so significant that they are responsible for the competitive crisis faced by the industry. He said these events have focused attention on taxation policy because close competitive pricing of coal and electricity produced from coal depends on several variables and very small pricing differences spell success or failure in competition in the open market.

Dr. Ramsett said the continued reductions in the price of delivered subbituminous coal have made it feasible to burn subbituminous coal in North Dakota power plants. He said this fact must be remembered in North Dakota coal taxation and regulatory policymaking. He said North Dakota tax policy was established based on a coal industry that mines lignite coal at the generation plant and produces electric power for sale. He said continuation of current trends will result either in a gradual loss of market share for the electric utility industry or increased use of subbituminous coal in North Dakota power plants. He said either result would cause a reduction in mining of lignite coal in North Dakota. Dr. Ramsett said it might make sense to shift reliance from the coal severance tax to a tax on electric power production, which would generate tax revenues whether the source of generation is lignite or subbituminous coal.

Testimony

North Dakota Lignite Energy Council representatives said Dr. Ramsett's report underscores that the lignite industry is in a fiercely competitive war in the marketplace. Because Dr. Ramsett's report was received late in the interim, Lignite Energy Council representatives made no recommendation to the committee but stated their intention to work with the Governor, legislators, political subdivisions, and the industry to develop a legislative approach for consideration during the 1999 legislative session.

Lignite Energy Council representatives reviewed the economics of using Wyoming coal in North Dakota. The price of Wyoming coal is \$3.12 per ton compared to \$10.56 per ton for lignite at the plant. The Wyoming coal would be subject to transportation costs of \$8.02 per ton plus the new North Dakota sales tax for imported coal of \$1.02 per ton. This comparison indicates a total cost of Wyoming coal of \$12.16 per ton versus a cost of \$10.56 per ton for lignite. The fact that a ton of lignite is less expensive may be misleading. A more realistic measure of actual cost is converting the cost of coal to a price per million BTUs produced. On this basis, the cost of North Dakota lignite is 78 cents per million BTUs compared to 72 cents per million BTUs for Wyoming coal delivered to the Leland Olds Station in North Dakota. Given this comparison, subbituminous coal is not merely competitive but actually lower in price than lignite coal for burning in North Dakota power plants. Another significant consideration is that subbituminous coal burns with substantially lower levels of sulfur dioxide and nitrate oxide, which means that blending of subbituminous coal with lignite coal for burning in the future may become environmentally significant if air standards become more stringent.

Conclusion

The committee makes no recommendation regarding the lignite industry study.

CHARITABLE ORGANIZATIONS' PROPERTY TAX EXEMPTION STUDY

Background

Constitutional and Statutory Provisions

The Constitution of North Dakota provides in Article X, Section 5 that ". . . property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation."

The study resolution focuses only on the charitable organization property tax exemption under NDCC Section 57-02-08(8). North Dakota Century Code Section 57-02-08(8) provides an exemption for:

All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity,

together with the land actually occupied by such institutions not leased or otherwise used with a view to profit

Most property tax exemptions provided by the Legislative Assembly do not apply to land. The Constitution of North Dakota, Article X, Section 5 provides that “. . . The legislative assembly may by law exempt any or all classes of **personal property** from taxation and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property. . . .” (emphasis added) This constitutional authority of the Legislative Assembly does not include providing an exemption for land upon which buildings are located. However, the same section of the constitution provides that the “property” used exclusively for charitable purposes shall be exempt from taxation. Because this provision is not limited to personal property, it appears both real and personal property of charities is intended to be exempted by the constitutional provision.

Unity of Ownership and Use

The statutory requirement that buildings and land, to be exempt, must be property “belonging to” institutions of public charity requires that the property must be owned by the institution of public charity to be eligible for the exemption and ownership by an individual renders property ineligible for the charitable property tax exemption. Vacant lots owned by institutions of public charity are not exempt because they are not “actually occupied” by the charitable institution.

In *Riverview Place, Inc. v. Cass County*, 448 N.W.2d 635 (N.D. 1989), the Supreme Court of North Dakota said:

[T]he determination of whether an institution falls within the exemption is, essentially, a two-step process in which it must be determined “whether the organization claiming the exemption is in fact a charitable one, and whether the property on which the exemption is claimed is being devoted to charitable purposes.” . . . ownership of the property in question by an institution of public charity does not, by that fact alone, exempt the property from taxation . . . it is the **use** made of the property . . . which determines whether the property is exempt from taxation. [emphasis in text] The property’s use must be devoted to charitable purposes and it must actually be used in carrying out the charitable purposes of the organization claiming the exemption.

Use With a View to Profit

In *Riverview Place*, the Supreme Court of North Dakota said:

. . . When a charitable organization charges a fee for its services and operates at a small net profit which is reinvested back into the

organization’s charitable operations, those facts do not automatically disqualify the entity’s property from an exemption on the basis that it was operated “with a view to profit,” as the concept of charity encompasses “something more than mere almsgiving” and therefore a “benevolent association is not required to use only red ink in keeping its books and ledgers.”

The following conclusions have been reached in application of the exemption by the Attorney General and the Tax Commissioner:

1. Only the amount of land that is reasonably required for a site for the buildings and improvements used for charitable purposes is eligible for the exemption. Excess land used to pasture cattle is “used with a view to profit.”
2. The meaning commonly given to “not used with a view to profit” is that no individual stockholder or investor will receive any kind of profit or gain or dividend from the operation of the charity. It does not mean that the charity cannot make some type of charge for certain services.
3. Occasional rental of property owned by a public charity and rented for nonexempt purposes does not destroy the tax-exempt status of the property.
4. If a charitable organization leases a building to another charitable organization at rent substantially below market rental rates so as to constitute financial assistance to the lessee charitable organization, then a charitable use by the lessor can be established.
5. A used clothing store operated by a public charity is not exempt because it is used for profit rather than the charitable uses of the charitable institution.

Valuation of Exempt Property of Charitable Organizations

For many years, state law has required valuation by assessment officials for all exempt property. However, assessment officials have generally not assessed that property. The reason given is that they believe it is more productive to devote limited time and resources to valuation of taxable property. For this reason, only a limited amount of information has been available from a few jurisdictions on values of exempt charitable property.

In 1995 Senate Bill No. 2081, the Legislative Assembly provided a statutory mechanism to allow the growth in tax-exempt property to be reflected in the amount that may be levied by political subdivisions beginning in 1999, under the reasoning that expanded amounts of exempt property require additional services from local governments and levying authority is required to meet the increased demand. After a 1997 amendment, local assessment officials will be required to establish valuations for property exempted from taxation as

new or expanding businesses, improvements to property, property of institutions of public charity, new single-family residential or townhouse or condominium property, property used for early childhood services, or pollution abatement improvements. These valuations must be in place for taxable year 1999.

Acquisition of Agricultural Land by Nonprofit Organizations

The Governor vetoed 1997 Senate Bill No. 2385, which would have prohibited any nonprofit corporation from acquiring more than 16,000 acres of land in North Dakota. Proponents of this legislation pointed out the potential damage to tax bases of political subdivisions when large amounts of property are removed from the tax rolls and the loss of local economic activity when agricultural land is removed from production. The Governor stated in his veto message that these are valid public policy concerns. The Governor stated that he had initiated a process to carefully consider this issue, and one of the main objectives of this process is to develop agreement regarding "how much is enough" for entities, such as the Nature Conservancy, North Dakota Wetlands Trust, United States Fish and Wildlife Service, and other organizations.

Legal Basis for Limiting Land Acquisition

Attempts to limit alienation and acquisition of property require examination of legal authority regarding the power of states to limit the amount of property that may be acquired by nonprofit organizations.

The 14th Amendment to the United States Constitution provides in part that state law may not deprive any person of life, liberty or property, without due process of law.

It is necessary to balance the unfettered right to ownership and use of property against the public interest. There are situations in which the interest of the general welfare of the public will outweigh the objectives of an individual or corporation in ownership or use of property. Although there is no court decision on the precise issue of whether a state may limit the acreage of property that may be owned by a nonprofit organization, it appears from existing legal authority that:

1. The due process clause of the 14th Amendment of the United States Constitution protects the right to acquire, possess, and use property.
2. Corporations are entitled to protection of the due process clause in their property rights.
3. The constitutional right of property is not absolute and is subject to restraint under the exercise of the police power.
4. In reviewing exercise of the police power, courts will not substitute their judgment for that of the legislature unless it clearly appears that the actions of the legislature have no just foundation in reason or necessity.

5. The legislature may not, under the guise of the police power, arbitrarily interfere with private property or impose unusual or unnecessary regulations on it.

In a challenge to the North Dakota corporate farming law, the United States Supreme Court upheld the authority of North Dakota to exclude corporations from ownership of farm property. The United States Supreme Court said "the Fourteenth Amendment does not deny to the state power to exclude a foreign corporation from doing business or acquiring or holding property within it." *Asbury Hospital v. Cass County*, 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6, (1945).

Although no discussion of the due process clause was included, the United States Supreme Court upheld an Act of Congress prohibiting religious and charitable corporations from acquiring or holding real estate exceeding a specified value in *Church of Jesus Christ of Latter Day Saints v. United States*, 136 U.S. 1, 10 S. Ct. 792, 34 L. Ed. 478, (1890).

Questions may arise about the right of a landowner to freely choose the party to whom the owner wishes to convey property. It has been held that the owner of property does not have a fundamental right to freely alienate property. *Northwestern Life Insurance Company v. Commodore Cove Improvement District*, 678 F.2d 24 (5th Cir. 1982).

State Limits on Charitable Property Tax Exemptions

Property tax exemptions originated at a time when churches conducted most educational and charitable activities. Because these activities were operated by churches and relieved government of the cost of performing some services or obligations, there was little controversy when property tax exemptions were written into states' constitutions and laws. As other organizations began to offer these services, exemptions were extended to these new activities. However, modern operation of charitable organizations has changed so that they sometimes compete with businesses run on a for-profit basis. A 1990 United States Government Accounting Office report prepared for the House Select Committee on Aging noted these changes and observed that nonprofit hospital goals most often relate to increasing the share of patients within market areas, mirroring the goals of investor-owned institutions. Several observers have suggested that granting and retaining charitable exemptions in the modern political environment have more to do with political clout than benefits to the public and government. The changing nature of charitable organization operation is one of the factors that led assessment officials to more closely scrutinize application of exemptions. Another factor leading to increased scrutiny of claims for exemptions is the proliferation in tax-exempt real property and resulting tax burden shifted to other taxpayers, who voice growing displeasure with property tax levels.

1985 Court Decisions

The Supreme Courts of Utah and Pennsylvania decided cases in 1985 which gained national attention regarding property tax exemption application for hospitals. The Utah Supreme Court (*Utah County v. Intermountain Health Care, Inc.*, 709 P.2d 265 (1985)) concluded that two hospitals whose exempt status had been challenged by local assessors lacked sufficient charitable attributes to qualify for property tax exemption. The Pennsylvania Supreme Court (*Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (1985)) concluded that a jointly owned hospital support facility was not an institution of purely public charity. The Pennsylvania decision involved application of a sales tax exemption, but the same standards apply to property tax exemptions in Pennsylvania so the decision meant the facility lost its exempt property tax status.

The Utah Supreme Court modified a six-factor standard from the Minnesota Supreme Court (*North Star Research Institute v. County of Hennepin*, 236 N.W.2d (1975)) and laid out the factors to be weighed in determining whether a particular institution is using its property exclusively for charitable purposes.

The Pennsylvania case did not involve a hospital. The Hospital Utilization Project was established by an association of hospitals to prepare a statistical abstract of patient information for all the hospitals in the area. The court found the project not to be charitable in nature. The court established criteria to determine that an entity is a purely public charity if it:

1. Advances a charitable purpose;
2. Donates or renders gratuitously a substantial portion of its services;
3. Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
4. Relieves the government of some of its burden; and
5. Operates entirely free from private profit motive.

Developments in Utah

After *Intermountain Health Care*, the Utah hospital industry prevailed upon the legislature to propose a constitutional amendment specifically granting a property tax exemption for nonprofit hospitals and nursing homes. Despite an extensive campaign by nonprofits, the measure was defeated by the voters in 1986.

A 1986 decision of the Supreme Court of Utah supplemented the guidelines from *Intermountain Health Care*. The Utah Tax Commission found that the guidelines after the court decisions did not produce objective standards to apply to particular fact situations. The Tax Commission conferred with county assessors, other county representatives, representatives of nonprofit hospitals and nursing homes, and representatives of for-profit hospitals and conducted a series of public hearings. The Tax Commission adopted standards for determining applicability of property tax exemptions for

hospitals and nursing homes and the standards were reviewed and approved by the Utah Supreme Court. The six standards adopted are as follows:

1. The institution must be organized on a nonprofit basis and the property in question must be dedicated to its charitable purpose.
2. The institution must demonstrate that net earnings and donations do not inure to the benefit of any private shareholder or individual.
3. The institution must provide open access to medical services regardless of race, religion, gender, or ability to pay and must provide evidence of its efforts to inform the public of its open access policy and of the availability of services for the indigent.
4. The institution must maintain a "charity plan" and must have a governing board consisting of a broad-based membership, operate in an open atmosphere, and meet at least annually to address the needs of the community.
5. The institution must enumerate and total various ways in which it provides unreimbursed service to the community according to specified measurement criteria. The value of unreimbursed care to indigent patients must be measured by the hospital's normal billing rate, reduced by the average of reductions provided to all patients who are not covered by government entitlement programs, plus expenses directly associated with special indigent clinics. The total of unreimbursed service must exceed for each year what would otherwise be the institution's property tax liability for the year.
6. Satellite facilities of an institution are entitled to an exemption if it is shown that these facilities enhance the institution's charitable mission.

Developments in Pennsylvania

Pennsylvania experienced 12 years of litigation in the wake of *Hospital Utilization Project*. Assessment officials and representatives of charitable organizations have been involved in frequent disputes over application of the five-point standards announced by the Pennsylvania Supreme Court in the *Hospital Utilization Project*. The Commonwealth Court of Pennsylvania has issued a series of decisions denying exemptions for hospitals, nursing homes, private schools, a religious publishing company, a residential program for troubled youth, and a Head Start program. In an effort to end the cycle of litigation and uncertainty, Pennsylvania charities sought a legislative solution that would provide clear, objective standards for determining what is an institution of purely public charity.

Pennsylvania 1997 House Bill No. 55 was passed and was signed by the Governor on November 26, 1997. The bill established five detailed criteria to determine what qualifies as a purely public charity:

1. The institution must advance a charitable purpose. This criterion is satisfied if the institution is organized and operated primarily to fulfill any of six listed purposes.
2. The institution must operate entirely free from private profit motive. Without regard to whether the institution's revenues exceed expenses, this criterion is satisfied if four listed criteria are met.
3. The institution must provide a community service by donating or rendering gratuitously a substantial portion of its services. This criterion is satisfied if the institution benefits the community by meeting one of seven detailed standards.
4. The institution must benefit a substantial and indefinite class of persons who are legitimate subjects of charity. "Legitimate subjects of charity" is defined as individuals unable to provide themselves with what the institution provides for them. The bill specifically disqualifies any organization not recognized as exempt under Section 501(c)(3) of the Internal Revenue Code and certain institutions otherwise qualified under Section 501(c)(3) of the Internal Revenue Code.
5. The institution must relieve the government of some of its burden. This criterion is satisfied if the institution meets any one of six criteria.

The bill provides a rebuttable presumption of exemption for institutions that were exempt under prior law but, for institutions having annual program service revenue of \$10 million or more, the presumption applies only if the institution has a voluntary agreement with a political subdivision. A voluntary agreement consists of making voluntary contributions to a political subdivision in the nature of payments in lieu of taxes.

The bill states that it is the policy of the State of Pennsylvania that institutions of purely public charity may not use their tax-exempt status to compete unfairly with small business. The bill prohibits an institution of public charity from funding, capitalizing, guaranteeing indebtedness for, leasing obligations of, or subsidizing a commercial business unrelated to the institution's charitable purpose. A broad range of exceptions are provided for a commercial business intended only for use of employees, staff, alumni, facility, members, students, clients, volunteers, patients, or residents or if the commercial business results in incidental or periodic sales rather than permanent and ongoing sales.

Committee Considerations

A North Dakota Long Term Care Association representative said 90 percent of the 88 long-term care facilities in the state are operated on a nonprofit basis. The representative said the association recognizes the benefits of services provided by political subdivisions. The association representative said it should be remembered

that payment of property taxes, if required by law, might not be allowed from some funds received by nursing homes, and if property taxes are to be paid, state reimbursement to nursing homes may have to be increased accordingly.

Assessment officials expressed concerns about the charitable organizations exemption. One difficulty is determining whether property qualifies and another is dealing with public concerns about possible unfair advantages exempt property provides in competing with taxable property. Assessment officials described the statutory exemption as requiring a great deal of legal interpretation, which can result in differences in administration within and across jurisdictions. Another growing problem is how to approach assessment for hospitals, YMCAs, and other organizations providing an expanded range of services in recent years. These expanded activities generate complaints from private businesses about unfair competition being fostered by a property tax exemption. Assessment issues can become extremely complicated when a property is used for charitable purposes and nonexempt activities. This requires a partial assessment against the property, which becomes difficult when there is mixed usage of certain areas.

A representative of the North Dakota Healthcare Association said nonprofit entities are required by Internal Revenue Code standards to not use earnings or donations to benefit private shareholders or others similarly situated; to not pay compensation to directors, officers, and employees based solely upon financial performance of the organization; and to use any excess revenues to further the organization's nonprofit purposes or fund other nonprofit organizations. The association representative suggested that adding criteria to define charitable activities can become extremely complex and lead to an unworkable, narrow test that becomes an accounting exercise and does not adequately address the range of activities engaged in by nonprofit organizations.

A representative of the Nature Conservancy stated opposition to limiting ownership of property in North Dakota by nonprofit organizations. The Nature Conservancy pays property taxes on all of its property in the state, although the property is exempt by law. The organization is very selective in the property it acquires in the state and seeks to acquire property only having rare, threatened, or endangered species or natural communities. Nearly all of the grasslands owned by the Nature Conservancy are under active grazing.

The committee considered a bill draft patterned after 1997 Pennsylvania law which established specific criteria to determine what constitutes charitable use of property for property tax exemption purposes. Committee members said it would be useful to establish a workable standard for assessors to fairly distinguish charitable activities from those that should not be eligible for property tax exemptions. Committee members were critical of the approach in the Pennsylvania law as being

too complicated and placing too much emphasis on tracking revenues and expenses. Committee members said the Pennsylvania law was obviously directed toward hospitals and does not adequately address other charitable organizations.

The committee considered a bill draft that limited the property tax exemption for property of hospitals to those areas of a building essential to providing inpatient services. Committee members said hospital activities have changed substantially in recent years, hospitals now have enormous budgets, and health care customers are now paying for services that did not exist several years ago like sports medicine, women's health centers, screening services, and other efforts. These activities were described as intended to expand operations and the client base for the hospitals and as encroaching in areas that should be left to private enterprise. Committee members did not support the bill draft approach because of concern about its effect on small town medical facilities and the difficulty assessment officials would have to determine which portions of a facility would be exempt as being essential for inpatient services.

The committee considered a bill draft that limited a nonprofit organization to ownership of no more than 16,000 acres of land in this state. Committee members expressed concern that farm property is being removed from production by acquisition by nonprofit organizations, which hurts the local economy and diminishes the tax base. Committee members said the approach in the bill draft did not address legislative concerns about protecting the tax base and would probably depress land prices. Committee members said legislation should not deprive the owner of property of the opportunity to sell property to whom the owner chooses.

Recommendation

The committee recommends House Bill No. 1051 to allow imposition of special assessments by cities against exempt property of charitable organizations. The bill allows a city to establish a special assessment district composed only of property of charitable organizations. The bill allows imposition of special assessments by the governing body of a city for the proportionate share of costs of police and fire protection and infrastructure expenditures paid from the budget of the city. The bill limits the amounts that may be levied against subject properties based on comparison of the value of those properties to the value of taxable property in the city. Committee members said the bill would provide local flexibility in determining whether and at what level special assessments would be imposed. The bill gives cities an option to require charitable organizations to pay for the value of certain city services in the same manner they pay special assessments for property

improvements under existing law, because the services contribute to the value of the property.

PROPERTY TAX RELIEF STUDY

Background

Property Tax Liability Determination

Property tax liability is determined by multiplying applicable taxing district mill rates times the taxable value of the property. Property taxes are collected by the county and distributed among taxing districts according to their interests in the revenues.

The mill rate for a taxing district is established through the budget process. Each taxing district prepares a proposed budget based on anticipated expenditures for the upcoming fiscal year. Hearings are held on the budget and adjustments may be made. The deadline for amendments to budgets and for sending copies of the levy and budget to the county auditor is October 10. From October 10 to December 10 the auditor prepares tax lists, which must be delivered to the county treasurer by December 10 and mailed to property owners by December 26.

The amount budgeted by a taxing district may not result in a tax levy exceeding the levy limitations established by law. Since 1981, state law has allowed political subdivisions to levy a percentage increase in dollars over the amount levied in the base year, as an alternative to the use of statutory mill levy limitations. Most taxing districts in the state use this optional method of determining the maximum levy. From 1981 through 1996, taxing districts were allowed a percentage increase in dollars over the base year levy amount in dollars. After 1996 NDCC Section 57-15-01.1 allows taxing districts using the optional method of determining levy limits to maintain the amount levied in dollars in the base year, but levies subject to this limit may not be increased without voter approval. During taxable years 1997 and 1998, an exception is provided for a county, city, township, or school district eligible for federal funds on a matching basis as a result of a disaster declared by the President of the United States to allow an increased levy in dollars equal to the amount required to match federal funds, up to an increase of two percent more than the amount levied in the base year.

The county auditor determines whether the amount levied by a taxing district is within the statutory limitations that apply to the district levy and divides the total property taxes to be collected for the taxing district by the taxing district's total taxable valuation. The result is a percentage that is the mill rate for the district.

Real property must be assessed with reference to its value on February 1 of each year. All property must be valued at its true and full value. True and full value is defined as the value determined by considering any earning or productive capacity, the market value, and all other factors that affect the actual value of the property. For agricultural property, valuation is determined by a

productivity formula. The assessed valuation of property is 50 percent of true and full value. Taxable valuation of property is nine percent of assessed valuation for residential property and 10 percent of assessed valuation for agricultural, commercial, and centrally assessed property. Taxable valuation is the amount against which the mill rate for the taxing district is applied to determine tax liability for individual parcels of property.

Committee Considerations

In 1960 property taxes accounted for 55 percent of all taxes collected in North Dakota. In 1992 property taxes accounted for less than 34 percent of all taxes collected in North Dakota. From 1960 to 1984, property taxes as a percentage of all taxes steadily decreased. Taxes collected by the state were about equal to property tax collections in 1970. By 1984 the state share of total tax collections was at 73 percent, a maximum for the period from 1960 through 1992. Since 1984 the trend has reversed and property taxes as a share of total tax collections are increasing.

The relative share of collections among tax types shifted since 1960. The most notable change is that property taxes decreased as a percentage of total tax collections since 1960. The greatest reduction in property tax collections occurred after 1969 when personal property was exempted and eliminated from the local property tax base. Increases in the sales tax rate and a business privilege tax were used to offset the loss of tax revenue resulting from exemption of personal property. Energy tax collections peaked in 1982 due to high prices but declined substantially after 1982. The loss in energy tax revenues after 1982 was replaced by increasing sales tax and individual income tax revenues. State sales and use taxes are the dominant force in state and local tax collections in North Dakota, exceeding property tax collections. Reliance on sales and property taxes is heavy, accounting for almost three-fourths of all taxes collected in North Dakota.

Shares of the total property tax burden for residential and commercial properties have increased. Agricultural property owners paid 38.2 percent of statewide property taxes in 1984 and that percentage declined to 31.7 percent in 1998 while residential property owners' share of statewide property taxes increased from 33.2 percent to 38.1 percent in the same period. Centrally assessed and commercial properties retained approximately equal shares of the tax burden during that time period. It appears there has been a shifting of tax burden from agricultural to residential property, but examination of county data shows this has not been uniform in all counties. Only eight counties collect more property taxes from residential than agricultural property but because these are the eight highest population counties, their effect skews statewide comparisons. Lower population counties still place an extremely high reliance on property tax revenue from agricultural property.

During the years 1981 through 1997, statewide agricultural property valuation declined by 1.5 percent while residential property valuation increased 57.6 percent and commercial property valuation increased 52.3 percent. In the years from 1993 through 1997, agricultural property had valuation increases of 3.3 percent or less per year, except for a 9.3 percent valuation increase in 1996. In the same time period residential property valuations statewide increased by almost seven percent per year and commercial property increased approximately 3.5 percent per year. The fact that valuations increase does not mean that property taxes will increase, because property tax liability is a function of valuation, rate of tax, and the mix of property types in the jurisdiction. If property taxes in a jurisdiction remain the same, a property's valuation could increase, but the property tax bill for the property would go down if the valuation of other property in the jurisdiction has a greater percentage increase in value.

The committee reviewed information on major state and local tax collections to try to determine whether an abnormal increase has occurred in property taxes in North Dakota over a period of 20 years. Reliance on property taxes as a percentage of total tax collections declined slightly from 1992 through 1997. Property taxes have shown a steady rate of growth in recent years, but the increase is slightly less than the increase for other tax types.

School district property taxes are responsible for most of the increase in property taxes from 1983 through 1997. In 1983 school districts levied 43 percent of all property taxes, and in 1997 they accounted for 51 percent of the total. Increases in property tax reliance across the state have not been uniform, and there is evidence that tax increases for agricultural property in certain areas of the state have been more severe than in other areas.

The committee reviewed information comparing effective tax rates for various property classifications. Effective tax rate is calculated by dividing the amount of property tax by the market value of the property. The purpose of the comparison is to determine whether property taxes are increasing or decreasing more than the market value of property. A higher effective tax rate means a higher property tax compared to market value. The 1996 effective tax rate for agricultural property was 1.04 percent compared to 1.86 percent for residential property, 2.24 percent for commercial property, and 1.74 percent for utility property. Although agricultural property has the lowest effective tax rate, the effective tax rate for agricultural property doubled from 1983 to 1991 and has remained approximately stable since then.

The committee reviewed information comparing average income among regions of the state on a per capita basis. In 1986 per capita income among regions was in a relatively narrow range from \$11,157 to \$13,461. By 1996 per capita income had stratified to show greater income differences from \$15,905 to

\$23,117 among the regions. Areas with lower per capita income generally coincide with areas where heavy reliance for property tax revenues is placed on agricultural property. This creates concern that the impact of property taxes is felt more keenly in some areas of the state, particularly where agricultural income has been below par.

Most concerns expressed to the committee about the need for property tax relief related to agricultural property. Because these issues led the committee into examination of the agricultural property valuation formula and classification and assessment of inundated agricultural property, the committee requested and received authority from the Legislative Council chairman to conduct a separate study of assessment and taxation of agricultural property and inundated lands. The results and recommendation of that study are described under **Agricultural Property Assessment Study** in this report.

As property valuations and property taxes continue to increase, concerns were raised about the impact on persons 65 years of age or older with limited income. Such people are eligible for the homestead credit to relieve some of the impact of property taxes. The homestead credit is limited based on income, and committee members were concerned that these income limitations must keep pace with inflation so the benefit of the credit is not lost to those it was intended to help.

Recommendation

The committee recommends House Bill No. 1052 to increase income limits for eligibility for the homestead credit by \$500 in each income category. The credit is based on five income categories, with the maximum benefit available to a person whose annual income is \$7,500 or less and no benefit to a person whose income exceeds \$13,500. The bill would raise the maximum annual income to qualify for the exemption from \$13,500 to \$14,000. Committee members said state law must preserve the benefit of the homestead property tax credit for persons 65 years of age or older with fixed or limited income. If those individuals receive a modest cost of living increase in income but lose the homestead credit as a result, the net effect would impose a hardship. Because the state reimburses political subdivisions for the cost of the homestead credit, the bill is anticipated to have a fiscal impact to the state, and it is estimated that the increased cost will be less than \$200,000 per biennium.

AGRICULTURAL PROPERTY ASSESSMENT STUDY

Background

True and full value of agricultural property for property tax purposes is based on productivity, as established through computation of the capitalized average annual gross return of the land made by the North

Dakota State University Department of Agricultural Economics. Annual gross return for rented land is determined from crop share or cash rent information and for other land is 30 percent of annual gross income for cropland used for growing crops other than sugar beets or potatoes, 20 percent of annual gross income for cropland used for growing sugar beets or potatoes, and 25 percent of gross income potential based on animal unit carrying capacity of the land for land used for grazing animals. Average annual gross return for each county is determined by using annual gross returns for the county for recent years, discarding the highest and lowest annual gross returns from those years, and averaging the returns for the remaining years. Passage of House Bill No. 1069 (1997) extended the number of years of production data used in the agricultural property valuation formula from six years to 10 years. The bill makes this change in increments by use of seven years' data in 1997, eight years' data in 1998, nine years' data in 1999, and 10 years' data after 1999. Average annual gross return is then capitalized using a 10-year average of the most recent 12-year period for the gross Farm Credit Services mortgage rate of interest. An average agricultural value per acre is established for cropland and noncropland on a statewide and countywide basis. This information is provided to the Tax Commissioner by December 1 of each year and then provided by the Tax Commissioner to each county director of tax equalization. The county director of tax equalization provides each assessor with an estimate of the average agricultural value of agricultural lands within the assessor's district. The assessor determines the value of each assessment parcel within that district. Within each county and assessment district, the average of values assigned must approximate the averages determined under the formula for the county or assigned to the district by the county director of tax equalization. In determining relative values, local assessment officials are to use soil type and soil classification data whenever possible.

Committee Considerations

Recent increases in agricultural property valuations in the state generated many complaints to legislators. Many farmers in the state are frustrated because a time of poor production and low commodity prices has been accompanied by increased agricultural property valuations and property tax burdens.

In 1996 average assessed value of agricultural land increased more than nine percent statewide. This substantial jump in values resulted because of the years used in the formula. For 1996 assessments, the 1988 drought year was replaced by 1994 good production year statistics. In addition, the capitalization rate has been declining steadily, which produces higher valuations. Passage of 1997 House Bill No. 1069 eased the effect of these factors by including an additional year of

production data to computation of agricultural property valuations, resulting in a decrease of almost 3.5 percent in 1997 average agricultural values per acre statewide compared to what would have been determined under the formula before the 1997 amendment. As additional years of data are added to the formula, the formula should generate more stable property valuations.

The committee reviewed detailed data on calculation of county average agricultural values per acre for several individual counties, including counties in the Devils Lake Basin experiencing difficulties because of inundation of agricultural property. The formula reflects the fact that land has been flooded because reported cropland acreage under the formula has diminished. However, nonproducing cropland is ignored in the formula and the average agricultural value per acre for the county is determined only on the basis of statistics for producing acreage. This artificially inflates the average agricultural value per acre for the county because the valuations for all agricultural property in the county must approximate the county average valuation as determined under the formula, and inundated land must be assessed as agricultural property. If the county assigns lower values to inundated lands, values of other agricultural property must be inflated to allow the average for all agricultural property to approximate the county average. The county is faced with the choice of keeping an unnaturally high valuation for inundated land or placing an unnaturally high valuation on property that remains in production. Representatives of counties in the Devils Lake Basin told the committee that they are having enormous difficulties with requests for abatement of inundated property, and that this in turn causes substantial problems for valuation of agricultural property that remains in production. It was suggested that the formula be adjusted to allow inundated lands to be excluded from consideration in agricultural property valuations. It was suggested that in addition to existing agricultural property classifications of cropland or noncropland, a third category should be created for inundated agricultural property.

The committee received a resolution signed by county commissioners from 10 counties stating that an increase in valuation for agricultural property is unacceptable in view of the current farm economy. The resolution requested assistance from the Legislative Assembly in restraining agricultural property valuations, particularly in counties in the Devils Lake Basin, where the lake has inundated vast amounts of farmland. The State Board of Equalization has recently granted several counties authority to reduce agricultural property valuations below the statewide average agricultural value per acre as determined under the valuation formula. The board concluded that following the law precisely would impose a hardship within these counties. This action was cited as evidence that the agricultural property valuation formula does not adequately address problems that arise in agricultural property valuation when a substantial amount of agricultural property is inundated.

The capitalization rate used in the agricultural property valuation formula was criticized as being too influential on valuations because a minor reduction in interest rates results in significant increases in valuation as established by the formula. The formula was also criticized for failing to account for costs of production because if farmers' costs of production increase while all other factors remain stable, farmers' net income will decrease but land valuation will remain the same. This was described as a deficiency in the formula because the formula is supposed to measure productivity, which should include consideration of all factors affecting farm income. The committee received information that farm production costs have increased approximately 67 percent in 10 years while yields have increased by 7.5 to 8 percent over that time period and prices received for products have declined.

The committee reviewed an analysis of the effect of restricting changes in the capitalization rate used in the agricultural property valuation formula. Based upon assumptions about what will happen to interest rates, it was estimated that limiting the capitalization rate to no less than 10 percent would result in land valuation reductions of approximately 2.5 percent per year, with a total reduction of approximately 14 percent by the year 2007.

The committee obtained an analysis of the effect on agricultural property valuation of including a component in the valuation formula based on the National Agricultural Statistics Service annual index of prices paid by farmers. It was estimated that use of this component would decrease agricultural property valuations statewide by approximately two percent per year. The cumulative effect of this change would be a reduction of approximately 25 percent in agricultural property assessed valuation by the year 2010 as compared to values determined under the formula without use of the cost index.

The committee recognized that including a production cost index in the agricultural property valuation formula would decrease agricultural property values, and that this change would have differing effects in different counties. Whenever agricultural property valuations are decreased, there will be a resulting shift of tax burden to other types of property unless valuations of those properties decrease even more. Because the mix of agricultural, residential, commercial, and utility property within counties is different, the effect of reduction of agricultural property valuations and resulting shift of property tax burden is different for each county. This effect will be minimal in counties in which substantial amounts of residential, commercial, and utility property exist to absorb the shifting tax burden but will have a more pronounced effect in counties in which agricultural property makes up a high proportion of the property tax base. The committee requested an analysis of this change, which was completed after the committee's final meeting and which bears out the committee's concern. The analysis shows that effects on agricultural property valuations are

variable for different counties. Over a period of 10 years, including a production cost index in the agricultural property valuation formula, and assuming all other factors remain the same, could result in an agricultural property tax decrease of 5.3 percent and a residential property tax increase of 17.1 percent in Benson County, an agricultural property tax decrease of 5.7 percent and a residential property tax increase of 15.1 percent in Nelson County, and an agricultural property tax decrease of 8.5 percent and a residential property tax increase of 10.6 percent in Walsh County. For the same time period, an agricultural property tax decrease of 21.4 percent would be accompanied by a residential property tax increase of 1.4 percent in Grand Forks County, an agricultural property tax decrease of 11.6 percent would be accompanied by a 1.1 percent residential property tax increase in Cass County, and a 12.9 percent agricultural property tax decrease would be accompanied by a 2.9 residential property tax increase in Williams County.

Recommendations

The committee recommends Senate Bill No. 2052 to create a separate category for inundated agricultural land for valuation purposes. The bill limits the county average valuation for inundated lands to 10 percent of the valuation of noncropland for the county. Establishing a separate classification category for inundated land will allow these lands to be assigned reduced valuations without affecting the valuation of other agricultural property in the county. This will address a significant problem that has arisen for counties in the Devils Lake Basin, where it has been necessary to transfer valuation from inundated agricultural lands to agricultural lands that remain in production. This will not solve the problem of loss of property tax revenue from inundated lands but will give counties a way to avoid the need to receive requests for abatements for inundated lands and the need to artificially inflate valuations of productive agricultural property. The bill defines inundated agricultural land as property that is unsuitable for growing crops or grazing farm animals for a full growing season or more due to the presence of water. The bill requires that classification of a parcel of property as inundated agricultural property must be approved by the county board of equalization for each taxable year. This will avoid the need for granting abatements but still allow the county to have decisionmaking authority to review the productive status of the property. The bill provides that valuation of individual parcels of inundated agricultural property may recognize the probability of whether or not the property will be suitable for production in the future.

The committee recommends Senate Bill No. 2053 to limit the capitalization rate in the agricultural property valuation formula to no less than 10 percent and no more than 11 percent. Under current law, the capitalization rate is one-half of the determinant of agricultural

property valuations. Limiting the capitalization rate fluctuation will avoid extreme effects on agricultural property values when interest rates are abnormally high or low.

The committee recommends Senate Bill No. 2054 to incorporate use of an index of prices paid by farmers in the agricultural property valuation formula. The bill requires establishing a base year index of prices paid by farmers which would be compared with an average of those costs over the most recent 10 years. Changes in prices paid by farmers would be factored into the valuation formula to increase valuations if costs decline or decrease valuations if costs increase. The index would be based on annual statistics prepared by the National Agricultural Statistics Service.

FARM BUILDINGS PROPERTY TAX EXEMPTION STUDY

Background

Farm residences and farm buildings other than residences are exempt from property taxes under NDCC Section 57-02-08(15). The provision relating to farm residences is much more detailed than the provision relating to other farm buildings. The exemption for residences provides criteria to determine what qualifies as a farm and who qualifies as a farmer and imposes income limitations. The exemption for farm buildings other than residences does not apply to any structure or improvement used in connection with a retail or wholesale business other than farming, any structure on platted land within the corporate limits of a city, or any structure located on railroad-operating property.

The North Dakota Supreme Court decision in *Butts Feed Lots v. Board of County Commissioners*, 261 N.W.2d 667 (1977) concluded that a feedlot operation was an industrial activity and the property did not qualify for the farm buildings exemption. The Supreme Court found that contract feeding of cattle not owned by the owner of the facility is an industrial activity and that raising cattle owned by the owner of the facility is an industrial activity if the feed for the cattle is not grown onsite. The Supreme Court also said an operation may be industrial if replacement animals are not raised onsite. The Tax Commissioner adopted guidelines that are intended to follow the Supreme Court decision. The guideline for animals raised and owned by the operator provides that the feed must be primarily grown by the person raising the animals and the enterprise must be operated in connection with or incidental to an ordinary farming operation.

1995-96 Interim Committee Considerations

The 1995-96 interim Taxation Committee study of the farm buildings exemption arose because of events that transpired in Richland County, although the topic is of relevance in each county in the state. In 1995 a large turkey-raising operation was established in Richland County. Richland County officials assumed that the

property would not qualify for the farm buildings exemption under the *Butts* analysis. During consideration of this issue, however, Richland County officials recognized that several existing operations raising turkeys, cattle, or hogs would also become taxable under the Tax Commissioner's guidelines adopted to implement *Butts*. Several issues arose regarding application of these guidelines in specific instances and Richland County officials decided to seek a legislative solution to clarify when the farm buildings exemption applies.

Richland County officials said the impact to Richland County's road budget for maintenance of the road to the new turkey facility exceeds normal costs of maintenance for a county road by approximately \$28,000 per year. The road in question is subjected to high-volume truck traffic due to the existence of the turkey-raising operation. Committee members asked whether granting county authority to levy special assessments for road damages would alleviate the problem. Richland County officials said levying special assessments in the situation at hand would not resolve the problem because several properties under different ownership abut the road, but traffic attributable to only one property is responsible for most of the road deterioration.

The committee considered several factors to distinguish industrial or commercial operations from agricultural operations, but none of the factors provided a solution without problems. Basing the exemption on whether the farmowner owns the animals that are being fed would require monitoring ownership of animals. Basing qualification for the exemption on the source of feed, as was done by the Supreme Court in *Butts*, requires monitoring feed and may force operators to grow their own feed when it could be a better management decision to purchase feed from off the farm. Basing the exemption on whether the owner lives on the site might unduly restrict a person's freedom to choose where to live. Limiting the number of paid employees could result in loss of jobs for employees above the limit. Limiting the value of farm buildings eligible for exemption would require assessment of all farm buildings. Causing excessive road repairs for the county or township could involve arbitrary decisions on who is responsible for road damage. Limiting the number of animals raised would require establishment of an accurate count of animals at any time of year and different limitations would be required for different kinds of animals. Basing the exemption on whether replacement animals are raised on the farm, as was discussed by the Supreme Court in *Butts*, was described as inappropriate for some kinds of animals and an interference with management decisions.

The committee discussed eliminating the farm buildings exemption and offsetting the property tax increase by a corresponding reduction in taxes against agricultural land. This would eliminate the need to determine who qualifies for the farm buildings exemption. However, this would reduce the tax burden for persons who own agricultural land but have few or no buildings or

do not actively farm the land, including nonresident landowners.

The 1995-96 interim Taxation Committee made no recommendation on the farm buildings exemption study. The committee did not agree with the criteria established under the Supreme Court's *Butts* decision but could not find a workable, fair method to distinguish farming operations. Committee members expressed preference for flexibility to allow common sense decisions by local governing bodies, over establishing statutory criteria that might be excessively rigid and unfair in some situations. Recent events in other counties indicate there is likely to be continued growth in the number and impact of livestock and poultry feeding operations, and the chairman of the Legislative Council assigned this subject to the interim Taxation Committee to continue the study.

Committee Considerations

The income limitations for the farm residence exemption were examined. Net income from farming or ranching as interpreted by the Tax Commissioner includes income from producing unmanufactured products of the soil, poultry, or livestock, or from dairy farming. This includes taxable farm income for income tax purposes and excludes income from custom work. Interest expense is deducted from income if it was incurred in the farm or ranch operation and was deducted in computing taxable income. Net income from farming or ranching does not include cash rent, mineral leases or royalties, wages or salaries, interest income from contract for deed payments on sale of farmland, or any other income not specifically included in farm income for federal income tax purposes. Depreciation of farm equipment is treated like other farming expenses and is deducted from gross revenues to determine net income from farming activities. A Tax Commissioner representative said obtaining and verifying net farm income information can be difficult.

Ward County officials informed the committee that it recently came to their attention that a beginning farmer cannot qualify for the farm residence exemption because the statutory provision defines a farmer as one who has not received more than 50 percent of annual net income from nonfarm sources during any one of the three preceding calendar years. The problem with this provision is that any individual who is just starting farming will be disqualified from the exemption because the person would have no farm income history to qualify under the statutory provision. Committee members were surprised that this statutory provision has existed for many years and has not been interpreted to cause problems for beginning farmers. Committee members said it would be appropriate to change the statutory provision to encourage efforts of individuals to begin farming.

The North Dakota Ag Coalition, Stockmen's Association, Turkey Growers Association, and Farm Bureau suggested that the criteria established by the North

Dakota Supreme Court in *Butts* are inappropriate in the current farm economy. These criteria were described as management decisions that are based on economics and efficiency. The Ag Coalition recommended limiting the definition of farm activities to raising or growing unprocessed agricultural products, regardless of feed source. An Ag Coalition representative said determining what constitutes processing of agricultural products should be the key to whether the exemption applies and suggested that anything involved with final preparation of the product for human consumption would be considered processing.

Another issue that was brought to the committee's attention involves establishing assessed valuations for tax-exempt farm buildings and residences. The state supervisor of assessments said farm buildings and residences are not required to be assessed or valued under 1997 legislation but a preexisting law originally enacted in 1897 requires assessors to establish values for all property except governmental property. It was suggested that the law be amended to exclude farm buildings and residences from the properties for which values must be established.

Recommendations

The committee recommends House Bill No. 1053 to allow beginning farmers to qualify for the farm buildings

property tax exemption. The bill defines a beginning farmer as one who has begun occupancy of a farm within the three preceding calendar years, who normally devotes the majority of time to farming activities, and who does not have a history of farm income for each of the three preceding calendar years.

The committee recommends House Bill No. 1054 to eliminate consideration in farm buildings tax exemption decisions of the criteria established by the North Dakota Supreme Court in *Butts*, based on whether the farmer grows or purchases feed for animals, whether the farmer owns the animals, whether replacement animals are produced on the farm, and whether the farmer is engaged in contract feeding of animals. The bill provides that buildings are not eligible for the exemption if they are primarily used for processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale. The language is intended to allow flexibility of interpretation by assessment officials to recognize ordinary farm practices but exclude processing that goes beyond ordinary handling.

The committee recommends House Bill No. 1055 to provide that farm buildings and residences are not among the properties for which assessors must establish a valuation.

WELFARE REFORM COMMITTEE

The Welfare Reform Committee was assigned the following study responsibilities:

1. Welfare reform monitoring - Evaluation;
2. Implementation of the temporary assistance for needy families (TANF) program;
3. Federal waiver terminations - Approvals;
4. Responsibilities relating to the revised administration of the TANF program; and
5. Tribal welfare reform issues.

Committee members were Senators Jim Yockim (Chairman), Judy L. DeMers, Tom Fischer, Judy Lee, Donna L. Nalewaja, Bob Stenehjem, and Russell T. Thane and Representatives LeRoy G. Bernstein, Linda Christenson, Jack Dalrymple, Connie Johnsen, Ralph L. Kilzer, Carol A. Niemeier, Clara Sue Price, and Robin Weisz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

STUDY RESPONSIBILITIES

Welfare reform monitoring - Evaluation.

Section 31 of 1997 House Bill No. 1012 required a Legislative Council study of the monitoring of North Dakota's welfare reform implementation efforts to determine the effectiveness of welfare reform. Also, the section required that the Department of Human Services and persons or parties conducting the review of welfare reform implementation efforts to periodically report regarding the evaluation of welfare reform.

Implementation of the temporary assistance for needy families (TANF) program study. Section 82 of 1997 House Bill No. 1226 directed a study of the implementation of the TANF program. The study was to address the issues of:

- The simplification of all public work programs into a single system;
- Providing a work force preparation and placement program;
- Establishing performance-based outcome measures for all contractors;
- The caseload ratio established in North Dakota Century Code (NDCC) Section 50-09-20.1 (65 cases to one worker);
- The training and expertise of the managers administering the training, education, employment, and management (TEEM) program; and
- The development of a tiered system of benefit support and incentives.

Federal waiver terminations. North Dakota Century Code Section 50-06-01.8, as amended by Sections 51 and 52 of 1997 House Bill No. 1226, allows, subject to the approval of the Legislative Council, the Department

of Human Services to terminate any waiver secured under Section 50-06-01.8(1) if necessary or desirable for the statewide implementation of the TEEM program.

Responsibilities relating to the revised administration of the TANF program. North Dakota Century Code Section 50-09-29, as created by Section 76 of House Bill No. 1226, includes the requirements for the Department of Human Services administration of the TANF program and provides the following exceptions to the administrative requirements:

1. If the secretary of the United States Department of Health and Human Services determines that funds otherwise available for the TANF program would be reduced or eliminated if the department administered the program as provided for in Section 50-09-29(1), the department is to administer the program in a manner that avoids a reduction or loss (subsection 2);
2. If the caseload of households provided assistance exceeds projections provided to the 55th Legislative Assembly, the department, subject to the approval of the Legislative Council, is to administer the TANF program in a manner that avoids spending or committing all funds appropriated prior to June 30, 1999 (subsection 3);
3. If the Department of Human Services determines that an insufficient worker opportunity exists, due to increases in the unemployment rate, to participate in work activities, the department may administer the TANF program in a different manner, subject to the approval of the Legislative Council (subsection 5);
4. If the department determines that administration of the TANF program causes otherwise eligible individuals to become a charge of the counties under NDCC Chapter 50-01, the department may administer the program in a manner that avoids that result, subject to the approval of the Legislative Council (subsection 6); and
5. If projected rates of expenditures for operation of the TANF program indicate the appropriations will be expended or committed prior to June 30, 1999, the department is to administer the TANF program in a manner that avoids that result, subject to the approval of the Legislative Council.

Tribal welfare reform issues. Senate Concurrent Resolution No. 4030 directed the Legislative Council to study the issues of welfare reform relating to the relationship between the state and the federally recognized Indian tribes within the state. The committee, in conducting its study, was to solicit input from tribal members, tribal leaders, and tribal government officials interested in state and tribal welfare reform issues.

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (PUBLIC LAW 104-193)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 became law in August 1996. The Act provided for substantial welfare reform, including a TANF block grant.

TANF Block Grant

The TANF block grant replaces the aid to families with dependent children (AFDC) program, allows the state to develop its assistance program, and provides North Dakota approximately \$26.4 million annually. The block grant:

- Includes a 15 percent cap on state administrative costs.
- Requires that the legislature appropriate the state's block grant funds.
- Requires an 80 percent maintenance of effort based on state spending for fiscal year 1994 (approximately \$9.7 million per year). (During the 1997-99 biennium, the state plans to spend \$47.2 million of federal TANF funds and \$19.3 million of state maintenance-of-effort funds, for a total of \$66.5 million).
- Allows transfers of block grant moneys up to 30 percent to the social services block grant and up to 10 percent to the child care block grant.
- Requires client work participation.
- Provides for sanctions and penalties against states for failing to meet work participation rates.
- Requires states to implement child support enforcement requirements.
- Limits individual receipt of welfare benefits to a five-year time period.

Tribal TANF Considerations

The Act allows Indian tribes with an approved tribal family assistance plan to directly receive and administer the TANF block grant funds for a tribal welfare program beginning in fiscal year 1997. Each tribe's share is based on the relative share of the state's TANF caseload to be served by the tribe. The state's TANF block grant would be reduced by any amount provided directly to a tribe. In structuring a welfare program, a tribe has the flexibility to establish its own work participation rates and time limits, subject to federal approval. The state, including tribal members, or excluding tribal members if a separate tribal welfare program is approved, is required to meet the federal work participation rates and time limits.

A consideration for the state is the state's role, if any, in the development, funding, and administration of any tribally administered welfare program. The Act **does not** require a state to provide financial support for tribal family assistance plans. Absent any state assistance,

tribes would receive only their share of the TANF block grant based on the number of eligible recipients to be served by the tribal TANF program.

Several issues state and tribal governments will need to consider related to the establishment of a tribal TANF program include program coordination, duplication of services, automation and data collection, services for nontribal members on tribal land, quality control, and tribal contracts with the state for operation of tribal programs.

Work Participation Requirements - Sanctions

The Act requires the state to meet the following work participation requirements for recipients on assistance:

Fiscal year 1997	25 percent
Fiscal year 1998	30 percent
Fiscal year 1999	35 percent
Fiscal year 2000	40 percent
Fiscal year 2001	45 percent
Fiscal year 2002 and beyond	50 percent

The Act requires participants to work a minimum number of hours per week to count in meeting the state's work participation rate. The minimum number of work hours required is 20 hours per week for fiscal years 1997 and 1998, 25 hours per week for fiscal year 1999, and 30 hours per week for fiscal year 2000 and beyond. These work participation requirements can be reduced if the state experiences a significant caseload reduction.

States will be sanctioned by a grant reduction of five percent the first year it fails to meet the work participation rates, and if the state continues to fail to meet the requirements, penalties increase by two percent each year to a maximum of 21 percent of the grant. Penalties can be reduced for good cause, such as an economic recession.

1997 LEGISLATIVE ASSEMBLY

House Bill No. 1012

The 1997 Legislative Assembly passed House Bill No. 1012 providing the funding for the Department of Human Services. The bill contained \$425,158 of federal funds for an evaluation of the state's implementation of the TANF program by an outside consultant. The bill also appropriated approximately \$52.8 million of federal moneys from the TANF block grant, or approximately \$26.4 million per year.

House Bill No. 1226

House Bill No. 1226 passed by the 1997 Legislative Assembly provided for the administration of the TANF program and welfare reform efforts. The following highlights some of the significant provisions of the bill:

- Allows the court, in cases in which an individual owes past-due child support, to require the individual to pay past-due support in accordance with

- a plan approved by the court, to participate in work activities, and to participate in treatment for mental illness or drug or alcohol dependency.
- Allows the court to suspend recreational licenses for nonpayment of child support .
 - Establishes a state disbursement unit for the collection and disbursement of payments of child support.
 - Expands the information reporting requirements in child support payment orders.
 - Requires a court, in a pretrial proceeding, to order child support to be paid if there is evidence of paternity, pending a final determination of paternity.
 - Allows the Department of Human Services to issue executions against the property of a child support debtor for child support arrearages greater than six times the monthly child support obligation.
 - Provides for a state directory of new hires and for employer reporting of new hires to the Department of Human Services.
 - Allows for liens on vehicles, vessels, accounts at financial institutions, and other personal property for nonpayment of child support.
 - Requires applicants to provide Social Security numbers before receiving professional or occupational licenses.
 - Provides for the establishment of a state case registry of child support cases in the statewide automated data processing system.
 - Allows the state child support agency, in the administration of the child support program under Title IV-D, to secure assets by issuing writs of execution to seize property from financial institutions, public and private retirement funds, and other benefits.
 - Provides for the establishment of a task force to implement the identified goals and programs relating to out-of-wedlock pregnancies, education and training on the problems of statutory rape, domestic violence victims, and pregnancy family planning services in the TEEM assessment. The task force was to include representatives of all relevant parties, including two members of the Legislative Assembly appointed by the chairman of the Legislative Council.
 - Provides for the transfer of responsibilities from the clerks of court to the state disbursement unit by providing intent that from July 1, 1997, to April 1, 1999, the clerks of court and the department share responsibilities and that the department prepare schedules for the transfer of specific responsibilities on a county-by-county and case-by-case basis.

WELFARE REFORM STATUS REPORTS AND MONITORING TEEM Project

The TEEM project is a North Dakota welfare reform project funded by the TANF block grant program. The committee received status reports from the Department of Human Services at each of the committee's meetings regarding the implementation of the TEEM project. The TEEM project combines benefits for assistance to families with dependent children, food stamps, and fuel assistance. In addition, TEEM is to emphasize employment as a means of attaining self-sufficiency, strengthen the family structure, and emphasize the responsibility of both parents by improving child support collections.

The TEEM project was approved as a waiver project by federal agencies on September 28, 1995. In May 1997 the department submitted the state's TANF plan to the United States Department of Health and Human Services, the plan received federal approval on June 26, 1997, and program implementation began on July 1, 1997.

As of July 1998, 53 percent of the cases in North Dakota were converted to the TEEM program with conversion of all cases expected by early 1999. The TEEM assessment process includes a basic screening for victims of domestic violence and the option of pre-pregnancy family planning services. The committee learned the Welfare Reform Task Force, created by 1997 House Bill No. 1226, is working to reduce out-of-wedlock births and to provide an education plan for the prevention of statutory rape.

The committee learned that because of federal restrictions, the department is not planning to implement a simplified food stamp program but include the regular food stamp program in the TEEM system as soon as possible. The computer changes necessary to integrate the food stamp program into the TEEM assessment will most likely be addressed when the Medicaid-TANF computer project is completed, which is expected to be by June 2000.

The state's welfare benefit cap was implemented July 1, 1998, and the committee was informed that very few households were affected by the benefit cap during the first two months. The benefit cap in general does not allow an increase in benefits to a household on assistance which has additional children while on assistance. The department will provide reports to the 1999 Legislative Assembly regarding the impact of the benefit cap.

The committee learned that the state's work participation rate for June 1998 was 31.8 percent compared to the federal requirement of 30 percent. Beginning in October 1998, the work participation rate increases to 35 percent, and the required hours of participation increase from 20 hours per week to 25 hours. Households may be sanctioned for not participating in job search or work activities. A sanction results in a temporary loss of benefits. Households with a child under

four months of age and those sanctioned for less than three months are excluded from the work participation rate calculation. If a household has been sanctioned more than three of the last 12 months, the household is counted in the total to which the work participation rate is applied. A large number of sanctioned households makes it difficult for the state to meet required work participation rates.

Economic Assistance Caseloads and Expenditures

The committee received reports from the Department of Human Services on the status of caseloads for the TANF, food stamp, medical assistance, and child care programs.

As of July 1998, the TANF caseload was 3,176 families compared to the estimate used in the 1997-99 appropriation of 4,380 in July 1997, which was estimated to increase to 4,449 by June 1999. This is the lowest caseload since December 1970. The TANF expenditures for the biennium are now projected to be \$29.03 million, or \$11.85 million less than the \$40.88 million appropriated by the 1997 Legislative Assembly. A total of \$5,738,923 was appropriated from the general fund, of which \$3,321,639 is projected to be spent to meet maintenance-of-effort requirements and the balance, or \$2,417,284, may be used to match the federal welfare-to-work block grant. Based on preliminary estimates, the department plans to have \$7.7 million of TANF funds available from the 1997-99 biennium appropriation to be used during the 1999-2001 biennium. A total of \$47.2 million of federal TANF funds will be spent in the 1997-99 biennium as well as \$19.3 million of state maintenance-of-effort funds.

As of July 1998, 13,664 families were receiving food stamp benefits compared to 14,706 in July 1997, a reduction of 1,042 families. The medical assistance or Medicaid number of eligible recipients was 29,709 for June 1998, compared to 30,228 in July 1997. Since 1993 the Medicaid program has experienced a net reduction in recipients, with a decline in children receiving services and an increase in aged and disabled recipients. Estimated general fund savings for the Medicaid program for the 1997-99 biennium are \$1 million, a portion of which is expected to be used for the funding of the children's health insurance program (CHIP). The child care development program caseload was 3,956 for May 1998, compared to 2,849 in July 1997.

Maintenance-of-Effort Requirements

The TANF block grant requires the state to spend each year at least 80 percent of state spending in federal fiscal year 1994 as its maintenance of effort. For North Dakota this is \$19,372,652 for the 1997-99 biennium. The maintenance of effort is spent by the state for TANF grants, work activities, and administration. The state

plans to spend at the maintenance-of-effort level for the biennium.

Children's Health Insurance Program Status Reports

Although the committee was not assigned responsibility to monitor the implementation of North Dakota's children's health insurance program and North Dakota Healthy Steps, the committee received periodic updates. The children's health insurance program was established by Congress in 1997 and requires a state match of 20.7 percent. North Dakota has been allocated just over \$5 million for federal fiscal year 1998, requiring a match of \$1.3 million from the general fund. States are not required to spend the entire allotment during any federal fiscal year but must have a plan approved by September 30, 1998, or forfeit the first-year allotment. During the fifth through seventh years of the program, the state's allotment may be reduced by as much as 25 percent, and any carryover funds from the early years will be available during those years.

The committee learned the Department of Human Services plans to implement the first phase of North Dakota Healthy Steps by expanding Medicaid coverage to children 18 years of age in a family with an adjusted gross income at or below 100 percent of the federal poverty level. The current poverty level is \$12,984 per year for a family of three. Currently, the Medicaid program covers children ages 6 through 17 with a family income at or below 100 percent of the poverty level and children under 6 years of age with a family income at or below 133 percent of the federal poverty level. This change was effective on October 1, 1998. The second phase will be addressed through legislation under development to be considered during the 1999 Legislative Assembly.

Welfare-to-Work Block Grant

Although the committee was not assigned responsibility to monitor the welfare-to-work block grant program, it received periodic reports. The program was established by the federal government in August 1997 and provides funding for North Dakota of approximately \$2.7 million for federal fiscal year 1998 and \$2.5 million for 1999. The state is required to provide matching funds of \$1 for each \$2 of welfare-to-work block grant funds, or \$1.35 million for fiscal year 1998 and \$1.25 million for fiscal year 1999. The grant allows the state to provide up to one-half of its match from in-kind contributions. The department plans to use savings from reduced TANF caseloads to provide the state match. State matching moneys for the remainder of the 1997-99 biennium are approximately \$2.4 million with \$250,000 in state matching funds required for the 1999-2001 biennium. States are allowed to carry forward unspent funds from a federal fiscal year for up to three years.

The welfare-to-work grant program allows services to be provided, including work-readiness activities, assessment and career counseling, individual service strategy, job search skills training, work maturity skills training, job search assistance, placement activities, unsubsidized employment, community service or work experience, job creation through wage subsidies, on-the-job training, job retention/postemployment activities, worksite monitoring, followup on individual progress, basic skills and vocational training, services to employers, and support service activities. The welfare-to-work grant program requires the full integration of all work force training programs and resources available to the state, including Work Force 2000, the JOBS training program, the TANF program, and Job Training Partnership Act employment training.

Evaluation Efforts

An evaluation plan was submitted by the Department of Human Services to the United States Department of Health and Human Services in July 1997 which included funding requests for an independent evaluation of North Dakota's welfare reform efforts and a related performance audit by the State Auditor's office. The United States Department of Health and Human Services indicated that the performance audit component would not be funded.

The committee learned North Dakota was awarded a one-year grant of approximately \$103,000 from the United States Department of Health and Human Services for an evaluation of TANF and the TEEM project. The department contracted with Berkeley Planning Associates for an evaluation of the state's implementation of the TEEM program. The evaluation is a limited program evaluation and is directed more toward a process evaluation of the TEEM implementation. The evaluation data is gathered primarily from interviews with state and county staffs and clients. Additional interviews will be conducted through June 1999 as the TEEM program is implemented statewide.

TRIBAL ISSUES AND TRIBAL WELFARE REFORM PLANS

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allows Indian tribes with an approved tribal family assistance plan to directly receive and administer the TANF block grant funds for a tribal welfare program beginning in fiscal year 1997.

The tribe must receive approval from the United States Department of Health and Human Services for a tribal TANF program for a minimum of three years. The state's TANF block grant would be reduced by any amount provided directly to a tribe. In structuring a welfare program, a tribe has the flexibility to establish its own work participation rates and time limits, subject to federal approval.

Joint Meeting

The committee met in October 1997 with members of the Budget Committee on Long-Term Care and the Budget Committee on Human Services to receive input from tribal members and to discuss tribal human service issues.

The committee received testimony from the director of the Division of Tribal Services, Administration for Children and Families, United States Department of Health and Human Services, Washington, DC. The testimony identified major issues the tribes and the states will need to address as tribes develop tribal TANF programs summarized as follows:

- States and tribes should have a common interest and challenge to see that no person who is eligible and in need of services "falls through the cracks."
- States must continue to provide the approximate 30 percent share that was previously contributed under the AFDC program to tribes when the tribes assume responsibility for TANF operations.
- Tribal programs will need state administrative support because of certain minimum costs to be incurred regardless of program size, including staff and programming.
- Program standards and definitions must be coordinated between the tribes and the state.
- Accountability must be addressed by an agreement between tribal and state governments, adjusted as necessary.
- Economic development, job creation, and job training must be available on the reservations.

Issues Regarding Tribal TANF Programs

In response to the committee's request, representatives of the Department of Human Services provided the following list of issues for the tribes and the state to consider regarding tribal administration of a TANF program and regarding the state providing matching funds:

Issues a tribe may consider regarding TANF administration:

1. Pros:
 - a. May reinforce tribal sovereignty.
 - b. May enhance the integration of social services in the tribe, particularly if the tribe contracts with the Bureau of Indian Affairs social services.
 - c. May allow tribal members to better understand the need for services if the services are provided by tribal members.
 - d. May be able to establish work participation requirements lower than the state's requirements.
 - e. May develop work activities to fit the unique circumstances of the tribe.

- f. May create employment opportunities for the staff administering the program.
2. Cons:
 - a. State will continue to administer food stamps, Medicaid, and other programs; therefore, clients will need to apply and report to separate agencies which may involve additional travel.
 - b. Could result in less coordination and less exchange of information between the tribes and the state for purposes of aiding in administration of other programs.
 - c. Duplication of computer systems.

Issues regarding whether the state should provide matching funds:

1. Pros:
 - a. May encourage a tribe to administer its own program.
 - b. Tribal-administered TANF recipients would not be considered in the determination of the state's work participation rate.
 - c. May engender good will between the tribes and the state, particularly since many prior government-to-government relationships were solely between the tribe and the federal government.
2. Cons:
 - a. State must maintain offices and basically the same size staff to deliver services to individuals for food stamps and Medicaid and to nontribal individuals.
 - b. Individuals need to apply and report to separate entities.
 - c. Less coordination among agencies of information regarding program benefits.
 - d. Unresolved child support issues including, but not limited to, establishing separate enforcement units and treatment of collections.
 - e. Expense of computer programs.

improvements to Highway 5, and telecommunications improvements.

2. Strengthen tribally owned businesses to increase profitability and create jobs by additional Uniband contracts, additional Turtle Mountain Manufacturing products, and strengthening and expanding tribal services.
3. Participate in joint ventures to create primary sector jobs, similar to Midwest Industries, Chippewa Homes, and Chippewa Doors and Windows.
4. Expand tourism, including the construction of a Sky Dancer Resort Hotel, and extend the gaming compact to allow for financing a new casino.
5. Create a sufficient and reliable economic development funding stream from additional revenues from the new casino. Currently, 25 percent of gaming gross revenues are earmarked for work force development and economic development.

The committee learned the Turtle Mountain Work First Initiative being developed to reduce poverty would ask the state to make available a total of \$15.9 million for a tribal TANF program during the 1999-2001 biennium. Funding would consist of approximately 30 percent of the federal TANF block grant or \$9,451,800, 30 percent of the welfare-to-work block grant or \$1,680,000, and 30 percent of the federal child care block grant or \$2,820,000. In addition, \$1,980,544 will be requested from the state general fund related to the tribe's share of the state's maintenance-of-effort amount. The tribe estimates its members will represent roughly 30 percent of the state's TANF clients when the program is implemented. A bill draft was presented by tribal representatives to the committee at its last meeting to implement the Work First Initiative. The committee took no action regarding the bill draft and the tribe plans to seek more input and have the bill draft introduced during the 1999 legislative session.

The committee learned the Turtle Mountain Tribe plans to:

- Seek local and statewide support for the Work First Initiative;
- Encourage the Governor to make work force development and job creation priorities a part of his 1998 welfare-to-work program;
- Develop program plans that build upon the experiences and resources of existing tribal organizations;
- Apply for a federal Department of Labor competitive welfare-to-work grant to formulate and implement transportation and child care delivery systems; and
- Seek the support of the 1999 Legislative Assembly for implementation of the Turtle Mountain Work First Initiative.

Turtle Mountain Band of Chippewa Indians Welfare Plans

The committee received information from the tribal chairman of the Turtle Mountain Band of Chippewa Indians regarding the tribe's study of the feasibility of a tribal TANF program, or the Work First Initiative. The committee learned the tribe has a 59 percent unemployment rate and graduates 150 high school graduates each year with few job opportunities. The tribe's economic development goal is to create 3,500 to 5,000 new primary sector jobs before the year 2013 by addressing the following priorities:

1. Secure public investment in local infrastructure, including construction at the Turtle Mountain Community College, an improved water system,

Client and Child Care Provider Concerns

The committee received testimony from clients and child care providers. Clients expressed concerns regarding the implementation of TEEM including transportation issues, job availability, and work participation requirements. Child care providers expressed concerns with department reimbursement and ratesetting methods.

North Dakota Association of County Social Service Board Directors - County Testimony

At each meeting the committee received reports from representatives of the North Dakota Association of County Social Service Board Directors regarding the status of welfare reform and also received testimony from county directors while holding meetings in Fargo, Grand Forks, Williston, and Bismarck. County directors identified significant reductions in TANF caseloads, with steady or increasing caseloads in other economic assistance areas including food stamps and child care. County representatives expressed concerns including:

- Counties with reservation lands have clients that may be unable to obtain employment within their home communities.
- Several areas of the state have school dropouts occurring as early as grades 7 and 8. The one year of education limitation under the state's TANF program will not allow these individuals to complete a high school equivalency, affecting the clients' ability to find employment.
- Sufficient rural child care and transportation is not available to meet the needs of welfare recipients.
- The 1997 Legislative Assembly established a client-to-staff caseload ratio of 65 to 1 for TEEM caseloads. Some counties indicated that any ratio in excess of 45 to 1 would be excessive; however, counties that may be negatively impacted under the "swap" provisions would have a difficult time staffing at anything less than a 65 to 1 ratio.
- The effect of clients reaching the 60-month limit on TANF benefits. A state-funded general assistance program may be necessary to meet clients' needs.

North Dakota Association of Counties - Distribution of Child Care Funding

The committee learned the Department of Human Services obligated \$1.8 million of federal child care grant funding through the North Dakota Association of Counties. The funds were obligated by the department near the end of federal fiscal year 1997 to avoid losing the funds. The total of \$1.8 million allocated included \$500,000 for community child care centers, \$500,000 for Head Start centers, \$600,000 for contracted child care needs for tribal programs and the United Tribes

Technical College, and \$200,000 for areas with the greatest need.

The committee received positive testimony regarding this method of distribution by representatives of county social services and tribal social services. Concerns were expressed that the funding was not available to family home care providers but was available only to group or facility child care providers.

North Dakota University System Reports - Welfare Recipients Education Needs

Representatives of the North Dakota University System informed the committee the system has a role in welfare reform which is being developed as part of the system's six-year plan. A higher education welfare task force has been formed consisting of higher education, tribal, vocational and technical education, Department of Human Services, and Job Service representatives. The committee received information on the Bismarck State College Phoenix program, a training program to assist women in obtaining higher wage technical careers. The committee also received information regarding TANF recipients enrolled in postsecondary education and the challenges higher education faces in welfare reform. Some of the challenges for higher education include the TANF work requirement provisions that limit education to 12 months, the small and disbursed numbers of TANF recipients in a rural state, and the large number of welfare recipients living in areas without good job opportunities and with transportation difficulties.

Committee Considerations - Refugee Food Stamp Benefits

The committee learned federal changes in 1997 limited food stamp benefits for refugees to a 60-month period. As a result, the committee considered but does not recommend a bill draft that would have required the Department of Human Services to provide food stamp benefits from the state general fund to refugees who have exceeded the federal time limit for participation in the program, or 60 months.

The Department of Human Services originally estimated the impact of the bill draft for the 1999-2001 biennium to be \$260,681 from the general fund. This would have provided benefits for legally admitted immigrants, otherwise eligible, which includes refugees and other legal aliens whose federal food stamp benefits have expired. Refugees are eligible for benefits for the first 60 months they are in the country and again when they become United States citizens. Citizenship generally takes six to six and one-half years. Delays are often encountered by refugees who have difficulty with the English language. As a result, in a typical case, the state, if the bill draft would have become law, would have provided benefits beginning with the 61st month and continuing to citizenship or on the average one and one-half years later.

At the last committee meeting the committee learned congressional action in 1998 restored food stamp benefits to some people made ineligible by the five-year limit. The new limit is **seven** years for persons under the age of 18, disabled persons, or persons 65 years of age or above. As a result, the department's revised estimate of the fiscal impact of the bill draft was \$180,000 from the general fund for the 1999-2001 biennium. The fiscal impact related to all legal immigrants who would no longer be eligible for federal food stamp benefits, including refugees and other legally admitted immigrants.

Committee Observations

The committee does not make any recommendations regarding its monitoring of welfare reform and tribal welfare reform issues. The committee anticipates that a future interim committee may be necessary to monitor the status of welfare reform, and the committee identified several issues that may continue to need to be monitored:

- The status of a federally funded evaluation of the state's welfare reform effort, the implementation of TEEM and client progress in meeting established goals, including obtaining and sustaining employment and the possibility of a tracking component included in the evaluation;
- The impact on clients of the 60-month time limit on benefits which will end payments for some clients beginning in July 2002;
- The development of criteria for clients eligible for the 20 percent hardship exception allowance to the 60-month lifetime benefit limit;
- The actual work participation rates compared to rates required by federal legislation;
- The assistance caseload reductions and reasons for the changes;
- The need for adequate available child care, employment opportunities, transportation, and life skills and employment training for clients;
- The day care funding allocation made available through the North Dakota Association of Counties;
- The role of the private sector;
- The related changes to the TEEM computer system;
- The status of biennial expenditures as compared to appropriations for TANF and child care block grant programs;
- The potential need for administrative changes or federal waiver terminations, subject to approval by the Legislative Council;

- The client concerns with the work participation requirements that require a client to work once a client's child reaches four months of age;
- The staff-to-client caseload ratios;
- The potential federal changes that could allow clients to receive more than one year of postsecondary education and meet the work participation requirements;
- As the welfare caseloads are reduced, the "hard-to-employ" welfare recipients will remain and will need more training and assistance, particularly in the areas of interpersonal skills and job readiness;
- The development of tribal welfare programs including the continued cooperation of the Department of Human Services and the tribal representatives in the development of potential tribal TANF programs;
- The issues regarding tribal welfare reform including the tribal welfare area to be served and the potential for the tribes contracting with the Department of Human Services, county social services, or a third party for administration of the tribal TANF program.
- The non-TANF-related problems that must be addressed on the Indian reservations, including high alcoholism rates, the need for job creation, and transportation issues.
- The impact of changing tribal TANF caseloads, high reservation unemployment rates, and the need for client job skills;
- The impact of tribal job training efforts and JOBS employment training contracts;
- The need for child care, transportation, on-the-job training, development of self-esteem, understanding of TANF rules, and access to training/education programs for tribal assistance clients; and
- The impact of the implementation of the children's health insurance program and the welfare-to-work block grant program.

Budget Tours

While conducting a meeting in Williston, the committee conducted a budget tour of UND-Williston, the Northwest Human Service Center, and the Williston Research Center. On the tour, the committee heard of institutional needs for capital improvements and programs, and of any problems the entities 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 1999 Legislative Assembly.

STUDY RESOLUTIONS CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE COUNCIL FOR THE 1997-98 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Council for study during the 1997-98 interim under authority of North Dakota Century Code Section 54-35-03. The table also identifies statutory and other responsibilities assigned to interim committees and identifies the interim committee assigned the study or responsibility.

Bill or Resolution No.	Subject Matter (Committee)	Bill or Resolution No.	Subject Matter (Committee)
			state support for school construction (Education Finance Committee)
		3001	Study the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system (Judiciary Committee)
1012 § 31	Study the monitoring of North Dakota's welfare reform implementation efforts to determine the effectiveness of welfare reform (Welfare Reform Committee)	3002	Study the state's investment process as it relates to the state bonding fund and the fire and tornado fund and monitor the performance of all investments of the State Investment Board and the Board of University and School Lands (Budget Committee on Government Finance)
1012 § 32	Study basic care rate equalization, including the cost impacts to the state and private pay residents (Budget Committee on Long-Term Care)	3003	Monitor the implementation of the projects developed by the Department of Human Services related to the conversion of existing nursing facility or basic care capacity for use by the Alzheimer's and related dementia population and the testing of an expanded case management system for elderly persons and disabled persons (Budget Committee on Long-Term Care)
1015 § 19	Study public employee health insurance benefits (Employee Benefits Programs Committee)		
1041 § 14	Study the provision of child support services and child care licensing in this state (Child Support Committee)		
1167 § 22	Study the charitable gaming laws and rules to determine whether the laws and rules regarding taxation, enforcement, limitations, conduct, and play of charitable gaming are adequate and appropriate (Judiciary Committee)	3004	Study the means of expanding home and community-based service availability, options for training additional qualified service providers, adequacy of geropsychiatric services, and the feasibility of combining service reimbursement payment sources to allow payments to flow to a broadened array of elderly and disabled services options (Budget Committee on Long-Term Care)
1226 § 82	Study the implementation of the temporary assistance for needy families program (Welfare Reform Committee)		
2004 § 27	Study emergency medical services (Insurance and Health Care Committee)	3005	Study American Indian long-term care needs and access to appropriate services and the functional relationship between state service units and the American Indian reservation service systems (Budget Committee on Long-Term Care)
2016 § 10	Study programs to prevent crime and delinquency and reduce incarceration (Criminal Justice Committee)	3006	Study long-term care financing issues to determine the changes necessary to develop alternative services and the feasibility of a managed care system for long-term care services (Budget Committee on Long-Term Care)
2019 § 12	Study economic development functions in this state, including the Bank of North Dakota programs, Technology Transfer, Inc., the North Dakota development fund, the Department of Economic Development and Finance, and other related state agencies (Commerce and Agriculture Committee)	3030	Study the development of a strategic planning process for the future of public health
2338 § 4	Study the financing of elementary and secondary schools and the availability of		

Bill or Resolution No.	Subject Matter (Committee)	Bill or Resolution No.	Subject Matter (Committee)
	in this state (Insurance and Health Care Committee)	4001	Monitor mental health and foster care services (Budget Committee on Government Services)
3031	Study the issues of fairness and equity as they relate to child support guidelines and the issuance and enforcement of child custody and visitation orders (Child Support Committee)	4002	Study those provisions of North Dakota Century Code Title 15 which relate to elementary and secondary education (Education Services Committee)
3032	Study the responsibilities of county social services as they are distinguished from the responsibilities of regional human service centers and the Department of Human Services when providing services to children and their families and persons with disabilities, including the elderly (Budget Committee on Human Services)	4017	Study legislative employee compensation (Legislative Management Committee)
		4019	Study the adequacy of transportation funding in this state (Budget Committee on Government Finance)
		4024	Study the development of an electronic mail and records management policy for governmental entities (Information Technology Committee)
3033	Study the effects of managed health care on the future viability of the health care delivery system in rural North Dakota (Insurance and Health Care Committee)	4025	Study the effects of sexual abuse on child victims, strategies to assist child victims and the parents of child victims, the use and effectiveness of the mandatory reporting law, effective deterrents, and the need for training of professionals, public awareness initiatives, and training of school personnel in the recognition of victims and in prevention activities (Criminal Justice Committee)
3037	Study the feasibility and desirability of providing property tax relief through alternative state and local revenue sources (Taxation Committee)		
3042	Study the Department of Human Services (including the block grant method of appropriating funds to regional human service centers per HB 1012 § 34) (Budget Committee on Human Services)	4030	Study the issues of welfare reform as they relate to the relationship between the state and the federally recognized Indian tribes within the state (Welfare Reform Committee)
3043	Study the feasibility and desirability of implementing hail suppression programs for the reduction of property damage in urban and rural areas and funding the programs through property and casualty line insurance premium taxes (Insurance and Health Care Committee)	4036	Study the level of and remedies for discrimination in this state (Judiciary Committee)
3044	Study the impact of tax-exempt property on school districts (Taxation Committee)	4041	Study the establishment of watershed districts to manage water based on watershed boundaries (Garrison Diversion Overview Committee)
3045	Study the current budget process, the results of the program performance-based budgeting pilot projects, and budget reforms in other states - by Legislative Council directive, expanded to include the feasibility of developing a legislative budget (Budget Committee on Government Finance)	4045	Study state funding of the office of clerk of district court, the issues and problems associated with the continued implementation of court unification, and the effective provision of judicial services to the citizens of this state (Judiciary Committee)
3046	Study the availability of affordable housing for middle income households, for the elderly, and in rural areas of this state (Commerce and Agriculture Committee)	4047	Study the short-term and long-term impact of federal education legislation and other direct and indirect mandates from whatever sources on the educational goals and fiscal well-being of school districts (Education Finance Committee)
3052	Study the property tax exemption for charitable organizations (Taxation Committee)		

Bill or Resolution No.	Subject Matter (Committee)	NDCC Citation	Subject Matter (Committee)
4049	Study the feasibility and desirability of revising the sections of the North Dakota Century Code which relate to sexual offenses (Criminal Justice Committee)	15-10-12.1	University and School Lands as sole owner (Budget Section) Approve any gift of a higher education facility (Budget Section)
4050	Study taxation and regulatory incentives for the lignite industry in order to improve its competitive position in the energy marketplace (Taxation Committee)	15-10-18 15-22-01.1	Approve nonresident student tuition fees (Budget Section) Acknowledge receipt of county plan assigning duties of county superintendent of schools (Education Services Committee)
4051	Study the desirability of requiring that a core curriculum be taught from kindergarten through grade 12; and if determined to be desirable, develop a core curriculum or endorse an existing core curriculum for delivery to each school child, regardless of where the child resides; and determine the feasibility and desirability of requiring the state to assume all costs of delivering that core curriculum to each school child (Education Services Committee)	15-34.1-12.1 18-11-15	Receive report from Superintendent of Public Instruction regarding the home schooling of children with autism (effective until July 1, 1999) (Education Services Committee) Receive notice from a firefighters relief association concerning service benefits paid under a special schedule (Employee Benefits Programs Committee)
4053	Study the prevention of and dispositional alternatives to juvenile crime with a focus on services offered to American Indian children (Criminal Justice Committee)	20.1-02-05.1	Approve comprehensive statewide land acquisition plan established by director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding \$10,000 by Game and Fish Department (Budget Section)
	NDCC Citation	Subject Matter (Committee)	
4-02.1-18	Receive annual audit report from State Fair Association (Legislative Audit and Fiscal Review Committee)	25-04-02.2	Authorize Developmental Center at Westwood Park, Grafton, to provide services under contract with a governmental or nongovernmental person (Budget Section)
4-05.1-19	Receive report from Agricultural Research Board on its annual evaluation of research activities and expenditures (Commerce and Agriculture Committee)	25-04-17	Receive report on writeoff of patients' accounts at Developmental Center at Westwood Park, Grafton (Legislative Audit and Fiscal Review Committee)
4-19-01.2	Approve use of moneys deposited in State Forester reserve account (Budget Section)	25-04-20	Approve sale, lease, or other management of the property of Westwood Park by the Westwood Park Assets Management Committee (Budget Section)
10-23-03.2	Receive annual audit report from corporation receiving ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)	26.1-45.1-07	Receive annual report from Commissioner of Insurance on the progress of the partnership for long-term care program (Insurance and Health Care Committee)
10-32-156	Receive annual audit report from any limited liability company that produces agricultural ethanol alcohol or methanol in this state and which receives a production subsidy from the state (Legislative Audit and Fiscal Review Committee)	26.1-50-05 28-32-02	Receive annual audited financial statement and report from North Dakota low risk incentive fund (Legislative Audit and Fiscal Review Committee) Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)
15-03-04	Approve any purchase of commercial or residential property by the Board of		

NDCC Citation	Subject Matter (Committee)	NDCC Citation	Subject Matter (Committee)
28-32-02	Establish standard procedures for administrative agency compliance with notice requirements of proposed rule-making (Administrative Rules Committee)	52-02-18	Receive report of biennial performance audit of the divisions of Job Service North Dakota (Legislative Audit and Fiscal Review Committee)
28-32-02	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)	54-03-26	Determine the fee payable by legislators for use of personal computers (Legislative Management Committee)
28-32-03.3	Determine whether an administrative rule is void and suspend the rule (Administrative Rules Committee)	54-06-26	Establish guidelines defining reasonable and appropriate use of state telephones by legislative branch personnel (Legislative Management Committee)
28-32-15	Receive notice of appeal of an administrative agency's rulemaking action (Administrative Rules Committee)	54-10-01	Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review Committee)
36-01-08.3	Receive annual report from the State Board of Animal Health (Commerce and Agriculture Committee)	54-10-01	Determine necessary performance audits by State Auditor (Legislative Audit and Fiscal Review Committee)
46-02-04	Determine contents of contracts for printing of legislative bills, resolutions, and journals (Legislative Management Committee)	54-10-13	Determine when State Auditor is to perform audits of political subdivisions (Legislative Audit and Fiscal Review Committee)
49-21-22.1	Review operation and effect of North Dakota telecommunications law (Regulatory Reform Review Commission)	54-10-15	Order the State Auditor to audit or review the accounts of any political subdivision (Legislative Audit and Fiscal Review Committee)
50-06-01.8	Approve termination of any waiver obtained by the Department of Human Services for the training, education, employment, and management (TEEM) program or the demonstration project to combine the benefits under the aid to families with dependent children, temporary assistance for needy families, fuel assistance, and food stamp programs (Welfare Reform Committee)	54-14-03.1	Receive reports on fiscal irregularities (Budget Section)
50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)	54-16-04	Approve transfers of money or spending authority which would eliminate or make impossible accomplishment of a program or objective funded by the Legislative Assembly (Budget Section)
50-06.3-08	Receive annual report from the Department of Human Services on writeoff of recipients' or patients' accounts (Legislative Audit and Fiscal Review Committee)	54-16-04	Approve transfers exceeding \$50,000 from one fund or line item to another unless necessary to comply with court order or to avoid imminent threat to safety or imminent financial loss to the state (Budget Section)
50-09-29	Approve revised administration of the temporary assistance for needy families program by the Department of Human Services (Welfare Reform Committee)	54-16-04.1	Approve Emergency Commission authorization of any state officer to spend federal moneys not appropriated by the Legislative Assembly (Budget Section)
52-02-17	Receive report from Job Service North Dakota on condition of job insurance trust fund if balance is projected to go below \$40,000,000 (Budget Section)	54-16-04.2	Approve Emergency Commission authorization of a state officer to receive moneys from any source for new or existing programs (Budget Section)
		54-27-22	Approve use of capital improvements planning revolving fund (Budget Section)

NDCC Citation	Subject Matter (Committee)	NDCC Citation	Subject Matter (Committee)
54-27-23	Approve use of cash flow financing (Budget Section)		distribution of electric energy within this state (Electric Utilities Committee)
54-27.2-03	Receive report on transfers of funds from the budget stabilization fund to the state general fund to offset projected decrease in general fund revenues (Budget Section)	54-35.2-02	Study local government structure, fiscal and other powers and functions of local governments, relationships between and among local governments and the state or any other government, allocation of state and local resources, and interstate issues involving local governments (Advisory Commission on Intergovernmental Relations)
54-34.3-04	Receive annual reports from the Department of Economic Development and Finance on loan performance and performance of the department (Commerce and Agriculture Committee)	54-35.2-02.1	Administer grants to political subdivisions for projects to improve efficiency of local governments (Advisory Commission on Intergovernmental Relations)
54-35-02	Review uniform laws recommended by Commission on Uniform State Laws (Judiciary Committee)	54-35.2-02.1	Receive annual report from the Advisory Commission on Intergovernmental Relations on planning grants administered by the commission (Budget Section)
54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Management Committee)	54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority (Budget Committee on Government Services)
54-35-02	Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents (Legislative Management Committee)	54-44.1-07	Prescribe form of budget information prepared by the director of the budget (Budget Section)
54-35-02.2	Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)	54-44.1-12.1	Object to any allotment by the director of the budget, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the action or failure to act is contrary to legislative intent (Budget Section)
54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans (Employee Benefits Programs Committee)	54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action (Budget Section)
54-35-02.6	Study and review administrative rules and related statutes (Administrative Rules Committee)	54-44.2-02	Receive annual report from Information Services Division regarding the coordination of information technology services with political subdivisions (Information Technology Committee)
54-35-02.7	Overview of the Garrison Diversion Project and related matters (Garrison Diversion Overview Committee)	54-44.2-11	Receive reports from director of Information Services Division and the Commissioner of the Board of Higher Education regarding areas for coordinated information technology systems (Information Technology Committee)
54-35-02.8	As the Legislative Ethics Committee—Consider or prepare a legislative code of ethics (Legislative Management Committee)	54-44.2-12	Receive report from Information Services Division with respect to state entity noncompliance with statewide information technology policies and standards
54-35-11	Make arrangements for 1999 session (Legislative Management Committee)		
54-35-15	Study emerging technology and evaluate its impact on the state's system of information technology (Information Technology Committee)		
54-35-18, 54-35-18.2	Study the impact of competition on the generation, transmission, and		

NDCC Citation	Subject Matter (Committee)	1989 Session Laws Citation	Subject Matter (Committee)
	(Legislative Audit and Fiscal Review Committee)	Chapter 25	Administer legislative wing and Capitol Grounds improvements appropriation (Legislative Management Committee)
54-52.1-08.2	Approve terminology adopted by Public Employees Retirement Board to comply with federal requirements (Employee Benefits Programs Committee)		
54-56-03	Approve grants, not otherwise specifically approved by the Legislative Assembly, distributed by the Children's Services Coordinating Committee to children's services organizations and programs (Budget Section)	1997 Session Laws Citation	Subject Matter (Committee)
		Chapter 4 § 4	Approve various line item transfers by the State Auditor (Budget Section)
65-02-03.3	Receive annual report from director of the Workers Compensation Bureau and the chairman of the Workers Compensation Board of Directors (Legislative Audit and Fiscal Review Committee)	Chapter 10 § 8	Receive a report from the Insurance Commissioner regarding actions taken to stabilize the distribution of insurance payments to fire districts (Budget Section)
65-02-08	Approve fee schedules for medical and hospital services proposed for adoption by the Workers Compensation Bureau (Administrative Rules Committee)	Chapter 12 § 7	Receive report from human service centers, the State Hospital, and the Developmental Center on the hiring of any additional full-time equivalent positions in addition to those authorized by the Legislative Assembly (Budget Section; Budget Committee on Government Services)
65-02-13.1	Receive annual report from the Workers Compensation Bureau regarding any reinsurance contract by the bureau (Budget Section)	Chapter 12 § 9	Approve expenditure of the welfare reform contingency (Budget Section)
65-02-29	Receive report from director of the Workers Compensation Bureau and the auditor regarding the biennial performance audit of the Workers Compensation Bureau (Legislative Audit and Fiscal Review Committee)	Chapter 12 § 19	Approve expenditures by the Department of Human Services exceeding authorized costs for certain computer development projects (Budget Section)
65-02-30	Receive report from director of the Workers Compensation Bureau, chairman of the Workers Compensation Bureau Board of Directors, and the auditor regarding the biennial performance audit of the Workers Compensation Bureau (Legislative Audit and Fiscal Review Committee)	Chapter 12 § 19	Approve waiver of certain requirements of the Department of Human Services in its reforming and enhancing services for the people of North Dakota (RESPOND) and TEEM projects (Budget Section)
65-06.2-09	Receive report from Workers Compensation Bureau regarding its safety audit of Roughrider Industries work programs and its performance audit of the modified workers' compensation coverage program (effective until July 1, 2003) (Commerce and Agriculture Committee)	Chapter 12 § 19	Receive periodic reports from the Department of Human Services on the status of the development of the RESPOND computer system (Budget Section)
65-08.1-02	Authorize establishment of casualty insurance organization to provide extra-territorial workers' compensation insurance (Budget Section)	Chapter 12 § 25	Receive report from the Department of Human Services concerning federal waivers to develop a pilot project for low-income parents providing services to developmentally disabled adult children (Budget Section)
		Chapter 12 § 28	Receive report from the Department of Human Services regarding human service center, State Hospital, and Developmental Center block grant accountability (Budget Section)

1997 Session Laws Citation	Subject Matter (Committee)	1997 Session Laws Citation	Subject Matter (Committee)
Chapter 12 § 29	Approve establishment of a traumatic brain injury program by the Developmental Center (Budget Section)		expenditures associated with the funds (Budget Section)
Chapter 12 § 30	Receive periodic reports from the Department of Human Services regarding the welfare fraud detection programs (Budget Section)	Chapter 22 § 4	Receive a report from the State Historical Board on its evaluation of the services, programs, and administrative structure of the State Historical Society (Budget Section)
Chapter 12 § 31	Receive periodic reports from the Department of Human Services regarding the evaluation of welfare reform (Welfare Reform Committee)	Chapter 23 § 6	Approve certain line item transfers by the Parks and Recreation Department (Budget Section)
Chapter 13 § 9	Receive report from the Superintendent of Public Instruction regarding any transfer of positions to the Division of Independent Study from other divisions of the Department of Public Instruction (Budget Section)	Chapter 26 § 3	Receive report from the Workers Compensation Bureau regarding the expenditure of the \$350,000 provided for critical salary adjustments (Budget Section)
Chapter 13 § 10	Receive report from Leadership in Education Consortium on training programs for teachers and education administrators developed in cooperation with the teacher learning centers (Education Services Committee)	Chapter 32 § 11	Receive report from any higher education institution that spends local funds in excess of the local funds appropriated to the institution (Budget Section)
Chapter 15 § 3	Approve expenditure exceeding \$50,000 of income in excess of estimated income appropriated to the Office of Management and Budget (Budget Section)	Chapter 32 § 16	Receive periodic reports from the Board of Higher Education regarding the board's allocations for salaries and wages and technology (Budget Section)
Chapter 15 § 4	Approve various line item transfers by the director of the Office of Management and Budget (Budget Section)	Chapter 32 § 17	Receive periodic reports from the State Board for Vocational and Technical Education on its progress in coordinating statewide access to work force training programs (Commerce and Agriculture Committee; Education Services Committee)
Chapter 15 § 13	Approve any state agency termination, reprioritization, or start of a program for which federal funding has been terminated, reduced, or started (Budget Section)	Chapter 36 § 3	Receive periodic reports from the commandant of the Veterans' Home regarding development of a corrective plan of action to improve the home's management, budget, and accounting functions (Budget Section)
Chapter 15 § 17	Receive report from the Office of Management and Budget concerning state employee compensation issues (Budget Committee on Government Services)	Chapter 40 § 4	Approve certain line item transfers by the Highway Patrol (Budget Section)
Chapter 15 § 18	Receive report from the Office of Management and Budget and the Public Employees Retirement System concerning pension portability (Employee Benefits Programs Committee)	Chapter 41 § 2	Approve certain line item transfers by the director of the Department of Transportation (Budget Section)
Chapter 15 § 26	Approve college or university expenditure of more than \$50,000 from internal service funds except for mandatory transfers for servicing related debt and routine operating	Chapter 41 § 4	Receive a report from the Department of Transportation regarding its evaluation of continued use of its 1978 Cessna airplane (Budget Section)
		Chapter 42 § 4	Approve certain line item transfers by the Commissioner of the Board of University and School Lands (Budget Section)

1997 Session Laws Citation	Subject Matter (Committee)
Chapter 43 § 2	Approve statewide grants, in addition to grants specifically approved by the Legislative Assembly, for services to children with serious emotional disorders (Budget Section)
Chapter 43 § 6	Receive a report from the Children's Services Coordinating Committee regarding its plan to reduce the administrative costs of the regional and tribal children's services coordinating committees (Budget Section)
Chapter 45 § 2	Approve transfers of appropriation authority by the director of the Department of Corrections and Rehabilitation (Budget Section)
Chapter 45 § 3	Approve certain line item transfers by the Department of Corrections and Rehabilitation (Budget Section)
Chapter 48 § 4	Receive statement from any ethanol plant receiving production incentives from the state regarding whether the plant produced a profit from its operation in the preceding fiscal year (Budget Section)
Chapter 49 § 7	Receive periodic reports from the State Board for Vocational and Technical Education on its progress in coordinating statewide access to work force training programs (Commerce and Agriculture Committee; Education Services Committee)
Chapter 50 § 6	Receive periodic reports from the vice president of agricultural affairs at North Dakota State University regarding salary and wage allocations (Budget Section)
Chapter 56 § 1	Receive report from Agricultural Experiment Station on its study of feasibility and desirability of industrial hemp production in this state (Commerce and Agriculture Committee)
Chapter 511 § 1	Receive notice from the State Water Commission if conditions are met for the commission to issue bonds to finance an outlet from Devils Lake and the state water development program (Budget Section)
Chapter 527 § 7	Receive report from Workers Compensation Bureau regarding its study of its wage-loss benefits structure (Commerce and Agriculture Committee)

1997 Session Laws Citation	Subject Matter (Committee)
Chapter 582	Hold legislative hearings required to receive block grants or other federal moneys (Budget Section)

LEGISLATIVE COUNCIL ASSIGNMENTS

The following table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees.

Responsibility	Interim
Receive reports from Job Service North Dakota relating to any administrative changes, statutory changes, and changes in the unemployment insurance tax structure that may be proposed by Job Service for consideration by the 1999 Legislative Assembly	Commerce and Agriculture
Review current laws and rules on animal confinement feeding operations in this state	Commerce and Agriculture
Receive reports from the Governor and the Department of Human Services on the children's health insurance program (CHIP)	Insurance and Health Care
Conduct public hearings on statewide primary and general election ballot measures	Judiciary
Study the authority of the Attorney General to enter contingent fee agreements with private attorneys	Judiciary
Study the application of the farm building property tax exemption	Taxation
Study the assessment of agricultural property and inundated lands	Taxation

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Council for study during the 1997-98 interim under authority of North Dakota Century Code Section 54-35-03. The subject matter of many of these measures is the same or similar to the subject matter of studies that were given priority or of study assignments by the Legislative Council.

Bill or Resolution No.	Subject Matter
1015 § 20	Study the utilization of telemedicine in this and other states, and the desirability of adopting any amendments to the professional licensing laws and other laws which will facilitate the development of

Bill or Resolution No.	Subject Matter	Bill or Resolution No.	Subject Matter
	telemedicine while preserving the quality of health care		schools in this state, the method by which accreditation standards are adopted, the fiscal impact of accreditation standards, and the feasibility and desirability of waiving standards if student performance levels exceed a designated score
1024 § 2	Study the coordination of efforts of the Department of Tourism, Department of Parks and Recreation, Department of Economic Development and Finance, State Historical Society, and Council on the Arts to maximize their effectiveness by providing unified services to enhance the state's public image	3049	Study additional improvements to the legislative process that ensure an accessible, productive citizen legislature
2064 § 15	Study the feasibility and desirability of including the Extension Service and research centers appropriations in the same appropriations bill as other entities of the University System	4004	Study methods through which North Dakota and South Dakota can collaborate to deliver government services more efficiently
2064 § 16	Study alternative methods of governing and delivering soil conservation services in the state	4014	Study the feasibility and desirability of restructuring county government (referred for study to the Advisory Commission on Intergovernmental Relations)
3008	Study the emergency medical services system to ensure the continued viability of this state's rural emergency medical services	4020	Study and develop a long-term plan for the investigatory and penological support mechanisms of the criminal justice system (including a review of placing the State Crime Laboratory with the Attorney General per SB 2004 § 29)
3020	Study airline service in this state	4021	Study participation in the Teachers' Fund for Retirement by retired persons who have resumed teaching
3028	Study the feasibility and desirability of establishing a state department of commerce	4023	Study the process of privatization and contracting for public sector services
3034	Study the impact of divorce on children and issues of equity and fairness as they relate to custody determinations, visitation orders, and child support obligations	4026	Study the feasibility and desirability of establishing a statewide domestic violence task force to address domestic violence prevention issues and adopt a statewide domestic violence prevention strategy
3035	Study the criteria and the manner in which the criteria is applied by the Education Standards and Practices Board in certifying teachers, in approving teacher preparation programs, and in developing a professional code of ethics, conduct, and performance	4037	Study the feasibility and desirability of licensing high pressure boiler operators, including which state agency would manage a state licensing process, the fees necessary to fund a licensing program, whether adequate training opportunities exist to support licensing, and whether any other state has a boiler licensing program with which this state could join
3038	Study assessment and taxation of mobile homes, park model trailers, recreational vehicles, and similar housing alternatives	4038	Study the effectiveness of methods to improve advocacy programs administered by the Department of Human Services and the feasibility and desirability of merging those advocacy programs, including the vulnerable adult protective services program, into the protection and advocacy program (including the feasibility and potential savings of sharing office space with other state agencies per HB 1014 § 2)
3039	Study the relationship between state general fund revenue gains from economic growth and losses from providing income tax incentives for investment in value-added agricultural processing		
3040	Study the truancy laws of this state and whether there are sufficient options and alternatives available to schools and school districts that have high incidences of truancy		
3047	Study the current standards for the accreditation of elementary and secondary		

Bill or Resolution No.	Subject Matter
4040	Study the feasibility and desirability of implementing a prepaid college tuition program
4042	Study the use of "abuse," "neglect," and "exploitation" in the North Dakota Century Code
4043	Study the issue of insurance brokers acting as consultants and the public policy of prohibiting insurance consultants from collecting commissions, consulting fees, and policy fees
4044	Study ways of improving the filing of agricultural liens so losses resulting from incomplete or inaccurate information can be reduced
4046	Study the role of the State Board for Vocational and Technical Education in work force training and retraining to determine whether the current organizational structure of the board is adequate to ensure continued leadership in readying the state's citizens for a globally competitive marketplace, and to determine the adequacy of

Bill or Resolution No.	Subject Matter
	funding for the board and for vocational and technical education in this state
4048	Study the interrelationship of the postjudgment issues of child support and visitation, including the accountability of both parents to honor divorce orders and the development of a parenting education program that addresses the impact of divorce on children
4052	Study occupational and professional licensing entities with an emphasis on methods to privatize licensing entities
4054	Study whether the Department of Human Services should reimburse qualified service providers who provide assistive technology devices and services to individuals with disabilities
4055	Study the potential for expansion of extended area telecommunications service (referred for study to the Regulatory Reform Review Commission)

1999 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1023 - Administrative Rules Sunsetting. This bill provides that an administrative rule will be effective only until August 1 after the next regular legislative session following the effective date of the rule unless the Administrative Rules Committee designates the rule as procedural or interpretive. (Administrative Rules Committee)

House Bill No. 1024 - Rules Review. This bill allows the Administrative Rules Committee to call up administrative rules for review, and those rules would be subject to the authority of the committee to file an objection or to void the rule. (Administrative Rules Committee)

House Bill No. 1025 - State Regulatory Program Rule Relevancy. This bill provides that an agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs. (Administrative Rules Committee)

House Bill No. 1026 - Agency Rulemaking Authority. This bill provides that an agency may adopt an administrative rule only when the rule falls within an area in which the agency has been specifically required or authorized to adopt rules. The bill requires the Administrative Rules Committee to review statutory rulemaking authority of each administrative agency to seek to limit administrative rulemaking to areas in which specific requirement or authorization of rulemaking exists. (Administrative Rules Committee)

House Bill No. 1027 - Child Support Contribution Trust. This bill authorizes courts to order a child support obligee to put a portion of the child support contribution into trust for the child's support and welfare. (Child Support Committee)

House Bill No. 1028 - Child Support and Employee Benefits. This bill provides that for purposes of determining gross income for purposes of establishing child support, gross income does not include an employee benefit if the employee may not lawfully liquidate the benefit without an income tax penalty and if the employee has no significant influence or control over the nature or amount of the benefit. (Child Support Committee)

House Bill No. 1029 - Child Support and Income From Overtime and Second Jobs. This bill authorizes courts to exclude an obligor's income from overtime and second jobs from the determination of gross income for purposes of establishing child support. (Child Support Committee)

House Bill No. 1030 - Child Fatality Review Panel Access to School Records. This bill requires a public or private institution offering elementary or secondary

education to disclose records to the child fatality review panel or a coroner. (Criminal Justice Committee)

House Bill No. 1031 - Felonious Registered Offender's Driver's License. This bill requires the letter "Y" to be placed on the driver's license of a felonious sexual offender and an individual who has committed a felony against a child. (Criminal Justice Committee)

House Bill No. 1032 - First Simple Assault Exception From Data Base. This bill excepts a child from being listed in the law enforcement data base as the result of that child's first adjudication for simple assault. (Criminal Justice Committee)

House Bill No. 1033 - School District Grade Levels. This bill requires each school district to offer all educational grade levels from 1 through 12 before July 1, 2002, or become attached, through reorganization or dissolution, to a district that does offer those grade levels. (Education Finance Committee)

House Bill No. 1034 - NDCC Title 15 Revision. This bill rewrites those portions of Title 15 which relate to the State Board of Public School Education, the Superintendent of Public Instruction, the Department of Public Instruction, the Compact for Education, the North Dakota Educational Telecommunications Council, schools, school districts, military installation school districts, school boards, county committees, county superintendents of schools, school district boundaries, students, chemical abuse prevention programs, postsecondary enrollment options programs, and adult education. (Education Services Committee)

House Bill No. 1035 - NDCC Title 15 Cross-Reference Reconciliation. This bill reconciles references to Title 15 found in other portions of the Century Code. (Education Services Committee)

House Bill No. 1036 - Public Service Commission and Year 2000. This bill authorizes the Public Service Commission to request from any North Dakota electric, gas, telephone, or pipeline public utility and generation and transmission rural electric distribution cooperative information on activities by that utility or cooperative to ensure that the year 2000 computer problem is addressed in a timely manner. (Electric Utilities Committee)

House Bill No. 1037 - Year 2000 Computer Compliance Immunity. This bill limits state and political subdivision liability for failure to become year 2000 compliant. (Information Technology Committee)

House Bill No. 1038 - Ambulance Service Grants. This bill provides that the formula used by the State Department of Health to distribute equipment grants to

ambulance services for prehospital emergency medical services equipment must consider the ambulance services' expenses that are not dependent on response volume. The bill also appropriates \$3,800,000 to the State Department of Health for the purpose of defraying expenses of prehospital emergency medical services. (Insurance and Health Care Committee)

House Bill No. 1039 - Prehospital Emergency Medical Services. This bill requires insurance companies, nonprofit health service corporations, and health maintenance organizations that provide coverage for prehospital emergency medical services to determine reimbursement eligibility for those services based on a prudent layperson standard of evaluating the need for the services. (Insurance and Health Care Committee)

House Bill No. 1040 - Hail Suppression Pilot Program. This bill provides for a six-year, statewide hail suppression program and appropriates \$3,100,000 to the State Water Commission for the purpose of implementing the first two years of the program. (Insurance and Health Care Committee)

House Bill No. 1041 - Games of Chance Conduct and Play. This bill removes statutory provisions on the conduct and play of games of chance; allows the Gaming Commission to adopt the rules for those games; and authorizes the Gaming Commission to adopt rules to permit an organization to conduct certain poker variations in addition to traditional straight poker. (Judiciary Committee)

House Bill No. 1042 - Clerk of Court Filing Fees. This bill imposes a new fee for four types of filings—an \$80 fee for petition for subsequent administration, an \$80 fee for filing a trust registration, an \$80 fee for a petition for allowance of a trustee's annual report or other remedies, and a \$10 fee for filing a guardian's annual report—and increases from \$10 to \$80 the fee for filing a foreign judgment or decree. (Judiciary Committee)

House Bill No. 1043 - Housing Discrimination. This bill repeals the current housing discrimination statutes, creates new housing discrimination laws, provides a procedure for filing a housing discrimination claim, provides remedies, and designates the Labor Department as the agency responsible for receiving and investigating housing discrimination claims. (Judiciary Committee)

House Bill No. 1044 - Twentieth Century Statutory References. This bill removes references to the twentieth century in statutory forms and removes antiquated and gender-specific language. (Judiciary Committee)

House Bill No. 1045 - Technical Corrections. This bill eliminates inaccurate or obsolete name and statutory references or superfluous language in the North Dakota Century Code. (Judiciary Committee)

House Bill No. 1046 - State Agency Service Contracts. This bill prohibits a state agency or institution from contracting for services to be provided to the agency or institution in the current biennium if the

contract provides for payment for the services to extend beyond the current biennium. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1047 - Beginning Farmer Revolving Loan Fund. This bill transfers the assets, liabilities, and fund equity of the beginning farmer revolving loan fund to the Bank of North Dakota on July 1, 1999. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1048 - Centralized Debt Collection. This bill establishes a centralized debt collection unit within the State Treasurer's office. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1049 - Audit Report Confidentiality. This bill provides that state agency and institution financial audit reports, financial-related audit reports, or performance audit reports prepared by the State Auditor's office or a private firm under contract with the State Auditor's office are confidential until the reports are presented to the Legislative Audit and Fiscal Review Committee. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1050 - Regulatory Reform Review Commission. This bill extends the duration of the Regulatory Reform Review Commission to the year 2003. (Regulatory Reform Review Commission)

House Bill No. 1051 - Charitable Property Special Assessments for Fire, Police, and Infrastructure Costs. This bill allows imposition of special assessments by cities against tax-exempt property of charitable organizations for the proportionate share of costs of police and fire protection and infrastructure expenditures paid from the city's budget. The bill limits the amount that may be levied against subject properties based on comparison of the value of those properties to the value of taxable property in the city. (Taxation Committee)

House Bill No. 1052 - Homestead Credit Income Limits. This bill increases income limits for eligibility for the homestead credit by \$500 in each of the five income categories. (Taxation Committee)

House Bill No. 1053 - Beginning Farmer Farm Buildings Property Tax Exemption. This bill allows beginning farmers to qualify for the farm buildings property tax exemption. (Taxation Committee)

House Bill No. 1054 - Farm Buildings Property Tax Exemption Application. This bill eliminates consideration in farm buildings tax exemption decisions of the criteria established by the North Dakota Supreme Court in 1977. The bill provides that buildings are not eligible for the exemption if they are primarily used for processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer before sale. (Taxation Committee)

House Bill No. 1055 - Exempt Farm Buildings Assessment. This bill provides that property tax-exempt farm buildings or residences do not have to be assessed. (Taxation Committee)

House Concurrent Resolution No. 3001 - Geropsychiatric Training Study. This resolution provides for a Legislative Council study of the expansion of psychiatric and geropsychiatric training for general practice and family practice physicians at the University of North Dakota School of Medicine and Health Sciences. (Budget Committee on Long-Term Care)

House Concurrent Resolution No. 3002 - American Indian Long-Term Care Study. This resolution provides for a Legislative Council study of American Indian long-term care and case management needs. (Budget Committee on Long-Term Care)

House Concurrent Resolution No. 3003 - Senior Mill Levy Match Study. This resolution provides for a Legislative Council study to determine if the mill levy match program could be expanded to enhance home and community-based service availability. (Budget Committee on Long-Term Care)

House Concurrent Resolution No. 3004 - Swing-Bed Process Study. This resolution provides for a Legislative Council study of the swing-bed process. (Budget Committee on Long-Term Care)

House Concurrent Resolution No. 3005 - Domestic Relations Pro Se Representation Study. This resolution provides for a Legislative Council study of the feasibility and desirability of facilitating pro se representation in domestic relations matters. (Child Support Committee)

House Concurrent Resolution No. 3006 - State Bar Association of North Dakota Joint Task Force on Family Law. This resolution expresses approval of the actions taken by the State Bar Association of North Dakota Joint Task Force on Family Law to facilitate and promote mediation as a method of addressing family law matters. (Child Support Committee)

House Concurrent Resolution No. 3007 - NDCC Title 15 Revision Study. This resolution provides for a Legislative Council study to continue the revision of those provisions of NDCC Title 15 which relate to elementary and secondary education. (Education Services Committee)

House Concurrent Resolution No. 3008 - Multistate Lottery. This resolution proposes a constitutional amendment to permit the Legislative Assembly to provide by law for participation by the state in a multistate lottery. (Judiciary Committee)

SENATE

Senate Bill No. 2027 - Administrative Rulemaking Notice Publication. This bill requires administrative rulemaking notices to be published in each official county newspaper rather than in each daily newspaper. (Administrative Rules Committee)

Senate Bill No. 2028 - Local Government Efficiency Planning Grant Program Repeal. This bill repeals the local government efficiency planning grant program administered by the Advisory Commission on Intergovernmental Relations. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2029 - Nonresident Tuition Rates. This bill eliminates the requirement that the Budget Section approve nonresident tuition rates proposed by the Board of Higher Education for state colleges and universities. (Budget Section)

Senate Bill No. 2030 - University of North Dakota Campus Building Construction. This bill authorizes the University of North Dakota to construct a building for use as a university bookstore and other retail businesses and appropriates \$4.5 million of other funds for the construction. (Budget Section)

Senate Bill No. 2031 - Legislative Budget Committee. This bill creates a Legislative Budget Committee under the Legislative Council to coordinate and direct activities involved in the development of budget recommendations during the interim and as needed during the legislative session to assist the Legislative Assembly in developing the final legislative budget. (Budget Committee on Government Finance)

Senate Bill No. 2032 - Assistance for Adopted Children With Special Needs. This bill requires the Department of Human Services to pay the cost, in excess of the federal share, of assistance provided adopted children with special needs and related administrative costs. (Budget Committee on Human Services)

Senate Bill No. 2033 - Basic Care Rate Equalization. This bill repeals basic care rate equalization and changes the definition of a private pay resident to include a managed care entity as a payer excepted from rate equalization. (Budget Committee on Long-Term Care)

Senate Bill No. 2034 - Alzheimer's and Related Dementia Pilot Projects. This bill authorizes the Department of Human Services to continue the approved Alzheimer's and related dementia population pilot projects during the 1999-2001 biennium. The bill also requires the department to monitor and report on the progress of the projects. (Budget Committee on Long-Term Care)

Senate Bill No. 2035 - Geropsychiatric Nursing Unit. This bill provides an exception to the case mix system of nursing home reimbursement to allow for the establishment of one 14-bed geropsychiatric nursing unit within an existing nursing facility. (Budget Committee on Long-Term Care)

Senate Bill No. 2036 - Basic Care and Assisted Living Repeal. This bill repeals basic care and assisted living and creates an adult residential care facility classification. The bill becomes effective July 1, 2001, to allow time for development of new rules, policies, and procedures. (Budget Committee on Long-Term Care)

Senate Bill No. 2037 - Targeted Case Management. This bill provides for the implementation of a targeted case management program and a requirement that any Medicaid-eligible individual obtain a preadmission assessment to determine the type of services necessary to maintain that individual. The bill also provides that the department is to monitor the results of the targeted case management program to determine if the program should be extended to all individuals. (Budget Committee on Long-Term Care)

Senate Bill No. 2038 - Nursing Facility and Basic Care Bed Moratorium. This bill maintains the moratorium on nursing facility and basic care beds through the 1999-2001 biennium. The bill also provides an exception to the basic care bed moratorium for the establishment of a traumatic brain-injured facility in western North Dakota. (Budget Committee on Long-Term Care)

Senate Bill No. 2039 - Child Support Guidelines and Extended Visitation. This bill provides that the child support guidelines created by the Department of Human Services must include consideration of the length of time a minor child spends with the child's obligor parent. (Child Support Committee)

Senate Bill No. 2040 - Parental Rights and Duties and Visitation. This bill provides parents with specific rights and duties and provides that courts must include these rights and duties in child visitation orders. The bill also allows courts, as a part of child visitation enforcement proceedings, to use any appropriate remedy that is available to enforce a child support order. (Child Support Committee)

Senate Bill No. 2041 - School Construction Loans. This bill increases from \$25 million to \$40 million the limit for school construction loans made from the coal development trust. (Education Finance Committee)

Senate Bill No. 2042 - School District Payments. This bill allows for the withholding of state aid payments to a school district if the school district fails to make full and timely payments on any evidences of indebtedness sold to the Bond Bank. (Education Finance Committee)

Senate Bill No. 2043 - Information Technology Department. This bill establishes an information technology department to be responsible for all telecommunications selection for all state agencies and for counties, cities, and public elementary and secondary schools. The department replaces the Information Services Division. (Information Technology Committee)

Senate Bill No. 2044 - Legislative Council Information Technology Committee. This bill statutorily establishes the Legislative Council Information

Technology Committee, which is responsible for establishing statewide goals and policy regarding information systems and technology, conducting studies of information technology efficiency and security, and reviewing the activities of the Information Technology Department. (Information Technology Committee)

Senate Bill No. 2045 - Public Health Law Consolidation. This bill consolidates the public health law into one chapter of the code, unifies the powers and duties of local public health units, and requires statewide participation in a public health unit. (Insurance and Health Care Committee)

Senate Bill No. 2046 - Partnership for Long-Term Care Program Repeal. This bill repeals the North Dakota Century Code chapter authorizing the partnership for long-term care program. (Insurance and Health Care Committee)

Senate Bill No. 2047 - Contingent Fee Arrangements. This bill provides that the Attorney General may not appoint a special assistant attorney general in a civil case in which the amount in controversy exceeds \$150,000 and for which the special assistant attorney general is to be compensated by a contingent fee arrangement unless the arrangement is approved by the Emergency Commission. (Judiciary Committee)

Senate Bill No. 2048 - North Dakota Stockmen's Association Fee Collection Procedures. This bill provides that fees collected for certain services of the North Dakota Stockmen's Association must be remitted to the State Treasurer for deposit in the North Dakota Stockmen's Association fund. The bill makes a continuing appropriation of the moneys in the fund to the North Dakota Stockmen's Association. (Judiciary Committee)

Senate Bill No. 2049 - Safe Deposit Box Entry. This bill provides for an affidavit procedure whereby an interested person may have access to a safe deposit box after the death of the owner to determine if the box contains a will or other document that states the owner's wishes regarding funeral or burial arrangements. (Judiciary Committee)

Senate Bill No. 2050 - Local Gaming Enforcement Grants. This bill provides for local gaming enforcement grants to be distributed based on the prior quarter's adjusted gross proceeds instead of the current quarter's adjusted gross proceeds. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2051 - School and Township Representation in City and County Property Tax Exemptions. This bill gives an affected school district or township the right to have a member participate as a nonvoting, ex officio member of the governing body of the city or county when that governing body is

considering granting an exemption or the right to make payments in lieu of taxes for a new or expanding business. (Taxation Committee)

Senate Bill No. 2052 - Inundated Agricultural Property Assessment. This bill creates a separate property tax valuation category for inundated agricultural land. The bill limits the county average valuation for inundated lands to 10 percent of the valuation of noncropland for the county. (Taxation Committee)

Senate Bill No. 2053 - Agricultural Property Tax Valuation Formula Capitalization Rate Limit. This bill limits the capitalization rate used in the agricultural property tax valuation formula to no less than 10 percent and no more than 11 percent. (Taxation Committee)

Senate Bill No. 2054 - Agricultural Property Tax Valuation Formula Farmer Cost Index. This bill incorporates an index of prices paid by farmers in the agricultural property tax valuation formula. (Taxation Committee)

Senate Concurrent Resolution No. 4001 - Federal Block Grant Legislative Hearings. This resolution authorizes the Budget Section to hold legislative hearings required for receipt of federal block grant funds. (Budget Section)

Senate Concurrent Resolution No. 4002 - County Social Service Agency Cooperation. This resolution urges the continued cooperation and coordination among county social service agencies for the delivery and administration of social services in a cost-effective and efficient manner and provides for monitoring by the Legislative Council. (Budget Committee on Human Services)

Senate Concurrent Resolution No. 4003 - Department of Human Services Administrative Changes. This resolution urges the Department of Human Services to implement recommendations to improve its administrative structure and enhance its budget presentation methods and to report to the Legislative Council regarding implementation of the recommendations. (Budget Committee on Human Services)

Senate Concurrent Resolution No. 4004 - Rural Long-Term Care Beds Reduction Incentives Study. This resolution provides for a Legislative Council study of an incentives package to assist rural communities and nursing facilities in closing or significantly reducing bed capacity and providing alternative long-term care services. (Budget Committee on Long-Term Care)

Senate Concurrent Resolution No. 4005 - Legislative Redistricting Study. This resolution provides for a Legislative Council study of the state of the law and technology with respect to legislative redistricting. (Legislative Management Committee)

