Report of the North Dakota Legislative Research Committee

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

Thirty-seventh Legislative Assembly

1961

North Dakota
Legislative Research Committee

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The Honorable William L. Guy
Governor of North Dakota

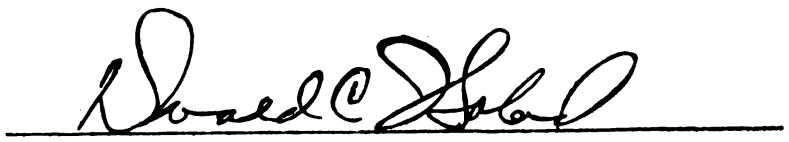
Members, Thirty-seventh Legislative Assembly
of North Dakota

Pursuant to law we have the honor to transmit to you the report and recommendations of the Legislative Research Committee to the Thirty-seventh Legislative Assembly.

This report includes the reports and recommendations of the Legislative Research Committee in the fields of education; finance; governmental organization; judiciary and code revision; natural resources; reapportionment; state, federal and local government; taxation; and other miscellaneous subjects considered by the Committee. In addition, you will find a short explanation of all bills being introduced by the Legislative Research Committee.

Respectfully submitted,

NORTH DAKOTA LEGISLATIVE
RESEARCH COMMITTEE



Donald C. Holand
Chairman

Table of Contents

Summary

Briefly - - - This Report Says

EDUCATION

School District Laws:

In accordance with the legislative directive, the Legislative Research Committee has prepared and recommends a bill to provide a single set of laws to govern all school districts in the state except for the Fargo Independent School District. The law governing special school districts has been amended and broadened to make it sufficiently flexible to govern all districts previously operating under the common, independent, and joint high school district laws, and it is recommended that these sets of school district laws be repealed. No major changes were made in this consolidation although school boards previously operating under the common school district law will have a greater range of discretional authority, similar to that previously given to boards of special school districts. The consolidation of the four separate sets of school district laws should go far in removing confusion in regard to school district operations.

Special Education:

Special Education refers to a public school program designed to meet the needs of children incapable of benefiting fully from ordinary classroom instruction due to speech or hearing defects or emotional, mental, or physical handicaps. Principal problems confronting all states in the field of special education are shortages of funds, trained personnel and facilities. Under present law the state may pay a maximum of $800 per pupil per year to school districts conducting special education programs. Though state appropriations have increased each biennium, only an estimated 20% of children within the state needing special education were receiving such education in 1958.

Recognizing that due to the shortage of funds at the state level local government will have to bear a large portion of the costs of any expanded program, the Committee recommends enactment of a law permitting the establishment of county or multi-county special education programs. State payments would be continued but the basic responsibility for establishing and financing special education would rest with the county, and the type of program established in each county would be dictated by existing local needs and the degree of local interest.

State Training School and Juvenile Delinquency:

Adequate services or facilities in three areas are necessary to rehabilitate the maximum number of delinquent children. First, investigatory and diagnostic services must be available to the courts to aid in determining whether a child should be committed to the Training School, and probation services must also be available to work with the child or his parents if the child remains in his home community. Second, there must be an adequate treatment and rehabilitation program at the Training School. Third, there must be provision for a well-planned program of release or placement from the Training School when the child is ready, together with supervision and assistance in his own home or a foster home.

The presence at the Training School of children who should not be there reveals that some courts are forced to operate without adequate services to investigate and diagnose the needs of the children, and to help them work out their problems in their home communities. The Committee recommends legislation to require each district judge to appoint not less than one full-time juvenile commissioner; and that child welfare services be reorganized on a regional rather than a county basis, so that district courts and juvenile commissioners may call upon such trained personnel for assistance in investigating juvenile cases, testing and evaluating children, and in working with the children or their parents in an attempt to handle problem juveniles in their home communities, short of committing them to the Training School. The program of the State Training School should be further improved by providing for additional well-trained persons in several positions, as well as providing funds to better compete in hiring qualified persons in other staff positions. These personnel improvements will further accelerate the changes now in process of converting from a custodial to a treatment program, and will aid in providing proper training for existing employees. This will promote early rehabilitation and release from the School.

It is recommended that an appropriation of about $200,000 be provided to construct a reception-treatment unit where new children can be placed to receive intensive attention from the staff to determine the type of program the child should follow at the institution and to provide proper orientation to the institution. This unit should provide an area in a separate wing where disturbed children can be placed who need restraint to prevent their running away or otherwise interfering with institutional life and where they can receive careful attention and treatment until they are ready to resume normal activities. The staff of the Children's Psychiatric Clinic in Bismarck should aid Training School personnel in dealing with these children. Some of the dormitories are too large to provide effective supervision and attention and should be divided into duplexes.

It is recommended that the State Board of Administration, which acts as the governing board for penal and charitable institutions, be reorganized as a part-time per diem board appointed by the Governor with the consent of the Senate, to act as a policymaking board for all institutions under its control. It would appoint a full-time executive director and delegate to him the authority deemed necessary to provide efficient day-by-day institutional management. The board would operate in a manner similar to the Board of Higher Education. The reasons for these recommendations and other recommendations not included in this summary will be found on page 11 of this report.

FINANCE

Institutional Care and Revolving Funds:

The Committee recommends that the Legislative Assembly change the present method of financing the costs of care of patients at state charitable institutions. These institutions include the State Hospital, the Grafton State School, and the Tuberculosis Sanatorium. At present, a portion of these costs are collected by the counties under a complex procedure of charges and credits, with a duty to the county of obtaining reimbursement from the patients or responsible relatives for both state and county costs in instances where they are financially able to pay the costs. Most counties do not collect their own share of the costs and almost never collect the state's share. Consequently many patients and responsible relatives or their estates that are able to pay full costs of care without hardship do not make the required payments. The Committee recommends that the state assume full responsibility for the cost of operating the charitable institutions and direct responsibility for collecting the costs of care from the patients or responsible relatives or their estates when payments will not result in undue hardship. The amount of money spent by all the counties for institutional care in the fiscal year 1958-1959 was $105,402 and in the fiscal year 1959-1960 the amount was $174,374. These figures do not include the money credited to the counties from liquor taxes. If the counties are relieved of paying these amounts for institutional care, the appropriation from the General Fund would have to rise accordingly. However, it is the opinion of the Committee that through a sound system of billing and collection the resulting income to the state will be in excess of the burden assumed by the state in relieving the counties of the responsibility for paying this small portion of institutional costs.

Investment of State Funds:

The funds studied by the Committee, with the assistance of the Bureau of Business and Economic Research, were the University and School Lands, Workmen's Compensation, State Bonding, State Fire and Tornado, Teachers' Insurance and Retirement, and Patrolmen's Retirement Funds. A survey had revealed that during 1956, the state realized an interest yield of only 2.1% on these funds as compared with 2.7% in a majority of the states. Based upon the $76 million then in such funds, this yield differential amounted to $450,000 per year.

Increasing the yield of these investments without sacrificing security was the prime concern of the Committee. The Committee is of the opinion that this can best be accomplished by broadening the list of investments permitted by law and by establishing a specialized central investment agency to handle such broadened investments.

Because of a historic yield differential of .4 of 1% between government bonds in which the Funds presently are heavily invested and high-grade corporate securities, the Committee recommends that about 50% of each of the funds be invested in such corporate securities. Such greater diversity of investments will require specialized management. The Committee thus recommends a central investment board such as a number of states presently have, with a full-time, experienced investment director to manage the investment of the funds.

Estimates of increased yield to the state resulting from the recommended legislation ranged from an admittedly conservative $150,000 per year to a full 1%, or about $760,000 per year after the investment program becomes well established.

State-Owned Mineral Interests:

Two agencies, the Board of University and School Lands and the Bank of North Dakota, are the principal state leasing agencies. The Committee considered the establishment of a central agency for leasing all state lands. Because of the high degree of cooperation and uniformity of leasing policy between the Board and the Bank, no central agency is recommended. Time available precluded the making of a comparison between revenue obtained by the state from its leasing operations and that obtained by private landowners similarly situated. Such a study is recommended for the next biennium.

GOVERNMENTAL ORGANIZATION

Occupational and Professional Licensing:

Some 28 occupations and professions are examined, licensed and regulated by 25 separate boards within the state. The Committee considered the possibility of a central agency to consolidate the clerical functions of these boards, such as issuance of licenses and collection of fees. Because the Committee found that establishment of a central agency would not eliminate the need for individual boards to examine applicants and regulate their occupation or profession and that the total costs of the functions which might be centralized are not excessively high, no central agency is recommended at this time.

Inquiry by the Committee disclosed high failure rates on examinations given by a few of the boards. To guard against arbitrary and unreasonable examination and grading procedures which may tend to limit competition in a given occupation or profession, the Committee recommends passage of a law establishing an appeal board and review procedure for unsuccessful license applicants who feel that disposition of their applications has been unjust. Such law should tend to discourage abuse of authority by licensing boards.

Consolidation of Public Health Activities:

The Committee considered the possibility of consolidating the State Medical Center and the State Health Department. The principal activity of the Medical Center is service to the medical profession through research and instruction. The Health Department, on the other hand, serves the people of the state by promoting a healthful environment and supplying preventative medical facilities and services. Cooperation between the two agencies appears excellent and duplication of functions does not appear to any appreciable degree. Lack of physical facilities for a consolidated agency would also appear to preclude consolidation. These facts led the Committee to the conclusion that consolidation is not presently feasible.

The next field considered was that of sanitary inspections of restaur-

ants and hotels, a field in which both the State Laboratories Department and district and city health units are active. The Committee found that these inspections duplicate each other to a considerable degree, resulting in harassment to proprietors and uncertainty as to standards. The Committee recommends approval of a bill which would transfer inspection and licensing duties from the Laboratories Department and place them entirely under health authorities. This transfer at no additional cost to the public will eliminate duplication and lead to uniform standards.

A number of miscellaneous licenses issued by the Attorney General's Licensing Department were also considered by the Committee. The need for several of these licenses was considered, and it is recommended that the licenses for soft drinks and taxicabs be eliminated. Soft drink bottling plants are supervised by the State Laboratories Department and taxicabs are licensed by the Public Service Commission. A combined license for cigars, tobacco, cigarettes and snuff is also recommended as a substitute for two presently existing licenses.

Consolidation of State Agricultural Activities:

At present, a substantial number of state agricultural functions are under separate boards, agencies, or commissions, and some of them should logically be placed under the Department of Agriculture. A list of agricultural functions, not all of which should be considered for consolidation, is: state seed department, livestock sanitary board, poultry improvement board, soil conservation committee, experiment stations, extension division of NDSU, dairy products promotion commission, state wheat commission, and potato development commission.

All persons appearing at the Committee hearing with one exception expressed opposition to any transfer of their divisions to the Department of Agriculture and Labor upon the ground that the personnel might become involved in politics. Since many of these agencies employ technically or professionally trained personnel, it might be difficult to obtain and retain the type of personnel needed.

The Committee, therefore, does not recommend a consolidation of these functions at this time. It is recommended, however, that the Legislative Assembly make provision for an interim study during the next biennium for the purpose of developing a merit system to apply to all or most state employees. If this is done, further consideration can be given to the consolidation of agricultural functions at future sessions.

Duties of Governor and Superintendent of Public Instruction:

Upon the request of the Governor and the Superintendent of Public Instruction, the Committee agreed to undertake a review of their duties with special reference to their membership upon various boards. Such board memberships have become so time-consuming that the Governor has only about 100 days, and the Superintendent of Public Instruction only about 90 days per year free to devote to general policymaking duties of their respective offices.

The Committee recommends that these officials be relieved of membership on a number of these boards, be permitted to designate a representative on others, and that other boards upon which these officials serve be abolished and their functions transferred to other boards or officials.

Mental Health:

Based on recommendations made by a U. S. Public Health Service survey team, the Committee recommends that a state mental health authority be established in the State Health Department whose duty it would be to determine, promote, evaluate, and coordinate all phases of mental health in the state of North Dakota, both on a state level as well as in political subdivisions and among private agencies. In addition, a mental health coordinating committee is recommended consisting of the state health officer as chairman, the executive director of the state welfare board, the chairman of the board of administration, and the superintendent of public instruction, or their representatives, and such other members as may be appointed by these persons. The primary purpose of this committee would be to aid the mental health authority by reviewing, evaluating, and coordinating all the functions, programs, and services of all state agencies, political subdivisions, and private organizations receiving state aid in the field of mental health in order to prevent duplication of activities and provide for cooperation among the many mental health services.

Another important recommendation of the Committee is that enabling legislation be passed authorizing cities, villages, counties, and health districts, or any combination thereof, and private nonprofit corporations to establish and maintain "community mental health service units". It would be the primary duty of these units to provide local diagnosis, care, and treatment in the community for those persons who have some mental health disorder, but because of the nature of their illness do not require institutional care. It would also be an important function of these units to provide care and treatment if needed to those persons who have been institutionalized and returned to their communities. It is hoped that the Legislative Assembly will be able to provide funds to aid these Community Mental Health Service Units in the establishment and maintenance of their respective programs. The Public Health Service survey team pointed out to the Committee that when local community facilities are available to treat and care for mental disorders that admission to mental hospitals, schools for mentally retarded, and training schools may often be avoided. This permissive legislation is a basic step toward a well-founded mental health program which will place and treat the problem in the local community so that the family and social ties of a person can be maintained.

Since the Committee recommends that the mental health authority be placed in the State Health Department, it also recommends that the administration of the recently established Children's Pyschiatric Clinic be transferred from the Board of Administration to the State Health Department to provide for a more central location of all state mental health activities and to aid the state authority in carrying out its duties.

In addition, the Committee feels that the very rigid sterilization laws in the state as they regard patients at our institutions should be modified. The Committee recommends that our laws be amended to allow voluntary admissions to the Grafton State School at the discretion of the superintendent since at the present time the only persons admitted to the Grafton State School must enter under formal commitment proceedings. In this manner it is felt that the parent or guardian of a person in need of care at that institution will not be so hesitant to place him in the Grafton State School.

Due to the very serious shortage of professionally trained teachers in the field of special education and also because some of the patients presently at the Grafton State School could have been educated in their own communities had proper facilities been available, the Committee recommends that the State Board of Higher Education establish a curriculum at one of the state teachers colleges to specifically train teachers in the field of special education.

Still another area in which the Committee felt a recommendation should be made was in the screening process and evaluation of persons prior to admission to the Grafton State School. In some instances children with physical handicaps but having average mental ability have been committed to such institution. Therefore the Committee recommends that sufficient funds be provided to procure an adequate staff for screening and evaluation prior to admission to the Grafton State School.

JUDICIARY and CODE REVISION

North Dakota Century Code:

Pursuant to Senate Bill No. 50 the Legislative Research Committee and the Secretary of State entered into a contract with the Allen Smith Company of Indianapolis, Indiana, to republish the North Dakota Revised Code of 1943. This enormous task has been completed and the result is a very attractive and modern compilation of North Dakota laws in fourteen volumes called the North Dakota Century Code. Some of the newly added features of this code are annotations following each section of law, textbook and Law Review article references, derivation notes, and pocket part supplements. In addition the index has been supplemented by additional entries whenever possible and in many instances the existing entries have been rewritten for clarification. The style and format of the index is completely new, which it is hoped will benefit the user. Revisor's Notes will be available from the Secretary of State.

NATURAL RESOURCES

Oil and Gas Laws:

The Committee was directed to study our oil and gas conservation and property laws with special emphasis on "correlative rights" of landowners. The Committee began its work with a series of hearings in the "oil country" at Westhope, Tioga, Columbus, and Watford City in order to make it easy for landowners to appear. Over 300 landowners attended and did an excellent job in presenting their problems and opinions. Perhaps the most common problem mentioned was the difficulty in prompt drilling of offset wells to prevent drainage in cases where the oil company was reluctant to drill. Another problem was the difficulty landowners encountered in determining if cases before the Industrial Commission affected their particular property. Subsequent hearings were held in Bismarck and Williston at which representatives of oil companies were invited to appear. Generally, the oil companies expressed satisfaction with our conservation and property laws, but stressed the necessity for more unitization programs in order to increase the ultimate recovery of oil and gas.

Three principal objectives guided the Committee in its work. First, to find ways to more nearly equalize the bargaining power of the landowners in dealing with major oil companies in matters relating to rights under oil and gas leases and in cases before the Industrial Commission; second, to bring state government in its oil and gas regulatory activities closer to the landowners so that they might better present their evidence and views to the Industrial Commission; finally, to consider methods of increasing the ultimate recovery of oil and gas from all fields. In all of these matters, the Committee attempted to improve the position of the landowners without prejudicing the rights of the oil companies or discouraging development.

Seven bills are recommended by the Committee. Perhaps the most important of these is the one establishing a "presumption of drainage". Under this bill a presumption of drainage would arise under certain circumstances when an oil well is producing oil and gas adjacent to an undeveloped tract. The burden of proof would then rest with the oil company to prove that such producing well is not draining oil or gas from the undeveloped tract or that other valid reasons exist for not drilling a well and producing such oil. If the court finds the drainage exists and a well should be drilled, the oil company would have the alternative of dropping the lease, paying the owner of the undeveloped tract compensatory royalties, or drilling the well. Other bills of importance include a revision of the portion of the law relating to voluntary unitization programs in order to better protect the rights of fringe area and mineral owners and to establish provisions of law for compulsory unitization when 75% of the landowners and 75% of the oil operators approve such programs. In the opinion of the Committee, the establishment of unified operations in any oil and gas field at the earliest possible date will have the beneficial result of substantially increasing the ultimate recovery of oil from the oil and gas reservoir to the substantial benefit of the landowners, oil company, and the state, as well as permitting more equitable compensation to fringe area landowners for oil that may be drained.

The Committee also recommends a bill to provide for a field examiner system in order that more cases before the Industrial Commission can be heard in the home area of the landowners whose property is affected by the hearing. While the Industrial Commission recently took action to institute an examiner system, the Committee believes that legislation upon the subject should be passed so that any question of the authority of the Industrial Commission to hold field hearings will be removed.

Much of the Committee's report and its recommendations in this field are too technical to be adequately covered in a short summary, and the reader is urged to read the full Committee report on this subject as found on page 41 of the Committee report.

REAPPORTIONMENT

House of Representatives:

Reapportionment is made mandatory after each federal census by a recently approved constitutional amendment. Because of the large amount of preliminary work required in compiling census figures and studying methods of apportionment, the Committee undertook a study in this field.

The Committee recommends that the method known as "equal proportions" be used by the Thirty-seventh Legislative Assembly in reapportioning the House of Representatives. Such method used by the U. S. Congress is currently the most widely used and is recognized as being the fairest method available, in that it favors neither the larger nor the smaller districts. The Constitution permits a House membership of from 61 to 140 members with the exact size to be selected by the Legislature. The Committee makes no recommendation as to the exact size desired, but does recommend that the size not be increased beyond the present 113 members.

By use of the priority list included in this report, it is possible to determine the composition of any given size House according to the method of "equal proportions".

STATE, FEDERAL and LOCAL GOVERNMENT

Civil Defense:

If an aggressor were to attack the United States today, our cities could expect to receive no more than 15 minutes warning prior to the attack. There is a probability that many officers of the executive and judicial branches would not survive the attack, and because of radioactive fallout it might well be true that many members of the Legislative Assembly would not survive. Unless persons are readily available to step into public offices to replace these men, chaotic conditions would result. At present, the Governor is the only official in the executive branch who would be automatically succeeded if he should be unavailable to perform the duties of his office. Following the pattern adopted in a number of other states, the Committee recommends that legislation be passed requiring each public official to designate interim emergency successors to fill his position if he should be unavailable following an atomic attack until such time as a regular successor could be appointed by the Governor or elected by the people. Since under the Constitution successors to members of the Legislative Assembly can only be elected by the people, it is recommended that a constitutional amendment be passed authorizing legislators to designate successors. A further recommendation is that legislation authorize an emergency seat of government at some place other than Bismarck.

The Committee recommends a bill which substantially reorganizes the state civil defense agency. The Act generally broadens the responsibility and the authority of the Governor and civil defense agency to take action in the event of foreign attack. State civil defense forces will never be adequately organized and equipped to deal by themselves with the conditions resulting from an atomic attack, and it is essential that the men and equipment of the National Guard be integrated in civil defense planning. The National Guard will be available for this purpose for a period of days, if not weeks, following such an attack and to ensure such integration and coordination of the National Guard and Civil Defense, it is recommended that the office of Civil Defense Director be made a civilian division of the North Dakota National Guard.

Highway, Roads and Streets

If 100 miles of county roads were added to the state highway system

each year as authorized by an Act of the last Legislative Assembly, the total cost to the state of North Dakota over a 13-year period would be $69.5 million, requiring $5 million of new revenue each year. It is the opinion of the Committee that such a program of adding 100 miles of county roads to the state highway system each year is far too costly to be seriously considered. In a questionnaire sent to all county commissioners, 27 of the 39 answering counties expressed a desire to retain such roads upon the county systems if the state could provide additional highway user revenue for their improvement. This would permit the improvement of many more miles of roads than would be possible on the state system since roads can be constructed to county standards for far less money. Since the sales price of gasoline upon which the tax has been refunded is not taxable under the sales or use tax law because of a loophole occurring in the 1946 initiated measure, it is recommended by the Committee that the 2% use tax be made applicable to the sales price of gasoline when the gasoline excise tax is refunded and that such funds be distributed equally among the counties. This would provide $700,000 annually of additional revenue to be used by the counties on their highway systems.

Because of the increased construction program resulting from increased federal aid funds which must be matched, the cost of purchasing of state highway rights-of-way, and a substantially improved highway maintenance program, the working balances of the State Highway Department have been decreasing at the rate of about $1.5 million per year. The revenue position of the State Highway Department is further complicated by the fact that gas tax revenues may not continue their annual rise because of the trend toward smaller automobiles which use less fuel. The same trend exists in regard to motor vehicle registration fees, and unless adjustments are made to more heavily tax the smaller compact cars, we may see a substantial decline of registration fee revenue. The Committee recommends that the Legislative Assembly revise the registration fee schedule for the primary purpose of adjusting the registration fees upward on smaller compact cars in order to prevent a decline in registration fee revenue, and that certain other changes be made in the registration fee laws relating to trucks, to prevent them dropping so rapidly into lower registration fee brackets as they grow older. Two registration fee schedules are submitted for consideration, one of which would provide slightly over $1 million and the other slightly over $1.5 million of additional revenue. It is recommended that 70% of the $1 million or $1.5 million increase in registration fee revenue be placed in the State Highway Department construction fund and that 30% of such increase in revenue be distributed on the basis of population to the cities and villages of the state to aid them in their highway, road and street problems.

Salary Classifications at Institutions of Higher Learning:

There are substantial arguments, both pro and con, in regard to the establishment of formal salary schedules at institutions of higher learning. Any salary classification plan that might be considered by the state should have adequate provision for merit increases for outstanding faculty members showing special classroom ability or otherwise making outstanding contributions to the college and its students. However, the Committee cannot at this time recommend the establishment of a fixed salary schedule even if merit were included. It is necessary for the college presidents and the board of higher education to have a greater range of discretion

under current conditions in the matter of salaries than would be possible under a fixed schedule. Because of the scarcity of instructors in certain fields, which scarcity can change rapidly from year to year, it is necessary for salaries in some fields to be higher than those in others if classrooms are not to remain vacant. Presidents should have some means of encouraging cooperation and special contribution and improvement among faculty members, since under present tenure policies once a faculty member acquires tenure he must be retained unless substantial cause can be shown for his removal. As the shortage of faculty becomes greater in coming years, it will be the outstanding members on the campus who will be most in demand by other institutions of higher learning. Since North Dakota will probably never be able to pay salaries corresponding with salaries paid by the more wealthy states, it is essential that some flexibility exist to pay our outstanding professors more adequately in order to retain their services, even if this might mean slightly lower salaries to the weaker or mediocre members of the faculty.

Other recommendations in regard to the payment of salaries to existing faculty members as compared to the salaries paid to new instructors hired in the same field, and starting salaries for new instructors, are also found in the report.

TAXATION

Assessment of Real Property:

Farm lands make up 42.7% of taxable value in the state as a whole, but account for as much as 65.9% in one county and as little as 17.9% in another. On a statewide basis locally-assessed real estate makes up 63.3% of the total taxable valuation; locally-assessed personal property makes up 22.3%, and public utility property 14.5%. Thirty-five per cent of the North Dakota property tax levies are on farm land; 5.2% are on lots, leased sites and unplatted sites; 7.8% are levies on business structures; and 14.6% are on nonfarm residences. Farm property is assessed on the average of 33.2% of its actual value, while nonfarm residential property is assessed at an average of 26.4%. The Committee found that in one county rural lands were assessed at 50% of their true value while urban residences were assessed at 20%. Assessments from one farm to another and from one residence to another varied greatly. It was not uncommon to find that some land was assessed four times higher in relation to its true value than other land in the same county. The same was found to be true as regards assessments between buildings in cities. This means that some taxpayers pay four times as much in real property taxes in relation to the value of their property as do others. Variations of assessment between individual taxpayers within a county were great. It was found that one residence in a village was assessed at only 3.3% of its value, while another residence in a city in the same county was assessed at 38.7% of its actual value. This means that the taxpayer in the city paid twelve times as much in county, state, and other taxes for each dollar of actual value of his property as did the taxpayer in the small village.

Because of these inequities and many others found by the Committee in the field of real property assessment, it became evident to them that something must be done to improve and make uniform the methods and procedures of real property assessment in the state. The Committee is

therefore recommending permissive legislation authorizing the counties, either individually or jointly, to establish and maintain a county assessor system. In counties maintaining the county assessor system all assessments would be undertaken by a county assessor and such deputies as each board of county commissioners may authorize. This bill provides that the county board of equalization will be responsible for all equalization within the county except in cities with a population of 5,000 or more inhabitants which elect to maintain a city assessor. If such cities do not elect to maintain a city assessor they will then be assessed by the county assessor under the provisions of this bill.

The county assessor would assess both real and personal property in those counties maintaining such a system. In those counties not choosing to maintain the office of county assessor it would be mandatory that the board of county commissioners appoint a county supervisor of assessments on a full or part-time basis, which could be an additional duty for an elected county official or such other person as such board may feel is qualified to fill the position. It would be the responsibility of the county supervisor of assessments to supervise generally all assessors within the county under the present assessment system insofar as uniformity of methods and procedures of assessment of concerned, and to carry out assessment policies of the State Tax Commissioner and the county commissioners by disseminating such information to the local assessors and requiring them to carry out these policies. In those counties maintaining the office of county assessor, it will be the duty of local boards of equalization to discover and place any omitted property on the assessment rolls and it will also be their duty to advise with the county board of equalization regarding all phases of assessment in their respective political subdivisions.

The Commmittee feels that in many counties the long-term cost of maintaining the office of county assessor will not be greater than the cost of maintaining the township and municipal assessment system. The saving of salaries of township and unorganized district assessors, as well as most of the city assessors, and the lessening of the load in the county auditors' offices, in some instances will pay for the operation of the office of county assessor.

All expenses of the office of county assessor will be paid from the county general fund, except that at the option of the county commissioners an additional mill levy may be authorized and spread on all taxable property if the county general funds are insufficient to maintain a full-time assessor.

Because the purpose of the optional county assessor bill is not to increase taxes, the Committee has recommended limitations as to the amount of monetary increase in tax yield that may be received by a political subdivision in a county maintaining the county assessor system for a two-year period.

State Supervisor of Assessments:

At the present time the State Tax Commissioner does not have any person to assume the responsibility of supervision of assessors, to assist political subdivisions in difficult assessment matters, to provide information regarding public utility assessments, or to provide the state board

of equalization with adequate information and assistance to enable it to perform a true job of equalization. The Committee therefore recommends that the position of state supervisor of assessments be created in the State Tax Commissioner's office to perform the duties relating to assessments. In addition, the supervisor would generally supervise all phases of methods and procedures of both real and personal property assessments in the state, so that all assessors in North Dakota would assess all property on a uniform basis. The person occupying this position should be highly qualified and therefore the bill provides that such position be filled only after the applicant has successfully passed examinations made available by the North Dakota Merit System Council.

Personal Property, Income, and Other Miscellaneous Taxes:

The Committee recommends that a system of self-listing be used for personal property. It is obvious that in counties maintaining a county assessor that such person could not go out and assess all the personal property of each individual taxpayer, and it has also been obvious that under the present system of personal property assessment a very poor job of such assessment is being done. The bill provides that the county assessor or the supervisor of assessments, as the case may be, will send out to each taxpayer a self-listing blank upon which the taxpayer would list, but not value, the taxable items of personal property.

The portion of the tax equity study report relating to personal property, income, and other miscellaneous taxes was not presented to the Committee until October of 1960. Because of the vast scope of the resolution directing the Legislative Research Committee to study all phases of our tax laws and structure, the Committee was forced to limit its attention to the field of real property assessment. The Committee recommends that those areas of tax laws and structure be studied during the next biennium by the Legislative Research Committee.

History and Functions of Legislative Research Committee

HISTORY OF THE COMMITTEE

The North Dakota Legislative Research Committee was established by act of the 1945 Legislative Assembly with amendments to this law passed during the 1947 Assembly.

The legislative research committee movement began in the State of Kansas in 1933 and has now grown until 40 states have established such interim committees, with further states considering this matter at their 1961 legislative assemblies.

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

Compared with the problems facing present legislators, those of but one or two decades ago seem much less difficult by comparison. The sums they were called upon to appropriate were much smaller. The range of subjects considered was not nearly so broad nor as complex. In contrast with other departments of government, however, the Legislature in the past has been forced to approach its deliberations without records, studies, or investigations of its own. Some of the information that it has had to rely upon in the past has been inadequate and occasionally it has been slanted because of interest. To assist in meeting its problems and to expedite the work of the session, the legislatures of the various states have established legislative research committees.

The work and stature of the North Dakota Legislative Research Committee has grown each year since it was established in 1945. Among its major projects since that time have been revision of the House and Senate rules; soldiers' bonus financing; studies of the feasibility of a state-operated automobile insurance plan; highway engineering and finance problems; oil and gas regulation and taxation; tax assessment; drainage laws; reorganization of state education functions; highway safety; business and cooperative corporations; Indian affairs; licensing and inspections; mental health; public welfare; credit practices; elementary and secondary education and higher education; special state funds and nonreverting appropriations; homestead exemptions; governmental organization; minimum wages and hours; life insurance company investments; partnerships; republication of the North Dakota Revised Code of 1943; legislative organization and procedure; securities; capitol office space; welfare records; and revision of motor vehicle laws.

Among the major fields of studies included in the work of the Committee during the present biennium are consolidation of school district laws; special education; training school and juvenile delinquency; collection of costs of institutional care; management of state-owned mineral interests; investment of state funds; consolidation of public health activities; consolidation of agricultural activities; licensing of occupations and professions; organization of mental health activities; duties of governor and superintendent of public instruction; republication of code; oil and gas conservation and property laws; reapportionment of House of Representatives; civil defense; salary classifications at institutions of higher learning; additions to the state highway system and highway finance; and tax structure.

In addition, many projects of lesser importance were studied and considered by the Committee, some of which will be the subject of legislation during the 1961 Session of the Legislature.

FUNCTIONS OF THE COMMITTEE

In addition to making detailed studies which are requested by resolution of the Legislature, the Legislative Research Committee considers problems of statewide importance that arise between sessions or upon which study is requested by individual members of the Legislature and, if feasible, develops legislation for introduction at the next session of the Legislature to meet these problems. The Committee provides a continuing research service to individual legislators, since the services of the Committee staff are

open to any individual senator or representative who desires specialized information upon problems that might arise or ideas that may come to his mind between sessions. The staff of the Committee drafts bills for individual legislators prior to and during each legislative session upon any subject on which they may choose to introduce a bill. In addition, the Committee revises portions of our Code which are in need of revision and periodically compiles all the laws of the State of North Dakota into cumulative Supplements to the Code.

METHODS OF RESEARCH AND INVESTIGATIONS

The manner in which the Committee carries on its research and investigations varies with the subject upon which the Committee is working. In all studies of major importance, the Committee has followed a practice of appointing a subcommittee from its own membership and from other members of the Legislature who may not be members of the Legislative Research Committee, upon whom falls the primary duty of preparing and supervising the study. These studies are in most instances carried on by the subcommittees with the assistance of the regular staff of the Legislative Research Committee, although on some projects the entire Committee has participated in the findings and studies. These subcommittees then make their reports upon their findings to the full Legislative Research Committee which may reject, amend, or accept a subcommittee's report. After the adoption of a report of a subcommittee, the Legislative Research Committee as a whole makes recommendations to the Legislative Assembly and where appropriate the Committee will prepare legislation to carry out such recommendations, which bills are then introduced by members of the subcommittee.

During the past interim, the Committee by contract obtained the services of the Bureau of Business and Economic Research at the University of North Dakota to aid the Committee in a study of the tax structure of North Dakota and in their study of the investment of state funds. The services of the National Institute of Mental Health, a division of the U. S. Department of Health, Education and Welfare, were obtained to aid the Committee in the mental health study. In this manner, the services of highly competent personnel were obtained for the Committee, and the Committee feels that it has obtained extremely sound and unbiased studies at a very economical cost.

In all other instances, the studies carried on by the Legislative Research Committee during this interim were handled entirely by the subcommittee concerned and the regular staff of the Committee. On certain occasions the advice and counsel of other people employed by the state government have been requested and their cooperation obtained.

REGIONAL MEETINGS AND INTERSTATE COOPERATION

The Legislative Research Committee is designated by statute as the State's committee on interstate cooperation. The most important and noteworthy activity of the Committee in this field has been through the North Central Legislative Conference, which held its biennial meeting at Des Moines, Iowa.

Reports and Recommendations

Education

House Concurrent Resolution K directed the Legislative Research Committee to develop a single set of laws to govern the school districts of the state; Senate Concurrent Resolution G directed the Committee to study problems involved in the establishment of an improved program of special education; and Senate Concurrent Resolution I-I directed the study of the program of the state training school and juvenile delinquency.

These studies were assigned by the Legislative Research Committee to its Subcommittee on Education consisting of: Representative Oscar Solberg, Chairman, Representatives Gordon S. Aamoth, Chester Fossum, Don Halcrow, and Stanley Saugstad; Senators Ralph J. Erickstad, Guy Larson, Charles L. Murphy, C. W. Schrock, and Raymond G. Vendsel.

CONSOLIDATION OF SCHOOL DISTRICT LAWS

House Concurrent Resolution K is probably an outgrowth of a resolution passed at the 1958 annual meeting of the State's Attorneys Association which called for a revision and consolidation of all school district laws. At the present time, the state of North Dakota has 1,768 school districts operating under the common school district law; 237 school districts operating under the special school district law; 2 districts operating under the independent school district law, and one school district, in the city of Fargo, operating under an entirely separate law of its own. In addition, there are laws governing the operation of joint high school districts and those governing the operation of county agricultural schools. The fact that these schools are operating under different sets of laws has resulted in a great deal of confusion among school officials, county officials, and the general public, including even the legal profession. There has been the most confusion between present common districts and special districts, especially in view of the recent trend towards school district reorganization, since the common and special school districts are generally involved in annexation or reorganization proceedings.

The first business of the Committee was to formulate the scope of their study. It was decided not to touch at all upon the laws governing county agricultural schools since they are operated by counties rather than school districts. The Committee did, however, decide to delete provisions in the law authorizing and governing joint high school districts. Such deletion would have very little effect upon the present educational picture in the state, since the only joint high school district in the state recently reorganized and now operates under regular school district laws. It was the decision of the Committee, then, to make one law govern all common, special, and independent school districts, except the Fargo school district, and to make such law sufficiently flexible that operations in the various districts could continue as much as possible in the same manner as they are presently being carried on. Because of local desires the Committee decided to exclude the Fargo school district from operating under the law governing all common, special, and independent school districts, and to allow it to continue to operate under Chapter 15-51 of the North Dakota Century Code. The Committee agreed that the purpose of its deliberations was to consolidate presently existing law, and not to create new school district law. Some small provisions have been inserted into the proposed bill which may have no direct counterpart in present law, but only where it is necessary to do so in order to more easily obtain uniformity of procedures, authority, or duties. It attempted to make no other substantive change even where it realized that present law could be improved upon.

The Committee first made a section-by-section comparison of all statutory powers, duties, procedures, etc. of the common, special, independent, and Fargo school district laws. At this point the Committee was able to tell exactly where the four different types of laws were similar, and where their provisions were dissimilar. On the basis of the comparison of the four types of laws, the Committee was of the opinion that the present special school district law would most easily lend itself to amendment in order to be able to embrace all school districts in the state. The approach taken, therefore, was to amend present special school district law in order to make it flexible enough to govern all school districts in the state, and to repeal those chapters of the law governing common and independent school districts. It should be noted, however, that where the Committee was of the opinion that a common or independent school district law was more desirable than the similar special school district law, such

provision was used in amending the special school district law.

From the time the study was begun, the Committee was aware that a special problem would arise in the case of the Fargo school district, since the placing of this district under the general school district laws would result in the district losing its present unlimited taxing authority. It was therefore decided to hold one of the Committee meetings in Fargo in order to give the people of the Fargo school district an opportunity to appear before the Committee and let their feelings on the subject be known. At the Fargo hearing, the persons appearing before the Committee were unanimously of the opinion that the Fargo school district should continue to be allowed to operate without any restrictions on its tax levy authority. This fact, together with the fact that the Committee was not entirely convinced that it should delve into such problems as changing any tax or tax levy provisions of the present law, led the Committee to recommend that the Fargo school district should be authorized to continue to operate under its present law. Tax levy limitations for all other school districts will remain unchanged, however, since these limitations are based upon the number of years of school work being offered by the district, rather than the type of district concerned. This idea has been carried out in the bill draft, as will be noted later.

Generally, the proposed legislation formulated by the Committee will not greatly change the operations of the present special school districts or independent school districts. Under the proposed legislation, the common school district boards will be given a greater amount of discretion in their operations than is now present in the common school district law.

It should be realized that in a consolidation bill of this type many small detailed items in the law must be changed in order to be able to fit all school districts. It is therefore not feasible to mention in this report all of the small amendments which are recommended by the Committee. For this reason, a section-by-section explanation of changes has been prepared as a separate document. Very briefly, however, the effects of the amendments can possibly be summarized as follows:

1. All school districts in the state except Fargo would be named "Public School Districts", and we would no longer have any references to special, common, or independent school districts.

2. While the common and special school district laws presently provide for a method by which part of an existing school district may be divided from the existing district to form a separate district, such provisions have been deleted in the proposed bill. These procedures are really a method whereby larger educational units may be broken up into smaller units, and are contrary to the present trend of combining educational units into larger districts. The Committee was of the opinion that if the necessity for such division should arise, the problem could be taken care of by regular reorganization proceedings.

3. The laws governing annexation proceedings, that is, methods whereby territories can be detached from one district and annexed to a contiguous district, have been retained. At the present time, the common district and special district laws are very similar on this procedure, and therefore very little change is effected in consolidating these two laws to apply to all school districts in the state. The amendment will, however, make annexation proceedings much more specific for independent districts.

4. Methods whereby rural areas may be detached from special school districts, and methods whereby special school districts can become common school districts, have been deleted from the law in the proposed bill, since there will no longer be any special or common school districts, and such problems will therefore be solved by regular annexation or reorganization proceedings.

5. The portion of the law providing for school district officers has been made flexible in order to allow three, five, seven, or nine-member boards, depending upon whether the district embraces urban or rural areas. Provision is made that districts presently having a certain number of school board members will continue to have the same number of members under the proposed law and, in addition, authority is given for any district embracing a city or village to increase the number of board members after receiving approval from the electors of the district. As at present, rural districts may have five-member school boards if their reorganization plan so specifies. Dates on which school district elections are to be held have been made uniform for all school districts, whereas at the present time the independent districts elect their members at a time different from the special and common districts. Polling hours for school district elections are made uniform for all school districts whereas at the present time the hours are different in the differ-

ent types of school districts. Notice of the school district election is to be given by the county superintendent of schools, while at present some of the laws provide for notice being given by local bodies as well as by county superintendents.

6. The composition, organization, and meetings of the governing bodies have undergone no really major changes. All such governing bodies are designated as "school boards", and the present designation of "board of education" has been done away with. All school boards are to hold a monthly meeting, except that those school boards of school districts in which are located only one and two-room schools may meet as often as they deem necessary, but not less than four times each year. Special meetings are allowed as at present, and provision has been inserted that, although written or printed notice of a special meeting is to be given to each member of a school board, any member's attendance at a special meeting shall constitute a waiver of such notice. The school boards are to appoint a clerk and a treasurer who are not members of the board. This would effect a change in the independent school districts where at present the city treasurer is also ex officio school district treasurer. It might be noted that there would seem to be nothing in the proposed law that would prevent an independent school district board from appointing the city treasurer as the school district treasurer and, since the compensation of the treasurer is to be designated by the school board, if the city treasurer were to be designated the school board could compensate such person or the city in the same manner in which he is now compensated if they so desire.

7. The general powers and duties of the school boards in the various school districts are comparable at present. In consolidating these powers and duties, however, the school boards in the present common school districts would receive considerably more discretionary authority than they have at the present time. At present, school boards in the common school districts must go to the people in order to receive approval for many of the actions which they may desire to take; for example, when removing, selling, or acquiring any type of building used by the school district. Under the proposed bill these things could be done, as they are now done in other types of school districts, by the school board without requiring submission of the question to the voters.

8. The duties of the school district clerks and treasurers under the proposed law would not greatly affect present procedures. It could possibly be said that the portion of the proposed law providing that the treasurer is to be appointed by the school board, rather than using the city treasurer in the ex officio capacity, represents a facet of educational philosophy. Such a provision would seem to result in a more clearly defined separation between the school district and the city government generally, and it is the thought of the Committee that the school district should be completely separated from the city government and not be in a position where it could be thought of as merely one arm of the municipal government.

The above recommendations represent only a few of the many small changes which will result from the proposed bill. However, as previously stated, in consolidating the various types of school district laws the purpose was not to make any major changes but rather to try to conform the small details which make the present types of school district procedures so confusing and cumbersome.

The Committee is especially appreciative of the fine cooperation and contribution to the work of the Committee which was extended by Mr. M. F. Peterson, Superintendent of Public Instruction, and by Mr. Howard Snortland, Director of the State Equalization Fund. In dealing with the exceedingly complex and involved laws governing school districts the aid of Mr. Peterson and Mr. Snortland was invaluable.

SPECIAL EDUCATION

Special education refers to a public school program designed to meet the special education needs of children who cannot benefit fully from ordinary methods of instruction in the classroom. The most common handicaps of children requiring special education are speech or hearing defects. Other children may be emotionally disturbed, mentally retarded, or physically handicapped. All of these children can be educated in the public schools if these schools are willing to provide for their special needs. The philosophy underlying the special education program is that all children, both handicapped and normal, are entitled to a public school education which will help them develop their capabilities. The public responsibility is the same, even though its fulfillment requires different and more costly methods for some of the children because they happen to be handicapped.

The Resolution directing the study of Special Education placed emphasis on a determination of the number of North Dakota children needing special education and the types of need; the possibility of consolidation of programs for greater utilization of available facilities; the possible methods of financing expanded programs; and the division of costs between the state and local governmental units.

The present North Dakota special education law was enacted in 1951. Included within its coverage are children between the ages of 6 and 21 who are classified as "educable." This term generally includes children in the 50 to 80 I. Q. classification, though these standards may vary quite frequently. The law establishes a special education advisory council to coordinate, assist, and establish standards for guidance of school districts conducting special education programs. A director of special education is employed by the Department of Public Instruction and serves as executive officer for special education.

State payments to school districts conducting special education programs are subject to the requirements that the school district must have expended an amount equal to the average expenditure in the district for elementary or high school students, as the case may be, and that the parents have made adequate efforts to provide needed education. Maximum per pupil payments for special education are $300 for instruction and an additional $500 for transportation, equipment and residential care. These payments are above and beyond per pupil payments from the county equalization fund and are subject to the availability of legislative appropriations. Amounts appropriated for special education have been as follows:

1951	$ 50,000
1953	164,000
1955	264,000
1957	289,000
1959	365,000

The number of children served by special education programs in North Dakota has risen from 472 during the 1951-1952 school year to 3,055 during the 1957-1958 school year. A census of North Dakota children needing special education of all types is not available but conservative estimates based upon national statistics place the number at about 15,000. Thus approximately 20% of children requiring special education were receiving such education as of the 1957-1958 school year.

Three main problems in the establishment of special education programs in local school districts, as cited by the state director of special education, are lack of space for instruction, shortage of trained personnel, and inadequacy of available funds.

The Committee considered the relative merits of permissive-type special education laws, as we now have in North Dakota, as opposed to the mandatory laws found in some other states. A majority of the laws found in other states are of the permissive type in that the establishment of special education programs by school districts is on an optional basis. A comparison of percentages of handicapped children participating in some type of special education program in states having mandatory laws and those states having permissive laws revealed no significant variation between those states having mandatory and those having permissive laws. In addition, the Committee was of the opinion that a mandatory-type law would in all probability not accomplish its objective because of lack of facilities, trained personnel, and funds. Thus the bill recommended by the Committee is of the permissive type.

It was the opinion of the Committee that if a substantially increased special education program is to be carried on in North Dakota, it will have to be primarily financed by funds from local levels of government because of deficiencies of state equalization funds. The Committee feels that a county special education program would be the most desirable from the standpoint of financing as well as utilization of personnel and facilities. The Committee recognizes that many school districts do not have a sufficient number of children in need of special education to warrant programs within their districts. Thus a county board of special education would be given authority to contract with school districts both within and outside the county to supply special education facilities.

The Committee has prepared and recommends approval of a bill which would permit the county superintendent of schools to appoint a county board of special education. One member would be appointed from each county commissioner district subject to approval of the board of county commissioners. The county superintendent of schools would serve as secretary and executive officer for the special education program.

The county board of special education would submit an annual program and budget to the board of county commissioners for approval. If such program and budget are approved, the board of county commissioners could finance the program by budgeting funds from the county general fund or by the levy of a tax of not to exceed three mills, over and above the mill levy limitations provided by law. Such levy would be subject to referral to the voters of the county upon the filing of a petition with the board of county commissioners containing the signatures of 5% of the voters.

The program and budget would next be submitted to the Department of Public Instruction for approval. If approved by this department, any payments by the state for special education would be made to the county board of special education to be disbursed by such board in furtherance of the county program. If the program and budget are not approved by the department, state payments would be made to the school district providing special education facilities, as is done under present law. The bill expressly states that it shall not alter the method of making per pupil payments out of the county or state equalization funds.

Provision would be made for the establishment of multiple county programs when deemed desirable by the boards of county commissioners involved.

The problem of providing adequate special education programs is a problem common to all the states. Expenditures for special education programs are increasing yearly but still fall far short of meeting existing needs. The present program in North Dakota as well as the county programs contemplated by the proposed bill include only the educable child. The Committee is of the opinion that such programs could perhaps at a later date be expanded to include the trainable children; those with I. Q.'s below that of the educable class.

Under the proposed bill it is contemplated that the state would continue to participate in special education to the extent that funds are available. The county, however, as the basic sponsor of special education programs, would have to decide whether or not the improved program authorized by the recommended enabling legislation would be put into effect. In the opinion of the Committee the proposed bill will provide a method of improving special education programs in accordance with existing local needs and the degree of local interest.

STATE TRAINING SCHOOL AND JUVENILE DELINQUENCY

Educational Program

The first matter to be considered in the course of this study was the instructional and educational program being carried on at the School. It came to the attention of the Committee that the North Dakota State Training School had not been fully accredited by the Superintendent of Public Instruction because of various deficiencies in the educational program. In view of the action of the last Legislative Assembly in raising educational standards and passing several laws relating to curriculum, teacher qualifications, and other matters for the purpose of improving the quality of education in North Dakota elementary and secondary schools, it seemed inconsistent that the state itself should operate a school which did not meet these standards. The Committee therefore requested the Department of Public Instruction to make a survey of the educational program of the State Training School and to make a report to the Committee regarding the improvements and changes necessary to obtain full accreditation.

Following the submission of this report by the Department of Public Instruction, conferences were held with the State Board of Administration and the Superintendent of the Training School. It was agreed by the Board and the Superintendent that the necessary steps would be taken to meet the requirements of the Department of Public Instruction in order that the School might become fully accredited. Some of these improvements were instituted when school began in the fall of 1960, and others will be placed in effect as soon as the new educational building is completed. The Committee recommends continued attention to the educational program of the State Training School by the Board of Administration and the Superintendent in order that the School may be fully accredited not later than the fall of 1961.

In addition, the Committee was active in reviewing plans for the new education-administration building to be constructed at the Training School. The Board of Administration submitted plans for the building to the Department of Public

Instruction for approval in meeting the standards of construction required by that Department for elementary and secondary educational buildings in the state. The building presently under construction should provide excellent educational and administrative facilities and almost completely meet the needs of the School in this area.

Rehabilitation Programs

From the Committee's study of juvenile programs and training schools in other states, there appears to be a trend toward using training schools only as a repository for those children who are unmanageable in any other way. Many states are attempting to locate potentially problem juveniles when they first come to the attention of public authorities, whether in the schools, the juvenile courts, or through welfare activities. Trained personnel then attempt to work with the child and his parents at home in order to overcome the situation which may be causing the problems or delinquency of the child. If the home life is such that no progress can be made, the next step is to, at least temporarily, place the child in a foster home and to work with the child under these circumstances. If this situation fails to provide rehabilitation, the final resource is usually a state training school.

The larger states, naturally, have more than one training school, and an attempt is made to send the child to the type of state school at which he will receive the most benefit. In these states it is usually recognized that there are certain students who, because of the seriousness of their delinquency or past records, may be sent directly to a state training school. This method of working with juveniles is not inexpensive, but it is felt that in the long run it is less expensive than placing the child in the training school, where it is not always possible to do a good job of rehabilitation, with the resulting additional public cost incurred over the lifetime of the person through detention in penitentiaries and welfare costs. Some studies of training schools in other states have shown that as many as 75% of the children in training schools should not have been assigned to the schools in the first place, but could have been cared for locally had resources been available.

There appears to be a growing recognition throughout the country that a well-trained staff is the most important element in the operation of a training school, as well as the most important item in any program designed to provide rehabilitation. The field of juvenile delinquency and rehabilitation of problem juveniles requires some participation by professional educators, psychologists, psychiatric consultants, trained social workers and, to a degree, assistance from other professions in working with problem children and their families. No course other than the provision of good, well-trained personnel will give the result of rehabilitation that is desired. In addition to professional persons, it is essential that a training school have on its staff intelligent personnel who are vitally interested in children; who can be trained by the professional members of the staff to the extent necessary to perform such routine round-the-clock care that the institution may require.

In some states, usually the larger states, there is a movement toward small district training schools for not more than 50 students. Such schools operate on a cottage system, with each cottage containing from 6 to 8 children, with an adequate staff. In such small units, the staff can usually get to know the students and work closely with them, which will result in earlier and more complete rehabilitation. Such a system costs money, but probably saves funds in the long run because of earlier discharges and because fewer juveniles later show up in the penitentiaries or on the welfare rolls. Through district or regional facilities, it is more feasible to work closely with the parents and for the parents to keep up their contact with the child. This usually results in more speedy rehabilitation and more permanent improvement in the family situation.

Some states are developing central reception centers to which all children committed by juvenile authorities are sent. At such a reception center a child is observed and tested to determine whether he should be returned to his home to be supervised and worked with by local probation personnel, sent to a foster home to be supervised or treated by local probation personnel, or sent to an institution for more intensive treatment or care. Such a system, however, requires that the services of trained people be available in local areas in order to provide the services to the child and his parents in his own home, or at a foster home.

Survey by Child Welfare League of America

At the request of a representative of the State Judicial Council, the Committee conferred

with a representative of the Child Welfare League of America to determine whether it was desirable to obtain the services of this organization to make a survey of our State Training School and our program for problem juveniles, such survey to be conducted by professional personnel having wide experience in the field of juvenile delinquency and with training schools in other states.

The Child Welfare League of America is a nonprofit organization which cooperates with the National Probation and Parole Association in providing services to states in evaluating and improving juvenile and penal programs. Following such a conference, it was agreed by the Committee to request the services of the Child Welfare League of America to make a survey of North Dakota juvenile problems and of the State Training School. The Public Welfare Department agreed to participate in this study through the payment of two-thirds of the costs of the Child Welfare League of America in providing these services, and the other one-third of the costs was paid by the Committee.

As the result of the contract with the Child Welfare League of America, the services of Mr. Richard Clendenen were obtained to carry out the survey. Mr. Clendenen has had wide experience in the field of juvenile delinquency at both the state and the national level, including the management and operation of training schools and, in addition, has made surveys of training schools in several other states.

The report of Mr. Clendenen in regard to the survey of the State Training School and the North Dakota program for juvenile delinquents was filed with the Committee in June of 1960, and received widespread attention in the press. The report itself was widely distributed throughout the state. In the interest of brevity, the report of the Committee will not attempt to cover all of the many points discussed by Mr. Clendenen in his report, nor all of the strong points or shortcomings of the program. From this point on, however, the Committee's report will list some of the principal findings and recommendations contained in his report.

Mr. Clendenen stated that adequate services or facilities in three areas are necessary to rehabilitate the maximum number of delinquent children. First, investigatory and diagnostic services must be available to the courts to aid in determining whether a child should be committed to the Training School, and probation services must be available to work with the child or his parents if the child remains in his home community. Second, there must be an adequate treatment and rehabilitation program at the Training school. Third, there must be provision for a well-planned program of release and placement from the Training School when the child is ready, together with supervision and assistance in his home or in a foster home.

He reported that the presence within the Training School of children who should not be there revealed that some courts are forced to operate without adequate services to investigate, study, and diagnose needs of children or to help them work out their problems while remaining in their own communities. Mr. Clendenen recommends that the Child Welfare Services of the Public Welfare Department be reorganized on a regional rather than strictly on a county basis, so that the district courts and the juvenile commissioners may call upon such trained personnel for assistance in investigating juvenile cases; aid in testing and evaluating children who may be suffering from mental illnesses; and that such trained personnel work with the children and their parents in an attempt to handle problem juveniles in their home communities rather than committing them to the Training School.

The program of the Training School should be designed to rehabilitate children who cannot be handled by the courts either at home or in foster homes with the assistance of juvenile commissioners and child welfare personnel. The program of the Training School should not be merely custodial but rather should be a treatment program in order to provide for rehabilitation and release of the child at as early a date as possible. Mr. Clendenen stated that much of the Training School's potential for rehabilitation is presently lost because of the lack of certain services and facilities that are essential to the establishment of an adequate program and because of the lack of proper training of employees. At present, employees frequently fail to understand the treatment and rehabilitation program that must be designed to fit a child's needs.

Mr. Clendenen recommended the establishment of an orientation-treatment unit at the Training School where new children can be placed to receive intensive attention from the staff to determine the type of program each child should follow at the institution and to provide for proper orientation to the institution. This unit should also

provide an area at the institution for disturbed children who need restraint to prevent their running away or otherwise interfering with institutional life and where careful treatment and attention could be provided until they are ready to resume normal institutional life. Children found to be seriously mentally disturbed when admitted or while at the institution should receive assistance from the Children's Psychiatric Clinic established at Bismarck by the last Legislature. Mr. Clendenen did not feel that many additional employees were necessary at the institution, although he strongly recommended that only qualified people be hired for certain key positions. Others should be trained while working at the institution, in order that everyone would have a fair degree of training in the complicated and difficult task of working with delinquent children.

Mr. Clendenen stated that some of the dormitories were too large to provide effective supervision and attention and should be divided into duplexes. A separate building which would not have to be too large or too expensive, should be constructed to house the reception-treatment unit. He suggested that Brown Cottage be torn down at an early date. He reported, however, that the new education-administration building now under construction will meet the greater part of the building needs of the institution if the program recommended by him is followed.

Principal Committee Recommendations

Physical Facilities

The Committee recommends the construction of a new building on the campus of the State Training School in the vicinity of the north entrance to the institution, to serve as a combination closed treatment- reception center. As envisioned by the Committee, the ideal type of construction would be a one-story structure in the shape of a "T". One wing of the "T" could be used for the closed treatment unit in which the disturbed students at the Training School who might need a certain amount of security to prevent their running away or who were too disturbed to participate in the institutional program could be lodged under the close supervision of medical personnel and counsellors in the building. A very intensive program of treatment and attention, with assistance provided from personnel of the Children's Psychiatric Clinic at Bismarck, would be given to these children until such time as they are ready to fully participate in the normal institutional program. The other wing of this building would be used to house new boys who had been committed to the Training School, in order to provide the proper orientation to the institution and to give time for the evaluation and testing of each child to determine the proper type of program for him at the School.

The central portion of the "T" of the building would house offices for medical and clinical personnel and for counsellors working with the children in the unit. The balance of the "T" would provide a suitable recreational area for children who are lodged in the unit. It should be noted that in addition to providing facilities for new arrivals and for disturbed children, the building will also provide additional housing, and to that extent will lessen dormitory occupancy, thereby permitting one or more of the present large dormitories to be divided into duplexes in order to house smaller groups of students who can be more adequately supervised. In recognition of the fact that almost two years must pass before such a new building can be completed and occupied, even if authorized, the Committee recommends that the Superintendent of the Training School and the Board of Administration make every effort to establish such a closed treatment-reception center on a temporary basis in any available facilities on the campus that might be reasonably suitable.

It is noted that during the early weeks at the School is the time when the child is most likely to run away; is the time when he is most in need of attention and understanding; and is also the time when he is most impressionable and most subject to rehabilitative efforts. Close attention and counselling at this stage should produce substantial dividends in a better adjusted child at the institution and encourage earlier release. In addition, to the extent facilities permit, children could also be referred to this unit by the juvenile courts for testing and evaluation by personnel from the Training School and the Children's Psychiatric Clinic in order to provide full information to the juvenile judge prior to any final disposition of the case. The judge could then make such proper, informed decision as to such disposition as will most readily encourage the child's rehabilitation and should result in a decrease of children committed to the School who do not properly belong there.

Other Recommendations In Regard to Training School

It is recommended that the position of Assistant Superintendent and Director of Treatment,

and the position of Director of Cottage Life be created upon the staff of the State Training School, and that an appropriation be made to the School in such sum as may be necessary to procure competent personnel to fill these positions.

It is recommended that funds available for salaries at the Training School be increased by the next Legislative Assembly in an amount sufficient to attract other competent staff members, as has been urged by the Superintendent of the Training School and as recommended in the report of the School.

It is recommended that the Training School establish a policy of forwarding adequate information to the courts committing a child, juvenile commissioners in his home area, local welfare agencies, and other interested local authorities in regard to a child who is released or placed from the Training School.

It is recommended that legislation be enacted requiring each district court judge to appoint a minimum of one full-time juvenile commissioner to aid in providing the juvenile judge with full information in regard to each juvenile coming before him, as well as to provide supervision and assistance to the child and his parents in working toward rehabilitation in his home community.

It is recommended that the Public Welfare Department establish child welfare services on a regional basis corresponding to the judicial districts to the maximum extent that such organization is feasible, in order to provide assistance to juvenile courts and juvenile commissioners in investigating juvenile cases and to aid in the rehabilitation of juveniles in their own homes or foster homes to the end that as few children as possible need be committed to the Training School.

It is recommended that legislation be passed requiring the Superintendent of the State Training School to notify the Division of Children and Youth of the Public Welfare Department when children are ready for placement from the Training School, and that it be the duty of the Division of Children and Youth to find suitable placement homes or positions for such children; that with the approval of the Superintendent of the Training School the children be placed in the homes recommended by the Division of Children and Youth and that the employees of this Division act as agents of the Superintendent in supervising such children as are released under the program, but that the Superintendent continue legal responsibility for the children during this period of placement.

It is recommended that legislation be passed requiring that social history and records of investigation in regard to each child be forwarded by the juvenile court to the Training School at the time of the child's commitment to the School or as soon thereafter as possible.

It is recommended that the Superintendent of the State Training School, the State Judicial Council, and the Public Welfare Department arrange for periodic conferences in order to better coordinate the program of the state in regard to juvenile delinquency.

It is strongly recommended that a more formal and definite program be established within the Training School for the training and development of the staff of the Training School in order that they might more fully understand the program of treatment and rehabilitation of juveniles.

It is recommended that funds be appropriated to convert New Building into a duplex unit and that the capacity of Dakota Hall be reduced if at all possible.

It is recommended that the Superintendent of the Training School establish a case conference committee to carefully evaluate the problems and needs of every child committed to the Training School and to formulate a program for him. The progress and treatment of each child should be periodically reviewed by this same body, terminating in eventual referral for placement. Arrangements should be made to procure the assistance of personnel of the Children's Psychiatric Clinic in making the initial study of the child as well as in re-evaluating the case of any child experiencing unusual problems in adjustment.

It is recommended that legislation be passed to provide for a statutory disciplinary committee at the Training School to consist of the Director of Treatment or his representative, as Chairman, a member of the medical staff, and the Director of Cottage Life or his representative, and that it be the duty of the disciplinary committee to advise the Superintendent on all disciplinary policies; to review all cases involving serious breaches of discipline and advise the Superintendent in regard to such specific cases; and to maintain records in writing of charges against students of disciplinary violations and the Com-

mittee's recommendations in regard to disciplinary action.

It is recommended that the preparation of food at the Training School be centralized in a single kitchen and that it be transported in insulated food carts to the individual units in order that the children may eat their meals in their respective units; that a general art shop for youngsters too young or otherwise ineligible for the trade-shop program be established in the new educational building; that the School's library be reorganized as soon as the new educational building is occupied and that books be available to all pupils, and selective books be rotated through the cottages as a part of a library program; and it is further recommended that the Training School continue its efforts to provide individualized clothing for all children at the School.

It is recommended that the present large-scale farming operation be reduced if it in any way interferes with the treatment program of the School, and that the Board of Auditors and the State Auditor make a cost analysis of the farming operation at the Training School for a one-year period in order to determine the profitability of such activity.

It is recommended that the official name be changed from the State Training School to "Heart Valley" except that diplomas from the school continue to be issued under the name of "Marmot Special School District."

Over-All Institutional Management

The Committee spent a good deal of time considering the proper type of agency to manage and govern the institutions of the state. In the opinion of the Committee, a board with three full-time members plus two ex officio members by its very nature has great difficulty in making the many day-by-day routine administrative decisions that are required. In one sense, it might be compared to operating the state of North Dakota with three full-time and two part-time governors, each of whom have equal power and authority, and none of whom can act without the concurrence of the others.

While the Committee recognizes the value of a board to give advice in regard to the policies governing institutions, it is felt that a full-time board becomes too involved in the many details of institutional management and housekeeping that might better be left to a single director or the superintendent of the institution concerned. Consequently, a full-time board does not have the time or perspective to make the over-all evaluation of programs that is needed to carry out the purposes for which the institution was founded. In the opinion of the Committee, if complete board action on all decisions were required in practice, the board would become so involved in red tape that it could not possibly function. If the board is to function and make its decisions on a timely basis, it is necessary for one man to assume the responsibility for them and make the decisions required. In the latter case, the board is then not functioning as originally intended. In the case of a five-man board it is naturally difficult to obtain authority for the decisions that must be made, and also at times difficult to place responsibility for these decisions.

It is therefore the firm opinion of the Committee that an operating board with three full-time and two ex officio members is not the organizational structure to provide the best type of institutional management.

It is recommended by the Committee that legislation be passed reorganizing the State Board of Administration to make it a part-time per diem board, composed of citizens having an interest in the fields of responsibility of such board, appointed by the Governor with the consent of the Senate, to act as a policymaking board in regard to all institutions under its control and other duties placed by law under the Board of Administration, with authority for such board to appoint a full-time executive director and to delegate to him such duties and authority as it may deem necessary to provide sound and efficient day-by-day institutional management. Such board should consist of seven members with staggered terms of office, and should be subject to removal by the Governor for cause.

A part-time per diem board of citiezns of the type recommended by the Committee would not likely become involved in the details of every-day administration and would be able to concentrate on the over-all policies and the program for which these institutions were formed. It might also be more representative of the public and more responsive to its desires. The Board of Higher Education is organized and operates in much this fashion, and might be used as an example of how such a board could function. The Committee wishes to stress that it makes this recommendation as a matter of principle in order to provide an organizational structure for better institutional

management, and the recommendation should not be considered as personal criticism of any present or past members of the Board of Administration.

Conclusions

Many of the recommendations made by the Committee can be accomplished by the Superintendent of the Training School and the Board of Administration without further action by the Legislative Assembly and, in some instances, the Board and the Superintendent have already taken action in that direction. However, in order to provide a permanent expression of legislative intent on this subject, a Concurrent Resolution has been prepared and is recommended for passage to give guidance in regard to policies to be followed at the institution. In other fields, the Committee felt definite legislation was required, and in these areas bills have been prepared. An examination of bills and the resolution accompanying this report will provide further detailed information regarding the Committee's recommendations.

Finance

INSTITUTIONAL CARE AND REVOLVING FUND

Senate Concurrent Resolution O-O directed the Legislative Research Committee to study the feasibility of abolishing the various institutional revolving funds and providing support for the charitable institutions directly from the General Fund as well as transferring the duty of collection of institutional care costs from the counties to the state. Senate Concurrent Resolution W directed the Committee to study the laws and policies of the state pertaining to the investment of state funds; and to consider the merits of broadening the types of investments permitted by law, and the provision of professional-type management of investments in order to obtain the greatest possible return consistent with safe investment practices. The Legislative Assembly also requested the Committee to study the management of state-owned mineral interests.

These studies were assigned to the Subcommittee on Finance consisting of Representative Walter Dahlund, Chairman, Representatives Leonard A. Bopp, K. A. Fitch, Charles F. Karabensh, Louis Leet, Arthur A. Link, and Gerhart Wilkie; Senators P. L. Foss, Gail H. Hernett, Lester N. Lautenschlager, and Grant Trenbeath.

At present, money from the state liquor tax is deposited in the various institutional revolving funds as a credit upon charges to counties that have been made by the state for the care of their patients at the State Hospital, Grafton State School and State Tuberculosis Sanatorium. The amount credited to these funds from the liquor tax is sufficient to pay most of the charges against the counties for the costs of care. However, the present procedures require a rather complicated series of charges, credits, billings, remittances, and transfers before the funds finally become available for expenditure in the operation of the institutions.

In theory it is the responsibility of the various counties under our laws to re-collect the average costs of patients' care at these institutions, as set by the Board of Administration, from the patients, their estates, or responsible relatives if they are able to pay such costs without undue hardship. In practice, however, the state's share of such costs is almost never collected by the county, and most counties make little effort to collect the portion of the costs they might have paid for patients' care, regardless of the ability of a patient, his estate, or responsible relatives to reimburse the county and state.

As a matter of principle, the Committee believes the practice of earmarking revenue from specific taxes for specific funds and specific governmental operation should be frowned upon except in cases of absolute necessity, since it in effect removes the discretion of the Legislative Assembly to appropriate the money of the state to the purposes that in the judgment of the Legislative Assembly most need such funds.

In the case of the charitable institutional fund and the various institutional support funds, the Committee can find no useful purpose for the maintenance of these special funds and the continuance of the resulting complicated bookkeeping transactions. It therefore recommends that these funds be eliminated and that all revenue derived by the state from the taxation of alcoholic beverages be placed in the General Fund, which is already the source of a large portion of the appropriations for the operation of these institutions, and that hereafter all appropriations for the operation of the institutions be made from the General Fund.

It is also the recommendation of the Committee that the various counties be relieved from the responsibility of paying a portion of the costs of care of patients at the State Hospital, Grafton State School, and State Tuberculosis Sanatorium, and that the operating costs of these institutions be paid entirely from the General Fund. The amount of money spent for institutional care by all counties for the fiscal year 1958-59 was $105,402 while in the fiscal year 1959-1960 it was approximately $174,374. These figures do not include the amount of money credited to the counties through the institutional support funds from liquor taxes. Therefore, if the counties are to be relieved of the responsibility of paying these amounts to the state from local tax resources, the amount of appropriations from the General Fund of the state would have to rise accordingly.

If the state is to assume the responsibility of paying all costs of operations of these three institutions, it also appears desirable that the Board

of Administration assume the responsibility for the billing and collection of the average costs of care from the patients, their estates, or responsible relatives, in such instances where it has been determined that such persons or their estates are able to pay these costs without undue hardship. Since no real effort is being made by most counties to collect the amounts due, it is the opinion of the Committee that a sound system of billing and collection will in a very short period of time result in income to the state in excess of the burden assumed by the state in relieving the counties of the responsibility for paying this small portion of the institutional costs.

If the Committee's recommendations are adopted, it will be necessary that an additional item be placed in the appropriation bill for the Board of Administration to pay the expenses of billing and collecting costs of institutional care from patients, their estates, or responsible relatives. It would appear to the Committee, however, that once all procedures have been established, this program could be carried on by one person employed by the board, who would spend part of his time in the field in the course of collections, and by one combination secretary-and-bookkeeper. Arrangements can be made with the office of the Motor Vehicle Registrar, to use automatic data processing equipment to prepare the monthly billings in a matter of a few hours. In the opinion of both the Committee and the Board of Administration, a reasonable appropriation for this billing and collection program will yield substantial dividends over and above the costs of administration, and, in addition, will provide sufficient additional income to compensate the state for assuming that portion of the cost of institutional operation presently being paid by the counties.

INVESTMENT OF STATE FUNDS

A study of the nature of that directed by Senate Concurrent Resolution W has been periodically discussed over the years but the current interest in such a study which led to the passage of the Resolution apparently resulted from an article published by the Bureau of Business and Economic Research, College of Business and Public Administration, of the University of North Dakota in December 1958. This article pointed out that during 1956 North Dakota realized a yield on its investment funds of only 2.1% in contrast with a yield of 2.7% in a majority of the states, which amounted to a difference in yield of over $450,000 per year based upon the $76 million then existing in such funds.

Report of Bureau of Business and Economic Research

Because of the detailed nature of the study which would be required to determine the characteristics and liquidity requirements of the various funds, the Legislative Research Committee called upon the Bureau of Business and Economic Research to make a detailed study of the funds and to recommend changes in portfolio policy which would be consistent with the needs and objectives of the various funds. The report of the study prepared by Glen Allen Mumey and Gilbert W. Gimbel under the supervision of Dr. William E. Koenker, included the following funds:

1. University and School Lands Funds
2. Workmen's Compensation Fund
3. State Bonding Fund
4. State Fire and Tornado Fund
5. Teachers' Insurance and Retirement Fund
6. Patrolmen's Retirement Fund

Recommendations made in the report of the Bureau of Business and Economic Research (although not entirely adopted by the Committee) and the reasons supporting such recommendations may be briefly summarized as follows:

1. The funds, with the exception of the University and School Lands Funds, should be divested of some of their holdings of municipal and school district bonds. These securities involve a higher degree of risk and yet, because their interest it tax exempt, yield no greater rate of interest than U. S. Government bonds and less than high grade corporate bonds. The tax exemption feature, while it serves to make such securities attractive to private investors, is of no value to the state funds since the state funds do not pay federal income tax. The University and School Lands Funds should continue to hold school district bonds since these funds are dedicated to aiding education and the purchase of such bonds is one method of lending such aid.

2. Each of the funds should hold between 45% and 55% of its portfolio in the form of high grade corporation debt securities. The report points to a differential in yield during the period of 1942 to 1958 of four-tenths of 1% between such high grade corporate securities and long-term U. S. Government bonds which the corporate securities would replace. This would mean a

gain of $150,000 per year in income to the funds with no significant increase in risk, since corporate securities rated "high grade" are considered by all rating agencies as being very secure investments. This security is attested to by the fact that during the period from 1900 to 1943 the loss rate on all bonds issued by U. S. domestic corporations was zero. In other words, losses from bond defaults were completely offset by gains obtained by investors through the calling of bonds at amounts greater than that called for by the terms of the bonds. On high grade bonds during the same period, such gains more than offset losses, resulting in a net gain of one-half of 1% to the investor.

3. Primary reserves of from 4% to 6% and secondary reserves of about 15% of the assets of each fund should be maintained for each fund except the University and School Lands Funds. Primary reserves would be maintained in the form of certificates of deposit or cash. Secondary reserves would be maintained in the form of U. S. Government securities maturing in one year or less and high grade, short-term commercial and finance company paper. Payments out of the Workmen's Compensation and Teachers' and Patrolmen's Retirement Funds will remain relatively constant and easily predicted. The Bonding and Fire and Tornado Funds are subject to great losses which cannot be ascertained in advance; thus it is not possible to prescribe adequate liquidity requirements. A reinsurance program would safeguard these funds in the event of a calamity. The University and School Lands Funds have no liquid reserve needs.

4. About 30% of the assets of each fund should be held in the form of long-term U. S. Government securities, obligations of agencies of the U. S. Government, federally insured or guaranteed loans or mortgages or federally insured North Dakota Savings and Loan Certificates. The percentage would be about 50% in the case of the University and School Lands Funds since they have no reserve requirements. Farm loans, a large number of which are held by the Board of University and School Lands, would fall within this category. Retention of some long-term government bonds, in which the funds are heavily invested presently, would aid in maintaining a conservative balance sheet for the funds.

5. Because of the advantages associated with large-scale security purchases and because of the higher degree of skill needed in the acquisition of corporate securities, it is recommended that the investment management of these funds be centralized. This recommendation does not contemplate commingling of the moneys of the individual funds, sharing of income or losses between funds, nor pooling of reserves. The recommendation does contemplate centralization of investment decisions and the purchase of investment securities. A full-time investment specialist would act on behalf of all the funds, replacing the part-time function of state officials who are already pressed with many other responsibilities.

The estimate of $150,000 per year in increased income to the funds is admittedly quite conservative and could possibly run as high as $225,000, based upon current yield differentials. Changes recommended in the present fund portfolios would involve the sale of $38.8 million of long-term U. S. Government bonds and $5.5 million of municipal securities in order to purchase $38.2 million in corporate securities and $6.5 million in short-term government securities. Fluctuations in market price would have to be watched carefully in order to make the most advantageous disposition and purchase of securities. This would almost certainly require a full-time investment specialist.

Outside Investment Consultation

The Committee submitted the report of the Bureau of Business and Economic Research to Mr. Eben W. Pyne, President, and Mr. John Crane, head of the Investment Research Department of the First National Bank & Trust Company, and Mr. John C. Archibald, Assistant Treasurer of the Chase Manhattan Bank, all of New York City. Mr. Pyne and Mr. Crane traveled to Bismarck to confer with representatives of the Committee. Their comments upon the report were highly favorable, although they also stated that the report was quite conservative in the types of investments recommended and the rather large reserve requirements, as well as the estimated financial gain to the trust funds resulting from a re-alignment of investments.

At the request of the Committee, Mr. Carl F. Jacobson, Executive Director of the Wisconsin Investment Board, appeared before the Committee to outline the type of operation they have in Wisconsin and answer questions relating to the possible establishment of a central investment agency in North Dakota.

Mr. Jacobson stated that the Wisconsin Investment Board which had its beginning in 1951,

operates a consolidated investment account for all separate operating funds that are subject to appropriation by the Legislative Assembly, as well as for trust-type funds. University and School Lands Funds, because of special constitutional provisions, are not under management of the Board. Wisconsin statutes permit the investment of up to 25% of the pension-type funds in common stock.

Wisconsin has realized a substantial appreciation in value in the teachers and public employees retirement funds through improved fund management and investments in common stocks. In addition the rates of return for these funds are currently 4.15% and 4.7% as opposed to about 2.9% in 1951. The benefits of this increased income will result in a 25% to 30% increase in retirement payments to teachers and other public employees.

The Wisconsin Investment Board delegates authority to the Director to make short-term purchases and sales and authorizes him to sell other investments if circumstances require. The Board approves all purchases of common stock in a new company before they are made, but, once such authority is granted, the Director determines when conditions permit or require individual purchases. Costs of operating the investment office are apportioned to the various funds under management of the Board and, when collected from the funds, are deposited in the general fund to replace the appropriation made for the Board. Costs of management, which go primarily for salaries amount to .9 of 1% of earnings.

Mr. Jacobson agreed with the New York investment bankers in their statements that recommendations contained in the report of the Bureau of Business and Economic Research are very conservative. He stated that it was his belief that the increased income from proper investment would be substantially more than the $150,000 per year estimated by the Bureau of Business and Economic Research. He stated that after a few years it should be possible to increase the yield upon these funds by a full 1% of interest which would yield the state an additional $760,000 per year.

He mentioned the use made by the Wisconsin Investment Board of outside investment counsel but stated that they probably would not be needed for the purchase of high grade corporate bonds if well qualified persons were available upon the investment staff of the state or the Bank of North Dakota. He suggested the use of a New York bank as custodian for the securities to clip coupons for redemption, and in general to obtain faster action on collections. In addition, the state would obtain the advantages of safekeeping provided for the securities and easy delivery upon their sale.

Mr. Jacobson stated that he agreed with the recommendations of the Bureau of Business and Economic Research in that it was not possible to substantially broaden the discretion in making investments without providing trained management to handle the investments. He favors a rather broad discretion placed in a qualified director, though perhaps in the formative stages somewhat more stringent controls could be imposed by statute or an investment board and then relaxed as the program progresses.

Mr. T. W. Sette, Manager of the Bank of North Dakota, suggested that since the Bank has some personnel employed in the securities field, it would seem logical that the Investment Board should place its investment counsel in a special department of the Bank. The amount of additional help that would be needed to handle the increased responsibility is uncertain, but it appears that at least one investment counsel, plus clerical assistance, would be required. The placement of such personnel in a department of the Bank of North Dakota would permit joint utilization of the services and research of such counsel by the Investment Board and by the Bank, and also would more readily facilitate joint purchases of securities.

Recommendations

The Committee has prepared and recommends approval of a bill which would establish a State Investment Board composed of the Manager of the Bank of North Dakota, a member of the Board of University and School Lands, a Workmen's Compensation Commissioner, a commercial banker, and a faculty member from the College of Business and Public Administration at the University to represent the Teachers Insurance and Retirement Fund. The latter two would be appointed by the Governor. The Board would be charged with investing the moneys of the funds and would set general policies and procedures. The Board would be empowered to employ a Director and other personnel to carry on day-to-day investment duties within such limits as it may set. Cooperation with the Bank of North Dakota in employment of personnel and facilities would be required.

The Director would make the purchases, sales, and exchanges of securities within limits of law and Board policy and would make recommendations to the Board on investment policy matters.

The Board would be charged with investment of the moneys of all funds included in the report except the University and School Lands Funds. These funds cannot be placed under management of the Board because of constitutional restrictions, but the proposed bill does require that the Board of University and School Lands consult with the Investment Board on investment policies, though the results of such consultation cannot be binding. Separate accounts would be maintained for each of the funds and commingling of funds prohibited except to the extent deemed advantageous in actual purchase or sale transactions. Upon completion of such transactions the moneys or securities must be immediately credited to the indivdual funds.

The present lists of legal investments for the funds would be retained and, in addition, the purchase of corporate securities and short-term commercial and finance company paper would be authorized. In order for corporate securities to qualify for investment, they would have to be rated "A" or higher by a nationally recognized rating service approved by the Board or, in the case of commercial or finance company paper or nonrated securities, the issuing company would have to have a 5-year earning record which meets specific standards contained in the bill, as well as a 10-year default free record. The investment of each of the funds in these types of securities would be limited to 50% of its assets. This expansion in the list of permitted investments represents perhaps the most significant provision of the proposed bill. The additional types of investments, however, cannot be made applicable to the University and School Lands Funds because of constitutional provisions. The Committee recommends that no common stock be purchased by the funds at the present time although it may be desirable to expand into such fields at a later date, particularly in the case of the retirement funds.

The proposed bill adopts the reserve requirements recommended in the report. It was the opinion of the Committee that each of the funds should retain authority to purchase municipal and school district bonds because to prohibit such authority might result in increased interest costs to municipalities and school districts forced to sell their issues on the private market that could offset the increased yield to the state or pension trust funds.

Personal profit by members, officers, and employees on transactions by the Board is expressly prohibited under penalty of $10,000 fine or one year imprisonment or both. The cost of operation of the Board for the first two years would be appropriated out of the state treasury and reimbursed to the General Fund when definitely ascertained at the end of this period. Thereafter, based upon the first two years' cost experience, expenses would be estimated and prorated in advance and appropriated out of the individual funds.

Because the University and School Lands Funds, which represent more than 50% of the total funds considered, are tightly restricted by constitutional provisions both as to types of legal investments and as to management of such investments by the Board of University and School Lands, the Committee recommends that the Legislative Assembly submit a constitutional amendment to the people of the state which would provide that such funds shall be invested as the Legislative Assembly shall determine and would give the State Investment Board the power to make investments of University and School Lands Funds. The Committee is of the opinion that the approval of such constitutional amendment and the subsequent investment of University and School Lands Funds in accordance therewith will result in a substantial increase in income available for the support of the common schools and institutions.

It is the opinion of the Committee that even if only the most conservative yield increases are realized the proposed bill would be beneficial to the included funds. The Committee believes it is the obligation of the state to invest its funds in such a manner as will yield the maximum investment income consistent with a high degree of safety, maintaining a bond market for local municipal and school district securities, and promoting the economic development of the state. Adoption of the Committee's recommendations will go far toward achieving these objectives.

MANAGEMENT OF STATE-OWNED MINERAL INTERESTS

Two state agencies, the Board of University and School Lands and the Bank of North Dakota, conduct leasing operations on the vast majority of state-owned lands. A competitive bid method of

leasing is prescribed by law with an exception for small tracts, upon which leases may be negotiated. An annual rental of 25c per acre is set by law for oil and gas leases. The Board and the Bank have by regulation set a minimum required bonus of $1 per acre in the western portion of the state and 50c per acre in the eastern portion. Royalties are set by law at one-eighth and a minimum lease term of five years is also fixed by law.

Revenues received by the Board of University and School Lands and the Bank of North Dakota from the beginning of oil exploration and production to June 30, 1960, are as follows:

	University and School Lands	Bank of North Dakota
Rental	$1,903,000	$ 657,000
Bonus	5,144,000	1,453,000
Royalty	2,000,000	575,000

The University and School Lands Funds are currently sharing in production from about 100 wells while the Bank of North Dakota shares in about 76 wells.

The Committee inquired as to the degree of cooperation and uniformity of leasing policies between the Board of University and School Lands and the Bank of North Dakota. It was pointed out that the Governor and the Attorney General are two of the three members of the Industrial Commission which controls the Bank, and that these same two officials are also two of the five members of the Board of University and School Lands. Representatives of the Board and of the Bank stated that there was a high degree of cooperation and consultation on leasing policies. Sales are held on consecutive days in order to attract a maximum number of potential buyers.

It is the opinion of the Committee that the overlapping of the membership of the governing boards plus the apparent high degree of cooperation between such boards on leasing policies should render unnecessary the creation of any additional body for the purpose of centralizing leasing activities.

The Committee next inquired as to how income derived by the state from its leasing activities compared with that derived by private landowners. Representatives of state leasing agencies were of the opinion that private landowners were perhaps receiving more income in the form of rentals than was the state because of the 25c per acre annual rental specified by law. However, they also stated their belief that such low rental encouraged bidding and resulted in considerably higher bonus income to the state than to private landowners.

The question of "checkerboard" leasing, that is, the withholding of tracts pending development and production on adjoining tracts was considered. However, the Committee does not believe this to be feasible because the land leased by these agencies is already a "checkerboard" and also because such policy might serve to discourage leasing.

Representatives of leasing agencies also stated that they favored the present low rental or a flexible minimum. They believed that higher minimum rentals would tend to discourage exploration and development of the oil and gas industry in the state. It was their opinion that, in the long run, income from the state's share in production would be the largest source of revenue and that to discourage development by high minimum rentals would be to deprive the state of future income in the form of bonus and royalties.

The Committee is aware that a comparison of state and private leases would involve some degree of difficulty, due principally to an unwillingness on the part of landowners and brokers to disclose rental and bonus figures and also due to the fact that a valid comparison would require that the tracts involved possess similar geological characteristics and that the leases be executed as nearly as possible at the same time.

The limited time available precluded the making of such comparison by the Committee or the staff for submission to the Legislative Assembly. If the Legislative Assembly deems it desirable, it may consider the passage of a Resolution directing the Committee to make such comparison during the next interim on a sample basis for submission to the Legislative Assembly.

In summary, the Committee believes current leasing laws are practical, sound, and sufficiently flexible to meet current needs. In view of the high degree of cooperation between the State Land Department and the Bank of North Dakota, no centralization of state oil leasing functions is necessary.

Governmental Organization

Senate Concurrent Resolutions V, Z, A-A, and House Bill No. 723 directed the Legislative Research Committee to study state activities in the fields of occupational and professional licensing, public health activities, agricultural activities, and mental health. In addition, in response to a request from the Governor and the Superintendent of Public Instruction, the duties of their respective offices in regard to their services upon boards and commissions were reviewed. The Committee's findings and recommendations in these fields are given in the following reports and, in addition, a proposal relating to a state merit system is included as a final recommendation.

OCCUPATIONAL AND PROFESSIONAL LICENSING

Senate Concurrent Resolution V directed the Legislative Research Committee to study the feasibility of consolidating the licensing and regulation of trades and occupations in one central agency.

The passage of the masseurs, watchmakers, and physical therapists' licensing Acts by the 1959 Legislature brought to 28 the number of "self-licensing and regulating" trades, occupations, and professions in the state of North Dakota. These 28 are examined, licensed, and regulated by 25 separate boards. The increased costs of licensing with resulting requests to the Legislature for higher license fees, a degree of confusion among people dealing with the separate boards, and complaints from various sources as to the quality of examinations and the methods or standards of testing and grading applicants were cited by Senate Concurrent Resolution V as principal reasons for its introduction.

For the purposes of promoting better business management, improving examinations and inspection and better protecting the public interest, some 18 states had by 1952 established some type of central licensing agency to consolidate the licensing functions of many of these "self-regulating" occupations and professions. In some of these states central licensing was taken over by an existing office such as the Secretaries of State in Colorado and Georgia, or the Departments of Health in Iowa, Kentucky, Nebraska, New Hampshire, and Rhode Island. In this latter group only those occupations, ranging from 6 to 13 in number, having a direct bearing upon the public health were centralized.

Other states have established new departments to handle this function. They include: the Department of Professional and Vocational Standards in California, the Department of Registration and Education in Illinois, and the Department of Business Regulation in Utah.

The one thing common to all states having a central licensing agency is that all retain the individual occupational or professional boards to conduct and grade examinations. There is, however, a wide variance in the balance of powers between the individual boards and the central licensing department. Thus, in Georgia, the central agency handles only license applications and financial matters. In Nebraska, on the other hand, the central agency has additional authority to enforce licensing statutes, conduct investigations, hold hearings, and suspend or revoke licenses. Individual boards only prepare and grade examinations.

Between these two "extremes" there is a wide variety in the division of authority. The functions generally vested in individual boards include preparing, conducting, and grading examinations and the establishment of rules and regulations to govern the particular occupation or profession. The central agency generally processes applications, issues licenses, keeps records, handles financial affairs, approves rules and regulations, and may hear appeals from board decisions. The authority to supervise trade and professional schools, enforce licensing statutes, investigate alleged violations, conduct hearings, and make recommendations may be vested in either the boards or the central agency. Regardless of what division of functions is selected, close coordination and consultation between boards and the cental agency appear essential.

At the request of the Committee, an invitation was extended to representatives of all occupational, trade, and professional licensing boards to be present at a meeting of the Committee for the purpose of expressing their views in regard to the possibility of establishing a central licensing agency. Representatives of some 22 of the licensing boards attended the Committee meeting and

presented statements as to policies and procedures of their respective boards. The board representatives present were nearly unanimous in their opposition to a central licensing agency, although it was pointed out by several members of the Committee that any central agency which might be proposed would not replace the individual boards but would rather merely centralize clerical duties, such as issuance of licenses and collection of fees.

As the next step in the study, a questionnaire was prepared and mailed to all examining boards regarding income and expenditures, the number of applicants taking examinations and the percentage of licenses issued, as well as review and appeal procedures for unsuccessful applicants.

The returns on the questionnaire and statements made by the various board representatives revealed that a majority of the licensing boards operate at a rather low cost, with many board members actually donating a portion of the time required for administering examinations and the clerical work involved in the collection of fees and issuance of licenses. Boards having relatively high costs of operation were those governing barbers, nurses, hairdressers, pharmacists, plumbers, and real estate brokers, who maintain full-time offices and carry on inspection and policing functions among their licensees.

In the opinion of the Committee the establishment of a central licensing agency would not eliminate the need for individual boards to examine applicants, promulgate standards for the individual occupation or profession, and carry out necessary inspections to insure compliance with these standards. The Committee feels that the costs of a central agency in addition to existing boards would be greater than the present costs and that any improved efficiency which might result from a central agency would probably be insufficient to warrant the change.

It is the recommendation of the Committee that no central licensing agency be established by the state at this time.

The Committee noted from responses to the questionnaire, as well as from complaints reaching individual members of the Committee, that at least 3 of the trades, occupations, and professions have substantially high failure rates among applicants taking examinations for licenses. The State Board of Architecture during the past 3 years has examined 34 applicants but issued licenses to only 5 of these applicants. Of 97 applicants taking electricians' examinations in the past 2 years, 57 have been issued licenses. Also within the past 2 years, 175 applicants took plumbers' examinations and 99 were successful.

Because Senate Concurrent Resolution V referred to complaints from citizens of the state that examinations for trade and occupational licensing may not truly measure the ability of the applicants and at times the testing and grading procedures have been questioned, the Committee turned its attention to the possibility of providing an appeal procedure for unsuccessful applicants who have reasonable grounds to feel that the action of an examining board was arbitrary or biased.

The Committee has prepared and recommends approval of a bill which would require every examining board to file with the Secretary of State all completed examination papers, the evaluation of any oral or practical examination, and the record of action taken by the board. An applicant would be entitled to examine his paper and any unsuccessful applicant having reasonable grounds for believing that the action of the board was unreasonable could, upon payment of a $25 fee, apply for a review. The review board would consist of the Secretary of State and not less than four others appointed by him and possessing, as nearly as practical, the same general qualifications as the original examining board. The applicant and a representative of the examining board would be entitled to appear before the review board.

The review board would be authorized to compare the unsuccessful applicant's paper with other tests given at the same time and if it compares favorably, give it a passing grade. If the board finds that the examination is unrealistic or not a fair test of the applicant's knowledge, the board would have the power to conduct a new examination and any applicant who has failed the preceding examination could take the new examination. Any applicant whose paper is re-graded and given a passing grade or who passes the new examination given by the review board would be considered of equal status in the particular profession, trade, or occupation as if he had passed the original examination. Appeal to the district court from decisions of the review board would be specifically authorized.

The Committee is aware that some difficulty may be encountered in securing unbiased members of a particular trade, occupation, or profession to serve upon a review board but, at the

other extreme, the value of a board of laymen without any specialized knowledge would be questionable. It is believed that the requirement that appointed review board members possess "to the extent practical" the same qualifications as the examining board members is a reasonable compromise.

It is the opinion of the Committee if a study of the evaluation or examination paper by the applicant is permitted and a review by an appeal board is possible, there will be less reason to fear an abuse of authority by licensing boards.

CONSOLIDATION OF PUBLIC HEALTH ACTIVITIES

Senate Concurrent Resolution Z directed the Legislative Research Committee to conduct an interim study into the feasibility of consolidating or unifying state activities in the field of public health into one agency.

The Committee decided to turn its attention first to the specific directive to consider the feasibility of consolidating public activities in the State Medical Center at the University of North Dakota, and to reserve its study of unification of other activities for later consideration.

Consolidation of Health Department and State Medical Center

The proponents of this resolution apparently felt that some of the statutory responsibilities of the Health Department and Medical Center overlap, and that a consolidation of the two departments would permit the rendering of better service to the citizens of the state; make a stronger medical school; provide new avenues for service to university students and faculty; and, on the whole, provide better services in the field of public health without additional cost. These proponents felt that if a true consolidation of the two departments proves impractical, a high degree of cooperation in some areas of activity of the two agencies could be effected whereby the Medical Center could provide some services or facilities to the Health Department, including the use of medical center funds.

The Committee first studied the organizational structure and duties and functions of the State Health Department. A meeting was then held at the State Medical Center in Grand Forks, attended by both Health Department and Medical Center personnel, and at this meeting the activities and facilities of the Medical Center were explained to the Committee. The Committee then concerned itself with making a determination as to whether or not it should make a recommendation to consolidate the two departments.

It became increasingly apparent to the Committee from testimony offered by key personnel of both the Health Department and the Medical Center that actual activities or operations of the two departments do not overlap to any appreciable degree or to the extent that inefficiency of operation exists. The activities of the State Medical Center lie in two areas—service to the medical profession and the state medical agencies, and in teaching. The function of the Health Department is to provide a healthful environment for all persons in the state and to extend preventative medical facilities and services to the people of the state. In short, the Medical Center services the medical profession while the Health Department services the public.

Although it is true that laboratory work is carried on by both departments, it was found that the work involved is not directed toward the same end, and there is no duplication of effort at the present time.

Medical Center activity, such as pathological services, which is strictly a medical function as distinguished from a public health function; biochemistry, a highly specialized phase of laboratory work; and bacteriology, which is carried on for teaching purposes as distinguished from diagnostic purposes, do not in any way correspond to the laboratory work carried on by the Health Department. Insofar as is practical, cooperation between the two departments concerning laboratory work appears to be excellent at the present time.

Medical technology students and other medical students in the university program work in the Health Department Laboratories during a portion of their training.

Another practical factor to be taken into account when considering the consolidation of laboratory facilities of the two departments is the diagnostic service that must be given to the people of the state by the Health Department laboratories. If laboratory functions of the two departments were to be combined under the Medical Center, it is probable that the laboratory would be located at Grand Forks. The

value of public diagnostic service rests largely on the speed with which results can be given to the public. It is doubtful that the western part of the state could receive speedy diagnostic service from a laboratory located at the eastern border of the state. It is probable, then, that even with a consolidation of laboratory facilities under the Medical Center a second laboratory would have to be maintained in Bismarck or some other western city which could service that part of the state. If, on the other hand, laboratory facilities were to be consolidated under the Health Department, a backward rather than forward step would be taken in regard to better utilization of public laboratory facilities by faculty and students in the medical fields, and such a utilization of facilities appears to be one of the major reasons for desiring a consolidation of the two departments.

Another item to be considered when examining the possibility of consolidation of activities under the Medical Center is the lack of space available to the Medical Center. Even at the present time it is found that more than one class is sometimes scheduled to be conducted in the same laboratory or classroom at the same time, and the situation could only be worsened if additional laboratory duties were to be assumed by the Medical Center.

The Committee also considered the possibility of consolidating non-laboratory functions of the Health Department under the Medical Center. The Committee recognized the fact that most public health activities require close cooperation with other state departments, such as the welfare and education agencies, and that such cooperation can best be attained when such activities are all located at the state capital.

It thus appears to the Committee that consolidation of the Health Department and the Medical Center is precluded by lack of physical facilities and by the fact that the location at Grand Forks is far less than an ideal one for a department which is bound to provide extensive services to the people of the entire state. This fact, combined with the fact that the Committee was unable to find that the activities of the two departments are overlapping to any real degree, leads the Committee to the conclusion that consolidation of the two departments is not presently feasible.

The Committee also is of the opinion that unification on a limited basis by transfer of certain functions from one department to the other is not desirable at the present time. Evidence presented to the Committee by both departments would indicate that in those areas where there is statutory overlapping of responsibility, cooperation is exceedingly close. Any transfer of functions at the present time might only hinder the operation of an otherwise smoothly working cooperative effort.

Inspection and Licensing of Restaurants, Hotels, and Motor and Trailer Courts

The Committee next turned its attention to the area of inspection and licensing of restaurants, hotels, boardinghouses, lodginghouses, and motor and trailer courts. Such inspection and licensing is presently the responsibility of the State Laboratories Department. The Laboratories Department currently inspects and sets standards for a large number of commodities including foods and drugs, narcotics, oleomargarine, eggs, cosmetics, petroleum products, commercial feeds and fertilizers. Additional types of establishments inspected include bakeries, grocery stores, sausage plants and similar food handling establishments.

District and city health unit inspectors also carry on inspection functions, particularly in the restaurant and hotel fields, and there is admittedly much duplication of inspection functions with a resulting harassment to proprietors, principally in the restaurant field. An appeal from the State Restaurant Association to the last session of the Legislature is one of the reasons for the Committee's attention to this particular field.

The State Laboratories Department currently has eight field inspectors active in the restaurant, hotel and motel inspection fields. District and city health units employ 25 to 30 inspectors who also inspect these establishments, in the 30 counties and 13 cities served by such health units, as a part of their duties. The State Health Department does not inspect such establishments.

Representatives of the State Laboratories Department expressed doubt that the number of inspectors could be cut if the inspection and licensing of restaurants, hotels and motels were transferred to health authorities, because the department would still need to pick up samples of food and drugs and other commodities for

testing. The Executive Director of the State Health Department estimated that it would require two field inspectors to cover areas in the state not serviced by district or city health units.

The Committee was of the opinion that the elimination of duplication and the establishment of uniform standards for inspection of hotels, restaurants, and motels were highly desirable. Although the transfer of such inspection functions from the State Laboratories Department to health authorities would apparently require two additional fieldmen in the Health Department, it is the firm opinion of the Committee that any additional expense involved could be offset by a reduction in the number of Laboratories Department inspectors. A field inspector force of eight men should not be required to carry out the remaining duties of the State Laboratories Department.

The Committee has prepared and recommends approval of a bill which would transfer the functions of inspection and licensing of restaurants, hotels, boardinghouses, lodginghouses, and motor and trailer courts from the State Laboratories Department to local health authorities. The term "health authorities" as defined in the proposed bill means the district board of health in areas where a health district is functioning; the city board of health in areas where a city board of health is functioning and approved by the Health Department; or the State Health Department in areas not served by either a district or city board of health.

It is the opinion of the Committee that the proposed bill will certainly eliminate duplication of inspection and licensing functions. In addition, it is believed that a high degree of uniformity can be achieved through the establishment by the State Health Department of statewide inspection standards.

Sanitary Inspection of Dairy Products

The next field considered by the Committee was that of sanitary inspection of dairy products. This field appears to be marked by some degree of duplication of functions. The Dairy Department within the office of the Commissioner of Agriculture and Labor has seven field inspectors charged with the responsibility of inspecting and regulating creameries, dairies, and dairy products on a statewide basis. District and city health units inspect milk producers and milk bottling plants in areas where such units have been established, enforcing municipal milk ordinances. Health authorities from other states and the federal government also do some inspection work within the state.

For the purpose of determining the extent of duplication and the amount of variance in sanitary standards throughout the state, the Committee held a hearing to which all affected state and municipal officials, dairy products producers and processors were invited. The specific action contemplated by the Committee was a transfer of dairy sanitary inspection functions from the Dairy Department to health authorities. Producers and processors appearing at this hearing were nearly unanimous in opposing such transfer. Representatives of the Dairy Department stated that the department does not duplicate the inspections by city health authorities unless requested to do so. There is some duplication of inspections within district health units due to the fact that the Dairy Department does inspect within health districts if the cities have no qualified inspectors.

The Committee, while acknowledging that some duplication of inspections exists, is of the opinion that such duplication is not an extremely serious problem. Health authorities are interested only in Grade A milk, while the Dairy Department is involved in inspection of all dairy products. The Dairy Department does accept the inspections of certain city health agencies. It appears to the Committee that much of the duplication is between the various health agencies themselves rather than between health agencies and the Dairy Department. These duplication and inspection conflicts which do arise can perhaps be minimized by the State Health Department in urging the establishment of more uniform inspection systems and acceptance by one health agency of the report of another agency's inspection. Cooperation between health agencies and the Dairy Department also appears essential.

The Committee recommends that during the next biennium joint conferences be held between fieldmen and agency heads of district health units, municipal health departments, and the State Dairy Department in order to develop common understanding and interpretation of the U. S. Public Health Milk Code, which should be the standard governing inspections by all agencies.

The Committee makes no recommendation

for the transfer of sanitary inspection functions at this time.

Attorney General Licensing Department

The Committee next considered the miscellaneous licenses issued by the Attorney General Licensing Department. This department currently licenses pool halls, bowling alleys, dance halls, theaters, taxicabs, soft drink dealers, tobacco or cigar dealers and privately owned halls used for public purposes. The principal function of the department is, however, liquor licensing. Coin-operated amusements are also licensed by this department.

While these licenses are not issued strictly on the basis of the possible effect of such activities upon public health, the Committee was of the opinion that they bore sufficient relationship to public health to be included within the scope of the study directed by Senate Concurrent Resolution Z.

Members of the Committee questioned the need for state licensing and inspection of a number of the above establishments. Representatives of the Attorney General's office agreed that the necessity for licensing some of these establishments was perhaps questionable, but they pointed out that such licensing and inspection served as an aid to enforcement of liquor control and other licensing laws, which is the main function of the Attorney General Licensing Department. Revenue yield from the issuance of miscellaneous licenses during the fiscal year of 1960 was about $45,000, the greater part of which comes from the soft drink and cigar and tobacco licenses.

The Committee was of the opinion that there is not sufficient justification for the state to continue licensing soft drink dealers or taxicabs. It was pointed out that soft drink bottling plants are under the supervision of the State Laboratories Department for sanitary purposes and that such supervision should be adequate to protect public health. Taxicabs are also licensed and regulated by the Public Service Commission and duplication of licensing does not appear desirable. In addition, the Committee feels that the cigar and tobacco license should be consolidated with the cigarette and snuff license currently issued by the State Laboratories Department. This consolidated license would then be administered by the Attorney General Licensing Department.

The Committee has prepared and recommends approval of a bill which would eliminate the license required for soft drink dealers and for taxicabs. In addition, the bill would combine the cigar and tobacco license with that required for cigarettes and snuff and would make the issuance of such license the responsibility of the Attorney General.

CONSOLIDATION OF STATE AGRICULTURAL ACTIVITIES

Senate Concurrent Resolution A-A directed the Legislative Research Committee to "study the various activities of the state in the field of agriculture now being carried on by various departments, agencies, boards, and institutions, and to determine the merits and feasibility of consolidating the administration of many or all of the state agricultural activities in the department of agriculture and labor".

The resolution recited the fact that the Constitution of North Dakota established a Department of Agriculture and required that this department be maintained and staffed by the state. Yet, while there are many activities of the state in the field of agriculture, the majority of them have been placed under the jurisdiction of separate boards, agencies, and institutions. It was the thought of the sponsors of this resolution that if consolidation of many or all of these agricultural activities within the Department of Agriculture and Labor were feasible it would carry out the intent of the Constitution in regard to this department and would eliminate confusion and any possibility of duplication; would establish definite responsibility for these functions; and might promote further efficiency in governmental activities.

A brief listing of the principal agricultural functions of the state, together with the present department or division having supervision or authority over them is as follows:

Commissioner of Agriculture and Labor

Dairy Division

Under the direction of the dairy commissioner, this division is engaged in the promotion, improvement, and regulation of dairy activities and products, and the enforcement of applicable laws and regulations.

Livestock Brand Division

This division records brands and marks for the identification of various types of livestock.

Bee Inspection Division

This division licenses beekeepers, inspects beehouses, and directs prevention, treatment, or destruction of diseased bees.

Nurseries Division

This division licenses and inspects nurseries and directs treatment or destruction of nursery stocks harboring pests or diseases.

Predatory Animal Control Division

This division cooperates with federal authorities in the control and destruction of predatory animals.

Division of Cooperatives

This division assists in establishment and maintenance of cooperatives and compiles records of their activities and progress.

Livestock Division

This division is responsible for approving bonds and licensing dealers in cattle, hogs, sheep, poultry, etc.

Labor Division

Under a deputy commissioner of agriculture and labor, administers and enforces labor laws and regulations, investigates labor conditions and disputes, sets standards of wages and hours. In addition, the commissioner of agriculture and labor serves as state statistician. His department is charged with gathering and publishing agricultural marketing information. Investigation and prosecution of complaints of discrimination in the sale of farm products is his responsibility.

The commissioner also serves on a number of boards and commissions which regulate other agricultural activities. They include: the Board of Administration, State Soil Conservation Committee, Poultry Improvement Board, Water Conservation Commission and the newly created Dairy Products Promotion Commission and the Rabies Control Committee. He is also a director of various fair and agricultural associations.

Board of Administration

State Seed Department

Located at the North Dakota State University of Agriculture and Applied Science this department is headed by a state seed commissioner who is appointed and supervised by the board. This department is responsible for examining, testing and labeling seeds. The seed commissioner has charge of inspecting and grading potatoes and licensing wholesale potato dealers.

Board of Higher Education

Experiment Stations

Located at Fargo, Dickinson, Williston, Minot, Langdon and Edgeley, they are under the control of and subject to the supervision of the Board of Higher Education. Their functions include testing and experimentation in a wide variety of agricultural products. The superintendent of each station makes an annual report to the commissioner of agriculture and labor.

Extension Division, NDSU

County Agents

The active direction and supervision of the work of the county agents is carried on by the extension division, NDSU, with the advice of the respective county commissioners. County commissioners are also responsible for administering grasshopper and rodent control programs.

State Livestock Sanitary Board

Seven members, appointed by the Governor, it is responsible for the protection of the health of domestic animals and the determination and use of the most efficient means for the prevention and control of dangerous, contagious, and infectious animal diseases. Inspects meat packing facilities.

North Dakota Poultry Improvement Board

Nine members, including the commissioner of agriculture and labor as an ex officio member, make up this board. Responsible for grading services, breed improvement and disease control promotion and supervision. Regulates egg grading and licensing of poultry operators.

State Soil Conservation Committee

An ex officio board of which the commissioner of agriculture and labor is a member. Supervises, assists and coordinates in the establishment and operation of soil conservation districts.

Miscellaneous

A number of other boards, commissions, etc also perform functions related to agriculture. They include the Dairy Products Promotion Commission, State Wheat Commission, and Potato Development Commission which are largely concerned with stabilizing and improving the agricultural economy of the state through developing new uses and markets for agricultural products. The dairy commissioner now handles the licensing of livestock dealers and sales rings, a function formerly performed by the public service commissioner. Various farmers' institutes are conducted under the supervision of the NDSU extension department.

Committee Hearings

The first formal meeting and hearing in regard to this subject was held on the campus of the North Dakota Agricultural College for the purpose of conferring with the President, the Dean of the College of Agriculture, and other officials on the campus in the fields of the agricultural extension service and agricultural experiment stations. In addition, the Committee met with the State Seed Commissioner whose operations are centered at the campus.

It was the opinion of the president of the NDSU, the Dean of the College of Agriculture, and experimental station personnel that the main purpose of the North Dakota State University was to provide an education to the youth of the state and to carry on agricultural research activities that would result in improved farming methods in the state. They were convinced, however, that an institution created for these purposes should avoid any type of "police work" that might be involved in any of the regulatory functions in the field of agriculture. In their opinion, the services of the College of Agriculture would gradually become confused and intermingled with their regulatory functions and when a point was reached that the College of Agriculture was telling the farmer what he could or could not do in certain areas of agricultural activities, then the entire program of research and training would be endangered.

The State Seed Commissioner expressed the opinion that the State Seed Department is a closely-knit department, in that all its activities relate to one another. He was of the opinion that no other state in the nation had all of its allied functions in regard to seeds under one agency, as is the case in North Dakota. Since the State Seed Department has considerable law enforcement activity, he seriously doubted that the College of Agriculture would want to assume responsibility for its activities. The Commissioner stated that he did not believe the State Seed Department should be placed under the the supervision of a political department as would be the case if it were supervised by the Commissioner of Agriculture and Labor. He reported that personnel of the State Seed Department become highly specialized in their work and any change in the political arena relating to the Department of Agriculture and Labor could in his opinion have a disastrous effect upon the program of the State Seed Department if employees were discharged for political reasons.

The State Seed Department employs six permanent inspectors and temporary inspectors are hired in the course of the season, as the work builds up, to a total of approximately 30. The Seed Commissioner was uncertain whether the inspectors of the State Seed Department would be fully qualified to aid in inspections in regard to other agricultural activities, but expressed the thought that perhaps they would have some qualifications in other fields or could be trained in those areas.

A subsequent hearing in regard to agricultural activities was held in Bismarck at which representatives of the Department of Agriculture and Labor, State Board of Administration, State Livestock Sanitary Board, Poultry Improvement Board, Soil Conservation Committee, Dairy Products Commission, Wheat Commission, and the Potato Development Commission were invited to be present. The Commissioner of Agriculture and Labor expressed the opinion that agricultural activities were too scattered in the governmental structure of North Dakota, but expressed uncertainty as to which functions should be transferred to the Department of Agriculture and Labor. He was uncertain as to the amount of any savings that might result from the transfer of these functions to the Department of Agriculture and Labor, but he expressed the thought that such a consolidation might permit a greater use of joint personnel. While he stated that the State Seed Department had operated well under the supervision of the Board of Administration, he thought it

could operate equally well under the Department of Agriculture and Labor, but declined to make any specific recommendations in regard to any transfers.

Representatives of the State Seed Commission expressed opposition to making it a division of the Department of Agriculture and Labor. They reported that at present the State Seed Department is entirely nonpolitical, which results in better tenure for personnel and makes operations more flexible. Under the present organizational system the State Seed Department can begin new work and establish new programs as quickly as they desire without having to clear matters through any higher authority.

Representatives of the Office of the State Veterinarian expressed strong opposition to any transfer of their department to the Department of Agriculture and Labor. They expressed the thought that there would be no additional efficiency as a result of such a transfer or any possibility for use of joint personnel, since the field work of the State Veterinarian is carried on primarily by private veterinarians on a part-time basis. They stated that a transfer to the Department of Agriculture and Labor would make it more difficult to hire competent personnel since they might become involved in politics.

Representatives of the Poultry Improvement Board strongly recommended that their board maintain an independent status since its current activities are governed by a board representing the poultry industry. It was reported that the board works closely with the State Veterinarian in disease control.

Representatives of the Dairy Products Commission recommended that their organization be left in an independent status in order to keep the program and its personnel out of politics, and to provide for direct participation by the dairy industry in the program.

Representatives of the State Wheat Commission expressed similar opposition to any transfer.

Representatives of the State Soil Conservation Committee expressed strong opposition to any transfer to the Department of Agriculture and Labor, stating that they could see nothing to be gained and reporting that most states have organized soil conservation functions in a manner similar to North Dakota.

The only suggestion of a change in which there might be some merit to a transfer of functions was made by a member of the State Board of Administration. Mr. Palmer Levin expressed the personal opinion, as one member of the Board of Administration, that the State Seed Department should not be under the supervision of the State Board of Administration since such a function is so foreign to other duties and responsibilities of the Board. He reported that practically no time is spent by the Board of Administration in supervision of the program, and their activities are largely limited to financial supervision. While the Board of Administration does not object to continuing the supervisory responsibility for the State Seed Department, he expressed the thought that it might be more logical to place it elsewhere. However, he suggested that care should be taken that any transfer would not hinder its operations or result in the discharge of qualified personnel.

Committee Conclusions

From testimony received at the various hearings conducted by the Committee, it was obvious that the unanimous opposition to any transfer of agricultural functions to the Department of Agriculture and Labor was primarily based upon the fact that the department is headed by an elected public official and that, as a result, there was an opportunity for politics to enter into the program. A unanimous fear was expressed that if politics should be the basis for selection or retention of personnel it would become very difficult to obtain and to retain experienced and qualified persons necessary for the proper functioning of the program. In addition, the fear was expressed that political pressure might destroy the effectiveness of some programs, result in the lowering of standards, or permit exceptions to usual standards to groups or individuals because of political favoritism.

In the opinion of the Committee, partisan politics should not be the basis for the employment or retention of personnel in the more specialized fields of agricultural functions. Since North Dakota does not have a full or limited merit system covering all state employees, it must be recognized that there is a possibility for partisan politics to affect the employment and retention of personnel. Consequently, the fears expressed by representatives of various departments and agencies presently carrying on agricultural functions cannot be completely disregarded. Therefore, while the Committee is of the opinion that some consolidation of these functions would result in

improved efficiencies, and some savings could be made through the common utilization of joint personnel and such consolidation might remove confusion in regard to responsibility for certain agricultural functions, the Committee cannot at this time recommend a transfer and an establishment of these agencies as divisions of the Department of Agriculture and Labor.

DUTIES of GOVERNOR and SUPERINTENDENT of PUBLIC INSTRUCTION

Upon request of the Governor and the Superintendent of Public Instruction, the Legislative Research Committee agreed to undertake a review of the duties of the Governor and the Superintendent of Public Instruction with special reference to their membership on various boards, commissions, and committees. Both the Governor and Superintendent of Public Instruction based this request upon the fact that their service upon boards and commissions was so time consuming that insufficient time was available to carry out the principal duties of their offices.

Information submitted by the Governor and obtained by consulting with other members of the various boards upon which the Governor serves revealed that the Governor spends approximately 117 days per year in attendance at meetings of some 31 boards, commissions, and committees. In addition, approximately 46 days per year are spent in office conferences regarding matters directly related to the affairs of such boards, making a total of approximately 163 days per year. It was found that the Superintendent of Public Instruction spends approximately 173 days per year upon matters involving his membership on some 12 boards, commissions, and committees. Discounting weekends, holidays, and vacation time there are approximately only 263 working days per year. Deducting time spent on these various bodies, it appears that the Governor is left with approximately 100 days and the Superintendent of Public Instruction with approximately 90 days remaining to devote to the duties of their offices.

It was the opinion of the Committee that the Governor and Superintendent of Public Instruction should be removed from membership on some boards and allowed to appoint representatives on other boards to attend such meetings as they were unable to attend. By thus relieving the Governor and Superintendent of Public Instruction of membership or the duty to attend such meetings, it was felt that these officials would have more time to devote to the general policy-making duties of their respective offices.

In regard to the Governor's duties, the Committee recommends that the Governor be relieved of membership on the Board of Directors of the Mandan Fair, the Board of Relief for Wrongful Imprisonment, and the Labor Dispute Board. In the case of the Labor Dispute Board, the Commissioner of Agriculture and Labor would take the place of the Governor.

It is further recommended that the Governor be authorized to appoint a representative to serve in his stead at such meetings as he is unable to attend on the Civil Defense Council, State Soil Conservation Committee, State Safety Committee. Indian Affairs Commission, Board of Directors of the State Historical Society, and the State Water Conservation Commission.

In addition, the Committee recommends that the law establishing the Advisory Committee for the Minot Fair and the Board of Directors of each state fair association be repealed since they have not functioned for a number of years, and that the laws establishing the Commission to Hear Petition for Insurance Company Consolidation or Reinsurance, the Board to Control Distribution of Laws, and the Board to Award Enrolling and Engrossing Contracts be repealed and that the functions of these boards be made the responsibility of the Commissioner of Insurance, Secretary of State, and Department of Accounts and Purchases respectively. Thus the Governor would be relieved of membership on these boards.

In regard to the duties of the Superintendent of Public Instruction, the Committee recommends that he be relieved of membership on the Health Council, Indian Affairs Commission, Board of Directors of the State Historical Society, State Board of Canvassers for Primary Elections, and State Board of Canvassers for General and Special Elections.

The Committee recommends that the Game and Fish Commissioner replace the Superintendent of Public Instruction on the Board of Directors of the State Historial Society and that the State Treasurer take his place on a State Board of Canvassers, which board would consist of the Clerk of the Supreme Court, Secretary of State, Treasurer, and the State Chairmen of the two political parties. This board would take the place of the State Board of Canvassers for Primary Elections and the State Board of Canvassers for General and Special Elections.

MENTAL HEALTH

Chapter 238 of the 1959 Session Laws directed the Legislative Research Committee to study existing mental health facilities and programs in North Dakota for the purpose of reorganizing and coordinating them and authorized an appropriation for professional assistance in making the study.

The Committee after reviewing the area of study included in Chapter 238 decided that it would be desirable to obtain professional assistance in formulating recommendations for a coordinated and effective mental health program in North Dakota. The Committee requested assistance from the National Institute of Mental Health, which is a division of the Public Health Service , U. S. Department of Health, Education and Welfare. This assistance was provided by a Public Health Service survey team at no cost to the state.

The Public Health Service survey team was composed of professional personnel from the Community Service Branch, National Institute of Mental Health, and from the Mental Health section of the Kansas City regional office of the Public Health Service assisted by a special consultant in mental retardation. This survey team spent part of a year becoming familiar with the actual and potential mental health resources in the state, as well as their special characteristics.

Team visits were made to the state in October of 1959, and in February, May, and July of 1960. On these occasions the survey team visited the major mental health facilities in the state and met with officials of those state agencies responsible for the various mental health activities. In addition, they visited the University of North Dakota, the State University, and two state teachers' colleges. They talked with local health and welfare officials, general medical practitioners, juvenile judges, and officials of private voluntary agencies and groups. Conferences were also held with representatives of the Indian Health Service area office and with staff members of the Kansas City regional office of the Department of Health, Education and Welfare concerned with health and welfare programs in North Dakota.

The preliminary findings and recommendations of this survey team were first discussed in July of 1960. At this time the survey team stated that they had met with a response of helpfulness, interest, cooperation, and concern from all persons contacted in the state. The survey team said there was ample evidence that the people of North Dakota are desirous of improving and expanding the mental health program.

The survey team stated to the Committee that there must be four elements of a comprehensive mental health program to ensure that all aspects of mental health are encompassed. These elements are:

1. Services designed for diagnosis, care, treatment, and rehabilitation of the mentally ill and mentally retarded, including private and public psychiatric out-patient services, psychiatric in-patient services in general hospitals and mental hospitals, and rehabilitation services in hospitals, clinics, and in the community;

2. Mental health consultation and services to, and training for professionals who deal with people with health, welfare, or social problems;

3. Health, education, and information services to promote the mental health of the public and to inform them about mental illness and emotional disturbance so that as citizens they may be aware of their community needs; and

4. Research and training, including staff development opportunities and continuous program evaluations.

The team pointed out that these elements are not sharply divided areas, but rather each is a continuation of the previous element. There is an increasing experience in this country and abroad, they stated, to show that when local community facilities are available, admission to mental hospitals, schools for the mentally retarded, or training schools may be avoided. The special survey team stressed the fact that the basic step toward a well-founded mental health program is to place and treat the problem in the local community so that family and social ties can be maintained.

The modern concept of care for the mentally ill and the mentally retarded which emphasizes treatment in the community instead of long-term care in an institution has many implications for all community health and welfare programs, particularly those of public welfare and public health agencies. The mental hospital must have a treatment-oriented program and be closely integrated with community agencies. Local psychiatric units and general hospitals are needed to provide patients with short-term, intensive treat-

ment with a minimum of isolation and disruption of their family, vocational, or social ties. The survey team went on to say that many individuals, groups, and facilities would necessarily have to be involved to provide mental health activities essential to adequate treatment and rehabilitation. Local health services are concerned, for example, with the promotion of heatlh and the identification, treatment and rehabilitation of the ill. Public welfare agencies certainly have a significant role in rehabilitation, treatment, and prevention. Other agencies having important mental health functions include the public school system, courts, prisons and correctional agencies, and law enforcement officers, since they are involved in daily contact with the mentally ill and emotionally disturbed. Of course, the church is a major institution involved in mental health.

The survey team also presented to the Committee an inventory of North Dakota's mental health program for the mentally ill, mentally retarded, emotionally disturbed children, juvenile delinquents, and those suffering from alcoholism. While this survey team pointed out areas of deficiency in these programs, it was generally conceded that North Dakota has, in most areas, the basic program with which to work for an effective, well-rounded mental health program. It should be pointed out that members of the survey team were not critical of North Dakota's programs in the field of mental health, but rather they complimented the state for having done as much as they had with the funds available.

The survey team also commented on the programs in promotion of mental health, the training of mental health personnel, and research undertaken in the field of mental health in North Dakota. While they found in these areas that North Dakota's programs should be improved, again they stated that our state had the basic framework to go ahead and develop a sound mental health program.

One of the major recommendations by the survey team, repeatedly stressed, was that there must be a central mental health authority in the state government to determine, promote, evaluate, and coordinate all phases of mental health in the state of North Dakota, both on a state level as well as in political subdivisions and among private agencies. They stated that in order for North Dakota to avoid duplication in the field of mental health, it must have a state mental health authority that would be the overseer or coordinator of all mental health activities in the state.

Based on the recommendations of the Public Health Service survey team, the Committee recommends that a mental health authority be established in the State Health Department. While the survey team made no recommendations as to the specific state department in which the state mental health authority should be established, the Committee felt that since the State Health Department had the primary duty of dealing with all aspects of health in the state of North Dakota, it was the logical place to establish this authority. Some of the duties of the mental health authority on the state level would be to perform the following functions in the general field of mental health:

1. Cooperate in providing services to state and local departments, agencies, and other groups now operating programs for the prevention of mental illness, mental retardation, and other psychiatric disabilities;

2. Assist in providing informational and educational services;

3. Assist in providing consultative services;

4. Assist in providing out-patient diagnostic and treatment services;

5. Assist in providing rehabilitative services for patients suffering from mental or emotional disorders, mental retardation, and other psychiatric conditions; and

6. Coordinate all mental health activities, to such extent possible, in the state.

The Committee also recommends that enabling legislation be passed authorizing cities, villages, counties, and health districts, or any combination thereof, and private nonprofit corporations to establish and maintain community mental health service units. It was recognized that some political subdivisions would undoubtedly be too small to support a community mental health service unit. Therefore, the Committee recommends that such legislation authorized that any combination of political subdivisions may combine their efforts in the promotion of mental health programs.

The Committee realizes that private organi-

zations may be of great assistance in this field, and therefore it has provided that these organizations may also function in the field of mental health as a part of the state program. Each mental health service unit would be governed by a board of directors to be appointed by the governing body of the political subdivision comprising such unit. The bills accompanying this report providing for the establishment of community mental health service units also provide that the board of directors of each unit may hire such personnel, both professional and administrative, as may be needed to carry out the program of the local community mental health service unit. The bill providing for the mental health authority provides also that to the extent funds are made available, the mental health authority in the State Health Department shall distribute these funds to community mental health service units on the basis of their proposed budgets and plans. However, there is a limitation as to state aid in that no more than 40% of the operating and maintenance costs of these community mental health service units could be provided by the state.

In addition to the duties of the mental health authority discussed above, the mental health authority in the State Health Department would have a duty regarding those communities which have established or which were in the process of establishing a community mental health service unit and desired state financial participation to:

1. Establish rules and regulations governing eligibility to receive state aid, and in this regard the mental health authority would prescribe qualifications of personnel, quality of professional service, in-service training, educational leave programs, and eligibility for care and treatment, so that no person would be denied service on the basis of race, color, or creed; approve fee schedules based on the ability to pay; and also require that any person who could afford to pay for his own treatment should pay at a rate customarily charged in private practice;

2. Review and evaluate local programs and the performance of professional and administrative personnel and make recommendations thereon;

3. Provide consultative staff service, to the extent available, to those communities having mental health service units; and

4. Employ qualified personnel, to the extent funds are available, to aid the state in providing these services.

Another important provision of this bill is for a mental health coordinating committee. This committee would be composed of the State Health Officer as chairman, the Superintendent of Public Instruction or his representative, the Executive Director of the State Welfare Board or his representative, the chairman of the Board of Administration or his representative, and such other members as may be appointed by these people to serve on this committee. The purpose of this committee would be to review, evaluate, and coordinate all the functions, programs, and services of all state agencies, political subdivisions, and private organizations receiving state aid in the field of mental health to prevent duplication of activities and provide for cooperation in the many fields of activities regarding mental health.

The Legislative Assembly in 1959 provided for an appropriation to the Board of Administration to be used in the creation and development of a children's psychiatric out-patient clinic as a part of the State Hospital. The purpose of this clinic was to provide psychiatric assistance to those youths and children placed under the control of the state of North Dakota through operation of law. Since the Committee is recommending that the state mental health authority be placed in the State Health Department, it also recommends in a separate bill that administration of the Children's Psychiatric Clinic be transferred from the Board of Administration to the State Health Department. This bill also provides that the staff of the Children's Psychiatric Clinic may be used by the mental health authority in the State Health Department to a limited extent in carrying out mental health services and programs undertaken by the Health Department.

It was the thought of the Committee that since psychiatric professional personnel are most difficult to secure, the staff which is already available at the Children's Psychiatric Clinic should be available to a limited extent to aid the mental health authority of the State Health Department. The Committee wishes to stress, however, that it will still be the primary duty of the professional staff at the Children's Psychiatric Clinic to provide care and treatment to those children and youths who are mentally ill, emotionally disturbed, or mentally retarded.

Local financing of community mental health

service units is also covered. That bill requires that funds provided to a community mental health service unit or private nonprofit corporation from a political subdivision be taken from the general fund of such political subdivision, unless a majority of the electors authorize an additional mill levy not to exceed three-fourths of one mill for this purpose. This mill levy, if approved, would be over and above any mill levy limitation now provided by law.

It should be pointed out that community mental health service units will be supervised and managed by the political subdivisions actually undertaking such program. It will be the primary purpose of the mental health authority in the State Health Department only to aid and assist such political subdivisions in their mental health programs. Budgets and detailed plans for programs and services of a community health service unit will, however, have to be approved by the State Health Department before such unit receives any funds that may be available from the state.

The Public Health Service survey team did bring to the attention of the Committee the rigid sterilization laws of the state as they pertain to persons confined in state institutions. Our laws provide that before any person confined to a state institution, who is of child-bearing age and is found to be mentally deficient, can go home, either on a leave basis or permanently from such institution, the superintendent or warden of the institution is required to report such person to a board of medical examiners. If such board agrees that such person is mentally deficient, it is mandatory that the board order such person to be sterilized. The survey team felt that these rigid laws were unnecessary and that the superintendent or warden of the institution should have discretional authority as to whether or not sterilization of a person should be recommended to the board prior to his leave or permanent discharge.

The Committee therefore recommends that the sterilization laws be modified to make them permissive rather than mandatory. A bill amending our laws to this effect accompanies this report.

The survey team complimented the Committee on the very modern laws the state has regarding admissions to the State Hospital, for both voluntary and involuntary patients. They stated, however, that at the Grafton State School all admissions are made only on a formal commitment basis. They suggested that our laws regarding admissions to the Grafton State School be modified to allow voluntary admissions to such School.

The Committee recommends that our laws be amended to provide for voluntary admission to the Grafton State School, and a bill to effectuate this recommendation accompanies this report. The bill also provides that if the parent or guardian of an individual makes application to the superintendent for the release of any voluntary patient, such person must be released forthwith, unless in the opinion of the superintendent such voluntary patient should remain at the State School for further care and treatment. In this event, the superintendent must institute formal commitment proceedings within seven days from the date of the request for release.

Another area that the survey team brought to the attention of the Committee for possible action was that of screening and evaluating persons admitted to the Grafton State School. The survey team stated that at the present time screening was inadequate because of lack of personnel and facilities. It was stated that in some instances physically handicapped children with average mental ability have been committed to the Grafton State School because of a lack of proper screening and evaluation. If such a program were provided, it would then be possible to develop a more adequate training or treatment program in accordance with the needs and capabilities of the child.

The Committee also found that many of the persons admitted to the Grafton State School could have been treated and cared for in their local communities if adequate screening were provided and local facilities in the educational field were improved. The reason a proper screening and evaluation program has not been inaugurated is because funds have not been made available to obtain necessary personnel for such purpose. The Committee therefore recommends that the Superintendent of the Grafton State School and the Board of Administration revise the proposed budget of such School and request the Appropriations Committees of the Legislative Assembly to provide sufficient funds to procure an adequate staff for screening and evaluating persons prior to admission to the Grafton State School.

The Committee found that at the present time in North Dakota, the number of professionally trained teachers in the field of special education was sadly lacking. Many of the children who are admitted to the Grafton State School and other

similar institutions could have been educated and trained in their own communities had proper facilities been available. There are many children who do not have high I.Q's, but who are educable, and it was felt by the Committee that there should be improved educational programs in local communities for the education of these children. The Committee recommends that the State Board of Higher Education establish a curriculum at one of the state teachers' colleges that will specifically train teachers in the field of special education.

The report of the Public Health Service survey team is available in the Legislative Research Committee offices if further information is desired.

STATE MERIT SYSTEM

The matter of the desirability of a complete or limited merit system for all employees of the state was discussed by the Committee, but since such a study or recommendation on a broad basis was not within the scope of any study assigned to the Committee and because time did not permit a thorough study in such a broad area, no recommendations in regard to a full or limited merit system for North Dakota public employees are made.

It is recognized, however, that lack of some type of a merit system for all state employees does handicap the state in its efforts to obtain and retain competent employees, especially those fillings positions where specialized training or experience is needed. In addition, lack of a merit system makes it very difficult to make changes in governmental structure because of the fear and uncertainty that occur among the public employees affected. The Committee therefore urges that a thorough study be carried on during the next biennium on the feasibility of establishing a complete or limited merit system to cover all employees of the state.

Judiciary and Code Revision

NORTH DAKOTA CENTURY CODE

Senate Bill No. 50 directed the Legislative Research Committee and the Secretary of State to negotiate a contract with a law book publisher for the republication of the North Dakota Revised Code of 1943, and to submit the republished code to the Thirty-seventh Legislative Assembly.

To carry on the republication a Subcommittee on Judiciary and Code Revision was appointed, consisting of Representative Albert Schmalenberger, Chairman, Representatives Walter O. Burk, Jacque Stockman, and Bruce M. Van Sickle; Senator Adam Gefreh, Vice Chairman, Senators Lee F. Brooks, Elton W. Ringsak, and Aloys Wartner, Jr. The Committee obtained the services of District Judge Eugene A. Burdick, representing the State Judicial Council; Professor Charles L. Crum, representing the School of Law at the University of North Dakota; and Attorney Joseph A. Donahue, representing the State Bar Association of North Dakota, as advisory members of the Subcommittee.

Pursuant to Senate Bill No. 50 the contract for the republication was awarded to The Allen Smith Company, a law book publishing house in Indianapolis, Indiana. The bill authorized the Legislative Research Committee to prescribe the form, style, contents, and general specifications for the republication of the code with authority to make such substantive changes in the present law as was necessary to correct minor errors, to correlate and integrate all the laws, and to eliminate or clarify obviously obsolete or ambiguous sections of the law.

The appropriation to the Secretary of State for the republication was $150,000. These moneys are used to purchase 1,000 sets of the new code from the publisher for distribution to state departments and agencies and to pay the expenses incurred by the Legislative Research Committee in the preparation of copy for and supervision of the republication. The publisher will sell the code directly to all non-state agencies and departments at the same price as it is sold to the state, which is $122.80 per set.

The Committee discussed at length appropriate names for the new republication. It was finally decided that the code should be named the "North Dakota Century Code", commemorating the one hundredth anniversary of the establishment of the Dakota Territory in 1861.

It should be pointed out that the provisions of the North Dakota Century Code are the latest versions of the laws as of the date of their enactment and therefore take precedence over all previous versions. However, insofar as provisions of the new code are substantially the same as previously existing statutes, they may be treated as continuations thereof to show the historical development of statutes and as an aid to their interpretation.

The annotations found in Volume 7 of the North Dakota Revised Code of 1943 have been reevaluated and brought up to date by the publisher and inserted following the appropriate section of the law rather than in a separate volume. The publisher has rechecked the Reports from the earliest Territorial Reports to date and has inserted numerous new annotations. Legal textbook and law review references, source notes, West Key Number System and collateral references have been inserted in the same manner.

The system used in the North Dakota Revised Code of 1943 for the numbering or designation of laws has been changed somewhat in this republication. Whereas one hyphen was previously used to separate the chapter and section from the title numerals, in the Century Code two hyphens are used, one to separate the title from the chapter and the other to separate the chapter from the section. In addition the decimal point system is used to designate sections which have been inserted between two consecutively numbered sections. For example, section 1-0101 will appear as 1-01-01 in the new code, and if a section is inserted between sections 1-01-01 and 1-01-02 it will appear as section 1-01-01.1.

Sections of the law that have been omitted by the Committee from this republication are distinguished from laws repealed by the Legislative Assembly. In some cases following the omitted section the words "Repealed by omission from this code" appear, which signifies that the section is repealed as of the date of enactment of this code because the section was clearly obsolete or its provisions were included in another section. All other sections designated as repealed have been repeal-

ed by the Legislative Assembly prior to the enactment of this code. In other cases the word "Omitted" appears, which signifies that the section has been omitted but not repealed, because it was not a statute of a general and permanent nature.

Another new feature which has been added to the North Dakota Century Code is that of pocket part supplements. The pocket part supplements are an accumulation of laws that will be inserted in the back cover of each volume as the new laws or amended laws are added to the volume. This differs from the previous method wherein a supplement was published as a separate volume. The cumulative pocket part supplements will be published every two years following the legislative session, while previously supplements were published every four years. Session laws of each legislative session will be published separately as usual.

The index to the North Dakota Revised Code of 1943 has been supplemented by additional entries wherever possible and in many instances the existing entries have been rewritten for clarification. The style and format of the new index is completely different, which, it is hoped, will benefit the user.

Revisor's Notes have been prepared for the North Dakota Century Code, noting all changes of laws made in the course of the republication. The purpose of the Revisor's Notes is to explain what changes have been made to previously existing versions of the law. Revisor's Notes in printed form will be available from the Secretary of State.

The North Dakota Century Code consists of 14 volumes. Volumes 1 through 12 of the new code contain the substantive law which is presently contained in Volumes 1 through 5 of the North Dakota Revised Code of 1943. Volume 13 of the new code contains parallel tables and historical documents and Volume 14 comprises the index.

It is recommended by the Committee that the entire code be introduced as Senate Bill No. 1 and passed by both houses of the 37th Legislative Assembly as early as possible in the Session, since all bills introduced will have to be drawn to amend the new code.

Natural Resources

House Concurrent Resolution A-2 was an outgrowth of a joint hearing of Committees of the Senate and House of Representatives of the Thirty-sixth Legislative Assembly on the subject of oil and gas conservation laws. In the words of the Resolution the Legislative Research Committee was directed to "study the laws of this state relating to the exploration, production, and conservation of oil and gas, including among other things the protection of the correlative rights of landowners". This study was assigned by the Legislative Research Committee to its Subcommittee on Natural Resources consisting of Senator Frank A. Wenstrom, Chairman, Senators Lloyd M. Erickson, Walter R. Fiedler, Rolland Redlin; Representatives Walter Dahlund, James W. Johnston, Halvor Rolfsrud, M. E. Vinje, R. W. Wheeler, Ralph M. Winge, and Orville P. Witteman.

It was contemplated by the Legislative Assembly that it would probably be necessary for the Committee to hire a petroleum engineer to assist them in their work. After consultation with officials in the Interstate Oil Compact Commission, the Committee procured the services of Mr. R. R. Spurrier, formerly director of the New Mexico Oil and Gas Conservation Commission for a period of nine years, and recommended as one of the most capable persons in the field of oil and gas conservation. Mr. Spurrier had no connection with the oil and gas industry in North Dakota, and his services were entirely paid for by the Committee from appropriations made by the Legislative Assembly for that purpose.

Since the Resolution called for a study of conservation of property laws with special emphasis on "correlative rights" of landowners, the Committee at its organizational meeting decided to begin its study with a series of hearings in the "oil country" at the cities of Westhope, Tioga, Columbus and Watford City. The purpose of these hearings was to give the individual landowners and royalty owners an opportunity to appear personally before the Committee on an informal basis, explain their problems, and make recommendations for changes in laws and regulatory practices. Over 300 landowners attended the series of hearings, which were held on four consecutive days. The landowners made excellent presentations in regard to their problems and stated their opinions with frankness and clarity.

Perhaps the most common problem mentioned by landowners was the difficulty in obtaining prompt drilling of offset wells to prevent drainage in cases where oil companies were reluctant to drill. Another commonly mentioned problem was the difficulty landowners encountered in determining if cases before the Industrial Commission affected their particular property and the inconvenience in attending hearings in Bismarck in order to present their views upon these matters. A suggestion was made by numerous landowners in the Westhope and Columbus area for modification of Rule 505 of the Industrial Commission, relating to the use of the depth factor in prorating production to spacing units. Other problems and recommendations brought to the attention of the Committee ranged from the possibility of a tax exemption to encourage the construction of pipelines, to permitting the Industrial Commission to employ a separate staff for the enforcement of conservation laws or to use the staff of the State Geologist as the Commission might prefer.

The minutes of the Committee contain almost 150 pages of statements and abstracts of testimony received in the course of these hearings, and it is impossible for the Committee to cover all of the many items presented and discussed without permitting this report to become unreasonably long. However, complete sets of these minutes are available in the offices of the Committee and can be made available to any interested person.

Following the meetings in the oil country, a two-day hearing was held in Bismarck, to which representatives of oil companies and professional representatives of landowners' associations were invited to appear. Again, there was excellent attendance at the hearing, and a high amount of interest was found among all persons attending. In general, the oil companies expressed satisfaction with our conservation of property laws and their administration. The opinion that such laws and their administration were probably the best in the nation was often stated. Oil company representatives did stress, however, that it was necessary that there be an acceleration in unitization programs in order to increase the ultimate maximum recovery of oil and gas and to keep the costs of producing this oil and gas competitive with other suppliers in our marketing area.

At subsequent meetings, during which the Committee carefully studied and evaluated all the testimony received, three objectives were set forth to guide the Committee in its work. First, the Committee deemed it desirable to better protect correlative rights by finding ways to more nearly equalize the bargaining power of the landowners when dealing with major oil companies in matters relating to rights under oil and gas leases. Second, the Committee sought methods to bring state government, and specifically the oil and gas regulatory activities of the Industrial Commission, closer to the landowners so that they could better present their evidence and views to the Commission and be more fully aware of matters before the Commission that would affect their property. Finally, it was deemed essential that all fair and practical methods be made available for increasing the ultimate recovery of oil and gas natural resources from all fields. In all these matters the Committee agreed that it should attempt to improve the position of landowners and promote greater ultimate recovery of oil and gas without prejudicing the rights of oil companies or materially discouraging exploration and development of oil and gas resources.

From the 30 or more proposals originally considered, the Committee in subsequent meetings sifted the matters down to eight subjects upon which bills were drawn for hearing and discussion purposes. Thereafter, a two-day meeting was held in the city of Williston at which representatives of oil companies and of landowners' associations and individual landowners very forcefully and ably presented their points of view to the Committee. In general, the representatives of the landowners' associations and individual landowners tended to support the bills under consideration with some recommended amendments. The representatives of oil companies favored several bills, recommended substantial amendments to several others, and expressed opposition to the balance. As a result of these hearings, it was possible for the Committee to better evaluate the merits of the bills under consideration and to improve them through amendments.

At its final meeting, the Committee approved substantial amendments to the bills and recommends the eight bills to the Legislative Assembly. In addition, a recommendation in regard to Rule 505 is made.

From this point, the Committee's report will consist of an explanation of the bills that are recommended for introduction at the next session of the Legislative Assembly, together with a discussion of their purpose.

Recommendations

1. The Committee recommends a bill to make the obligation to pay oil and gas royalties due a mineral owner the essence of the lease contract, and to make the breach of the obligation to promptly pay such royalties grounds which the court, in its discretion, might use as the basis for cancellation of the oil and gas lease. A number of landowners reported that at times there appeared to be an unreasonable lag in the payment of royalties and since their only apparent remedy was to sue in the courts for a recovery of the royalties due, they felt this was not sufficient penalty to ensure conscientious efforts to make prompt payments. In the Committee's opinion, the proposed bill would make the failure to promptly pay royalties a more serious matter, but since cancellation would be at the discretion of the courts, it would not unduly penalize a lease operator if he has reasonable grounds for failing to make prompt payment.

2. The Committee recommends that the conservation laws be amended to specifically authorize the current practice of the Industrial Commission in establishing more than one marketing area in the state and in allocating separate allowables to each marketing district. This has been the practice of the Industrial Commission for several years and appears to be authorized under present laws. However, a good deal of concern was expressed by some people that such authority might not in fact exist, and that the orders of the Industrial Commission establishing more than one marketing district might be overturned by the courts. Therefore, the Committee recommends an amendment of the law to specifically authorize this practice.

3. The Committee recommends an amendment of our laws to authorize the Industrial Commission, in its discretion, to select either the State Geologist as the director of oil and gas conservation, or appoint a separate independent staff to administer oil and gas conservation laws. It was pointed out by a number of people appearing before the Committee that it was inconsistent with normal governmental principles to require the Industrial Commission to use as head of its staff a person appointed as Professor of Geology by the President of the University, who in turn was

ex officio State Geologist, and who, as State Geologist, would automatically head the staff for the Industrial Commission. Those persons who pointed out this unusual condition were often quick to state that the present organization has operated well because of the cooperation of the State Geologist, but it was suggested that such a degree of cooperation might not always exist in the future, with personnel changes. It is the opinion of the Committee that it is presently desirable for the State Geologist to continue as Director of Oil and Gas Conservation since this permits the joint use of facilities of the University and personnel of the Geological Survey in oil and gas conservation work, and has other advantages that naturally flow between the University and office of State Geologist. In the event the past degree of cooperation continues, the Committee can see no benefit in making a change in the oil and gas conservation staff when the possible additional costs of separate facilities and staff duplication are considered. However, the Committee recognizes the inconsistency of the present administrative organization and, therefore, believes that the option should exist on the part of the Industrial Commission to employ a separate staff in the event they deem it necessary. Before such a change could be made, however, it would be necessary for the Legislative Assembly to appropriate funds to the new staff of the Industrial Commission and, consequently, the Legislative Assembly would have an opportunity to review the propriety of this change prior to its implementation.

4. The Committee recommends the amendment of the conservation laws in regard to the payment of costs of developing and operating property that is pooled to make a full spacing unit. Present law permits the Industrial Commission to order the pooling of fractional tracts to make a full spacing unit for its exploration and development in the event that the individual owners should be unable to agree upon its development.

The amendment proposed by the Committee would permit the operator designated by the Industrial Commission to develop and operate the premises and recover his costs from the share of the oil allocated to the nonconsenting owners of the property. The posting of a bond to ensure proper handling of the funds would be required and such operator would account to the Industrial Commission for his expenditures. At present, it is necessary to foreclose a lien upon the nonconsenting owner's share of the oil in the same manner a chattel mortgage is foreclosed. This method of recovering the operator's costs is considered too cumbersome.

5. The Committee recommends that the oil and gas conservation laws be amended to specifically authorize the use of an examiner system to conduct hearings for the Industrial Commission. In a survey made by the Committee of the cases considered by the Industrial Commission during an 18-month period, it was found that the overwhelming majority of them were routine in nature and generally noncontroversial. In the opinion of the Committee, these can adequately be handled by an examiner designated by the Commission without requiring the attendance of the elected public officials who constitute the Industrial Commission. The designated examiner could then make a report to the Industrial Commission in regard to the matters presented at the hearing, together with his recommendations, and the Industrial Commission could issue its order in the case. Adequate provision is made for a rehearing before the full Industrial Commission, or for appeal to the courts in the event of dissatisfaction on the part of the parties to the hearing.

The use of an examiner system has two real advantages. First, it lightens the load upon elected public officials who are pressed for time in carrying out the other duties of their offices. It authorizes them to delegate routine cases to an examiner, yet permits them to personally hear more important controversial cases where their presence is required. Second, it will permit and make practical the holding of hearings in the field in the areas near the property concerned. This will result in the landowners being better informed of matters before the Industrial Commission affecting their property and make it more convenient for them to attend and present their evidence and views. In addition, it will permit field hearings even in the more important or controversial cases when desirable, in that the Commission may designate an examiner to hold field hearings to take a portion of the testimony from those persons who cannot reasonably attend the meetings of the Commission in Bismarck. The use of this system will result in bringing the oil and gas regulatory activities much closer to the landowner so that he may better know of, and understand, actions that might affect his property as well as making it convenient to present his evidence and views to the Commission.

6. The Committee recommends an amend-

ment of the conservation law relating to the approval of voluntary unitization agreements by the Industrial Commission. In essence, the Committee recommends that any operator desiring to develop a pool on a unit basis may at his option submit the plan to the Industrial Commission for approval, but such approval would be only for the purpose of relieving the operator from a suit charging the violation of state anti-trust or monopoly laws. Approval by the Commission would be given only if the Commission finds the agreement would protect the correlative rights of all parties having legitimate interests in the common pool, including owners of royalties and mineral rights affected by the agreement. All persons having valid interests in any portion of a common pool must be given an opportunity to participate upon a fair and reasonable basis. However, such approval by the Commission could not be construed as a defense to any action for damages or other remedy in the courts for any cause of action resulting from the unit operation. In the event the operator should decide to proceed with a unitization program without Industrial Commission approval, he then might be subject to suit under the anti-trust laws, and again would be fully subject to any suit for damages or injunctive relief that might be provided by the courts. No supersedeas bond would be necessary to bring an action in the courts in regard to any rights that were affected by the voluntary unitization program regardless of whether it received the prior approval of the Industrial Commission.

In the opinion of the Committee, this amendment will have the desirable effect of permitting fringe area mineral owners who have provable supplies of oil and gas under their property to participate in the unit agreement and receive proportionate payments for the oil and gas that may be produced from the wells in the unit even though the amount underlying their premises is not sufficiently large by itself to warrant the drilling of a well for its extraction. In the event a fringe area landowner is not properly included in the unit plan, the operator would be subject to all the remedies provided by the courts.

7. The Committee recommends the passage of a compulsory unitization law in the state of North Dakota which when approved by 75% of the oil and gas operators, by 75% of the mineral owners, and by the Industrial Commission, could require the participation of any nonconsenting landowners. In the opinion of the Committee, it is essential that unitization programs be encouraged in North Dakota in order to provide for the maximum recovery of the oil and gas in place. It has been demonstrated many times that unitization programs which encompass the drilling of strategic wells for the production of oil or gas and the use of others wells for repressuring, recycling, or water flooding can result in very substantial increases in the total recovery of oil and gas in a reservoir, that without such programs would otherwise forever remain unrecovered. The failure to recover the maximum amount of oil and gas in place is a complete waste of vital natural resources and should not be countenanced by the state. In addition, since under a unitization program everyone shares in the total production of the field in accordance with his proportionate share in the pool regardless of whether the oil is produced upon his own property or upon his neighbor's, such a program will go far in removing the problem of drilling offsets and of drainage. It can permit the payment to fringe area landowners of their proportionate share of oil in the pool even though the oil underlying their tract may not in itself be in sufficient quantity to warrant the drilling of a well upon the premises for its recovery.

The bill recommended by the Committee closely parallels the compulsory unitization bill recommended as a Model Act by the Interstate Oil Compact Commission with certain exceptions specifically inserted by the Committee for the protection of the correlative rights of mineral owners. The principal deviation from the Model Act is found in the proposed section 38-08-09.8 of the bill, which prohibits approval by the Industrial Commission if the plan embraces less than the entire common pool unless it is shown that those tracts not included within the proposed unit but which contain oil or gas within the common pool, will not have oil or gas drained by the unit operation or that the amount of oil underlying such tracts is so small as to make it impossible to measure or estimate or the measurement is extremely speculative, or that all persons having valid interests in tracts but not included within the proposed unit have had or will have an opportunity to become parties to the agreement upon a fair and reasonable basis.

8. The Committee recommends a bill which would establish a presumption of drainage in the event an undeveloped tract of land lies adjacent to a producing oil and gas well and a portion of such undeveloped tract is within the radius of a circle centered at the producing well containing the number of acres prescribed by the In-

dustrial Commission as the proper spacing unit for the well in question. Such a presumption could arise in the event the owner of the undeveloped tract makes a demand upon the lessee for the drilling of a protection well and such well is not commenced or drilled with due diligence within one year after such demand. In such event, the lessor may commence suit in the district court and will have the benefit of the presumption that his property is being drained. It would then be necessary for the lease owner to carry the burden of proof by showing that the land is not being drained, or that a reasonably prudent lessee under similar circumstances could not be expected to drill a well with reasonable expectation of producing oil or gas in commercial quantities; or that any well that may have been commenced is being drilled with due diligence; or that a valid contract exists between the lessor and lessee for payments in compensation of drainage in lieu of drilling a well as provided in the Act. In the event the holder of the lease should fail to show such justification for his failure to drill a well, the court may order the lease cancelled, or order the holder of the lease to drill a well within a period of time stated by the court, or to pay to the mineral owner a sum determined by the court as compensation for oil or gas being drained from the undeveloped tract, and award damages if any are due.

A large number of landowners expressed the opinion in the course of the hearings that it was difficult for them to go into court to protect their rights in the event an oil company failed to drill a protection well to prevent drainage of oil from their property. Geological information or engineering data to prove the existence of the oil and its drainage was generally unavailable to them, and they often lacked the financial or other resources to obtain such information. It was therefore the general opinion of landowners and their attorneys that suits for cancellation of leases for failure to drill offset wells was not a practical and workable remedy. In the opinion of the Committee, the proposed bill will go far in equalizing bargaining power between landowners and the oil companies in these matters. It will be possible for the landowner to simply prove the existence of a producing well on adjacent property and that a portion of his property is within the radius of a circle centered at the producing well encompassing the number of acres of the spacing unit. The burden of proof will then immediately shift to the oil company to show why a well should not be drilled. In the opinion of the Committee, this is the proper place for the burden to rest since it is usually the oil company that has the geological and engineering data to prove the case as well as the professional talent to present it. It seems no more than fair that the person best able to provide this evidence should bear the burden of proof.

Rule 505. As mentioned earlier in the report, a substantial number of landowners in the Westhope and Columbus area recommended that Rule 505 of the Industrial Commission be modified by removing or modifying the use of the depth factor in the allocation of market allowables. In general, the depth factor is a mathematical index intended to be in proportion to the costs of developing and producing deeper wells. For instance, under Rule 505 all wells under 5,000 feet in depth receive a depth factor of 1, while wells between 8,000 and 9,000 feet receive a depth factor of 3. The Industrial Commission, in distributing the monthly market allowables among the various wells in a marketing district, allocates such production on the basis of 40-acre units. Therefore, if it was determined in any given month that the market allowable for each 40-acre unit was 10 barrels, all wells under 5,000 feet in spacing units of 40 acres would receive a market allowable of 10 barrels per day. However, in the event wells under 5,000 feet were on an 80-acre spacing pattern, the allowable for each well would be that allowed each 40-acre tract in the spacing unit, or a total of 20 barrels per day. A well in a field having spacing units of 160 acres would, of course, receive four times the daily 40-acre allowable, or 40 barrels per day. However, in the event the producing wells in the field were of greater depth than 5,000 feet, for instance 8,000 feet, the depth factor of 3 would apply. Therefore, you would multiply the daily allowable of 10 times 3 for each 40-acre tract in the spacing unit in order to determine the total daily allowable for the well. For instance, an 8,000 foot well on a 160-acre spacing unit would receive an allowable of 10 barrels for each 40 acres in the unit multiplied by 3, or a total of 120 barrels per day.

Some landowners appearing before the Committee recommended that the depth and acreage factors in allowables be entirely eliminated and that the same allowables be given to all wells regardless of their depth or the size of the spacing unit. Other landowners suggested that allowables be on the basis of the number of 40-acre tracts contained within the spacing unit and that no depth factor whatsoever should be used. Perhaps the most common suggestion received was

that all allowables be based upon the number of 40-acre tracts contained in a spacing unit, but that the depth factor be applied only to the 40-acre tract upon which the well was located, or at most, to the 40-acre tract containing the well plus one additional 40-acre tract in the spacing unit.

While the Committee made no formal finding or recommendation in regard to the depth factor, since the factor was created by regulation of the Industrial Commission and not specifically provided in the law, it was generally recognized that some consideration should be given to the costs of finding and producing oil from deep formations in order to encourage deep drilling. However, it is the opinion of the Committee that the use of a depth factor should be reviewed in the light of the larger size spacing units that have been approved in recent years. It seemed to the Committee that while allowables should be based upon the number of 40-acre tracts contained in every spacing unit and that the depth factor could legitimately be considered in regard to the 40-acre tract upon which the well was located, the application of the depth factor to all other 40-acre tracts might not be entirely justifiable since no well had been drilled upon the other tracts and, therefore, there were no costs to recover. In the event that it should be found that this change might unduly restrict deep exploration and production, it might be possible to authorize the use of the depth factor in determining allowables for the 40-acre tract in the spacing unit upon which the well was located, plus one additional 40-acre tract.

It was the concensus of the Committee that it does not seem justifiable to continue to authorize the full application of the depth factor to all 40-acre tracts within a spacing unit in view of the fact that an increasing number of 160-acre spacing units have been approved and, in one instance, a 320-acre spacing unit has been approved. The full application of the depth factor to large spacing units may actually have the effect of discriminating against the shallower wells when both shallow and deep wells are found within the same marketing districts.

The Committee met with the Industrial Commission and urged the Commission to hold a hearing in regard to Industrial Commission rules, with special reference as to the equities of the full use of the depth factor under Rule 505 upon all 40-acre tracts in a spacing unit.

COMMENTS

This report of necessity omits many of the details of the proposals being recommended by the Committee, and in the interest of brevity does not go into full detail regarding all the various reasons for the Committee recommendations. Neither does the report attempt to cover the more than 20 proposals that were seriously considered by the Committee but which were not recommended upon the grounds that they were not practical or equitable. However, a full discussion of such matters can be found in the files and minutes of Committee meetings. The details of the recommendations of the Committee can be found in an examination of the bills recommended by the Committee which accompany this report.

Reapportionment

Reapportionment of the North Dakota House of Representatives

Senate Concurrent Resolution M, chapter 438 of the 1959 Session Laws and proposed by the Thirty-sixth Legislative Assembly, provided for the amendment of sections 26, 29, and 35 of the North Dakota Constitution relating to the reapportionment of the North Dakota House of Representatives. This resolution appeared on the Primary Election ballot as Measure Number 3 and was approved by the voters of the State of North Dakota 84,002 to 66,529 in the Primary Election of June 28, 1960.

By the terms of Measure Number 3 the North Dakota Senate will remain as presently constituted. The 49 legislative districts are frozen as they now stand, and each will be represented by one Senator and at least one Representative, except that legislative districts comprised of more than one county will be represented in the House by at least as many Representatives as there are counties in the district. The remaining Representatives are required to be apportioned among the various districts according to the population of the districts after each federal decennial census. Should any Legislative Assembly fail to make a reapportionment when required to do so, a board consisting of the Chief Justice of the Supreme Court, Attorney General, Secretary of State, and the majority and minority leaders of the House would be required to do so within ninety days after the adjournment of the Legislative Assembly. Such reapportionment would have the same force and effect as though made by the Legislative Assembly.

Since it appeared that the Legislature would rather make the reapportionment itself than to pass the matter on to the special board, it seemed essential that the Legislative Assembly be provided with the vital census information broken down by legislative districts, together with the various alternate plans of reapportionment that would meet the constitutional requirements. To provide this information and consider the possibility of making recommendations in regard to the reapportionment of the House, a special Subcommittee on Legislative Reapportionment was appointed by the Chairman of the Legislative Research Committee, consisting of: Senator Gail H. Hernett, Chairman, Senators H. B. Baeverstad, John O. Garaas, C. G. Kee, and Rolland Redlin; Representatives Scott Anderson, Howard Doherty, K. A. Fitch, Arthur A. Link, Oscar Solberg, Oscar Sorlie, Thomas R. Stallman, and R. W. Wheeler.

As the first step toward arriving at recommendations in regard to reapportionment, the Committee obtained a breakdown of the final 1960 census figures for each of the present legislative districts. These figures were verified by a comparison with a similar census breakdown prepared by Professor John Avery Bond and Manley Lokken of the Political Science Department of the North Dakota State University of Agriculture and Applied Science.

The Committee obtained the assistance of Professor Walter E. Kaloupek of the Political Science Department and Professor Woodrow H. McBride of the Mathematics Department of the University of North Dakota in a study of general principles and particular methods of reapportionment.

The Committee recommends that the method of "equal proportions" be used in reapportioning the North Dakota House of Representatives. This method is used by the greater number of the states and by the United States House of Representatives, and is widely recognized by authorities on apportionment as being a neutral method that favors neither the larger nor the smaller districts in its application. The method of "equal proportions" utilizes a mathematical formula which has been proven correct and may be easily applied, through the use of a priority list to a House of any size. This mathematical formula is a short cut, avoiding the extremely time-consuming task of using the trial-and-error method of continually shifting seats from one district to another until an arrangement is hit upon that provides the maximum uniformity and equality. This method allocates the House seats (after the assignment of one seat to each legislative district and to each county in multiple county districts) in accordance with the relative population of each district and will provide the most uniformity possible in the number of people per Representative in each district.

The constitutional amendment approved by the voters in June of 1960 provides for a minimum of one Representative per district and one per county in multiple county districts. The effect of

this provision is to require a minimum of 61 members in the North Dakota House of Representatives. The maximum size is fixed by the Constitution at 140 members. The exact size, between 61 and 140, is for determination by the Legislative Assembly.

The Committee recommends that the size of the House not be increased beyond the present 113 members. It was noted by the Committee that as of 1955, North Dakota ranked fifth among the states with a high ratio of House members in relation to the population of the state. In North Dakota each Representative represented 5,500 people while the national average of all the states was one Representative for each 20,500 people. The increase in total cost and the lessening of the value of the individual Representative's vote are additional reasons for the recommendation of a 113-member maximum.

The Committee makes no definite recommendation as to the possibility of decreasing the number of Representatives below the present 113. An informal poll of the 14 Legislators on the Subcommittee revealed that 9 of them favored a reduction to slightly under 100 members, while 5 favored retaining the present membership of 113.

The effect on presently existing representation of House memberships of 113, 99, and 140 computed by the method of "equal proportions" would be as follows:

If a House membership of 113 were decided upon, 19 districts would lose 1 Representative, 20 districts would remain the same, 5 districts would gain one Representative, 1 district would gain 2 Representatives, and 4 districts would gain 3 seats each.

A House membership of 99 would result in 1 district losing 2 Representatives, 24 districts losing 1 Representative each, 17 districts remaining the same, 3 districts gaining 1 Representative each, 3 districts gaining 2 Representatives each, and 1 district gaining 3 Representatives.

If the size of the House were set at 140, 6 districts would lose 1 Representative each, 29 would remain as presently represented, 6 would gain 1 Representative each, 4 districts would gain 2 Representatives each, 1 district would gain 4 Representatives, and 3 districts would gain 5 Representatives each.

By reference to the attached priority list, it is possible to determine the number of Representatives each district would receive in a House of any given size from 61 through 140 members. For example, if a 70-member House is selected, a line can be drawn after the number 70 in the priority list and all priorities below this line disregarded. Then reading up the list commencing with the number 70, Morton County would get 2 seats, Williams 2, the 29th District of Ward 3, Stutsman 2, the 6th District of Grand Forks 2, the 9th District of Cass 3, and Burleigh 2. Any district not appearing in the priority list, prior to any selected point, will receive one Representative, unless it is a multiple county district, in which event it will receive as many Representatives as there are counties in the district.

Priority List, Method of Equal Proportions

Cumulative Size of House	District	Cumulative Total of Reps. from each Dist.
62	9 Cass	2
63	29 Ward	2
64	27 Burleigh	2
65	9 Cass	3
66	6 Grand Forks	2
67	23 Stutsman	2
68	29 Ward	3
69	45 Williams	2
70	30 Morton	2
71	27 Burleigh	3
72	9 Cass	4
73	31 Stark	2
74	29 Ward	4
75	7 Grand Forks	2
76	6 Grand Forks	3
77	9 Cass	5
78	23 Stutsman	3
79	46 McLean	2
80	27 Burleigh	4
81	21 Ramsey	2
82	29 Ward	5
83	1 Pembina	2
84	45 Williams	3
85	10 Cass	2
86	30 Morton	3
87	9 Cass	6
88	15 Barnes	2
89	28 Bottineau	2
90	34 McHenry	2
91	29 Ward	6
92	27 Burleigh	5
93	31 Stark	3
94	19 Rolette	2
95	8 Traill	2
96	12 Richland	2

Cumulative Size of House	District	Cumulative Total of Reps. from each Dist.
97	6 Grand Forks	4
98	23 Stutsman	4
99	9 Cass	7
100	44 Mountrail	2
101	18 Cavalier	2
102	4 Walsh	2
103	20 Benson	2
104	33 Wells	2
105	29 Ward	7
106	7 Grand Forks	3
107	45 Williams	4
108	9 Cass	8
109	27 Burleigh	6
110	24 LaMoure	2
111	30 Morton	4
112	26 Emmons	2
113	3 Walsh	2
114	37 Richland	2
115	25 Dickey	2
116	6 Grand Forks	5
117	46 McLean	3
118	14 Ransom	2
119	23 Stutsman	5
120	29 Ward	8
121	9 Cass	9
122	21 Ramsey	3
123	31 Stark	4
124	1 Pembina	3
125	27 Burleigh	7
126	11 Cass	2
127	42 Pierce	2
128	10 Cass	3
129	41 McKenzie	2
130	5 Grand Forks	2
131	17 Nelson	2
132	29 Ward	9
133	9 Cass	10
134	45 Williams	5
135	36 McIntosh-Logan	3
136	13 Sargent	2
137	15 Barnes	3
138	30 Morton	5
139	6 Grand Forks	6
140	40 Burke-Divide	3

State, Federal and Local Government

Senate Concurrent Resolution O directed the Legislative Research Committee to study the civil defense organization of the state and the laws pertaining to civil defense. In addition, the respective Legislative Research Committee Resolutions Committees of the House and the Senate included in their reports a directive that the Committee study the feasibility of placing additional miles of county roads in the state highway system and to study salary classification systems at institutions of higher learning.

These studies were assigned by the Legislative Research Committee to its Subcommittee on State, Federal and Local Government consisting of Senator Raymond G. Vendsel, Chairman, Senators Kenneth Morgan, Leland Roen and George Saumur; Representatives George R. Berntson, Howard O. Bye, C. W. Fries, Milo Knudsen, J. Milton Myhre, Hjalmar C. Nygaard, and Oscar Solberg.

CIVIL DEFENSE

The study resolution directed the Legislative Research Committee to study the civil defense laws and organization of the state and of its political subdivisions in order to ensure that all proper measures are taken for the protection of lives and property within the state in the event of foreign attack or natural disaster.

Continuity of Government

The first problem which the Committee took under consideration was how best to ensure that the state and local governmental units would continue to properly function during and after foreign attack. The operation of such governmental units is vitally necessary during an emergency to restore some semblance of order following an attack.

This continuity of government problem has been brought about as a result of the tremendous destructive capacity or power which can be brought to bear against our country in the event that we become involved in total war. If an aggressor were to attack the United States today, our cities could expect to receive warning no more than fifteen to thirty minutes prior to attack, which is less time than is necesary to evacuate even our larger North Dakota cities. In the event of such an attack the very existence of our society as we know it will depend upon the ability of the populace to withstand the initial blow, and then organize efficiently to build up defenses to aggression, as well as our cities and towns. However, the probability that governmental and judicial leaders on both the state and local levels would not survive an attack makes very real the possibility that chaotic conditions could exist in which every man would stand alone against all the rest in his individual fight for survival. Under such circumstances it is impossible to estimate how much time would pass before the rebuilding process could begin.

The Committee feels that it is the responsibility of the Legislative Assembly to ensure to the extent possible that some kind of order can be maintained under attack conditions, so that the state and its political subdivisions can survive to govern a stunned and frightened citizenry. The Committee is further of the opinion that the way to prevent such chaotic conditions is to see that the government continues to operate by ensuring that key governmental positions are filled by qualified persons; that the courts are kept open and that they are presided over by competent persons; and that the lawmaking ability of the respective governments is in a position to function during the emergency. In short, advanced preparations should be made so that even in the event of nuclear attack our society can be governed within the framework of existing governmental structures.

The Committee examined the present law in order to determine to what extent governmental operations could be continued in the event of nuclear attack. In the event that Bismarck should be hit by enemy missiles or bombs, or subjected to heavy radioactive fallout, it is probable that the great majority of our elected and appointed public officials comprising the executive branch of government would become casualties and be unavailable to perform their duties. At present however, the Governor is the only official in the executive branch who will be automatically succeeded if he should become unavailable. Vacancies occurring in the offices of any other public officials are to be filled by appointment by the Governor. However, in the event of attack, it is likely that the Governor will not readily know who is available for appointment, or for that matter, he may not know for sure what offices are vacant. In an emergency situation like that contemplated, public offices must be filled almost instantly if the government is to operate. It is thus apparent that under present law, the executive branch could con-

ceivably become virtually unmanned if Bismarck were to be destroyed in an attack.

Vacancies in the Legislative Assembly are to be filled by special elections under present law. The Constitution provides that a majority of the members must be present at the legislative chambers to constitute a quorum, and further, that no law may be passed except by an affirmative vote of a majority of the elected members of each house. Thus, if fifty percent or more of the members of the Legislative Assembly become casualties of an attack, or for any other reason are not able to meet with the rest of that body, there is no method by which necessary legislation can be passed until a special election is called to fill these vacancies. Even if only one or two nuclear strikes are made in North Dakota during an attack, radioactive fallout would be such that it is likely that a large number of our legislators might be unavailable, at least for a period of time. The chances that such a special election could be successfully conducted under conditions likely to exist after an attack are extremely slim. Furthermore, it would appear that the only real alternative to legally formulated legislation would be the imposition of martial law by the Governor or his successor.

Major positions in the judicial branch of government are also to be filled by appointment by the Governor, and here again, it may be some time before the Governor would know of a vacancy under attack conditions, and even then he might not know what qualified persons are available to fill such vacancies.

County and city governmental vacancies are generally to be filled by appointment by the county commissioners, city councils, or city commissions, and other like bodies. The same problems arise here as are present on the state level.

Present law also requires that the seat of government at Bismarck be the location at which the Legislative Assembly is to meet and offices of public officials are to be located. Conditions might well become such that it would be impossible to conduct public business at the seat of government in Bismarck.

After examining present law, the Committee was of the opinion that should our state be subjected to nuclear attack, it would be virtually impossible for either state or local governments to operate in a manner that would adequately govern the populace of the state in the manner that might be necessary.

The Committee came to the conclusion that the best way to ensure that all important governmental positions on both the state and local level are filled with competent persons is to appoint successors to these positions prior to any emergency, so that in the event of emergency these appointees would be ready to take over immediately. As a result, two bills and a concurrent resolution regarding continuity of government have been formulated. The principal purposes of these measures can probably be enumerated as follows:

1. Each state officer and each member of the Legislative Assembly shall immediately appoint in a designated order of succession from three to seven persons who are to assume the powers and duties of his office in the event that the public officer or legislator should become unavailable during or after an attack upon the state. These appointed persons, designated as "emergency interim successors", shall assume powers and duties of the office only until the original officer or legislator becomes available, or until an emergency interim successor higher in the order of succession becomes available, or until the vacancy can be filled by regular constitutional or statutory methods.

2. Authority is given to cities, villages, and counties to provide for the appointment of the same type of emergency interim successors for key executive and legislative positions on the local level.

3. Special emergency judges are to be immediately appointed, with the Governor appointing such judges for courts of record, and the district court judges appointing judges for courts not of record. These judges are to act only in the event that regular judges become unavailable in event of attack, and are to act only until the regular judge or a special emergency judge higher in order of succession becomes available or until the vacancy can be filled by regular constitutional or statutory means.

4. Whenever, because of an attack or threatened attack, it becomes imprudent or impossible to conduct public business at the seat of government at Bismarck, the Governor or Legislative Assembly may designate alternate sites at which official governmental business may be transacted. Authority is also given to political subdivisions to temporarily relocate their government during an emergency.

5. A recommended concurrent resolution would amend the Constitution in order that provisions in the bill relating to the Legislative Assembly may be enacted under authority of the Constitution. This amendment would allow in periods of emergency caused by enemy attack waiver of restrictions upon such items as the place and time of the convening of the Legislative Assembly, length of session and quorum and voting requirements of the Legislative Assembly, subjects of legislation, eligibility of legislators to hold other offices and residence requirements for such persons, as well as restrictions upon expenditures, loans or donations of public moneys.

It should be remembered that, except for the appointment of the emergency interim successors and special emergency judges, the provisions recommended above would become active only in the event of foreign attack upon the state, and that all such emergency measures would cease at such time as normal operations could begin within the normal framework of governmental structure. It is felt that measures such as are outlined above are absolutely necessary to ensure that some form of centralized authority will exist on both the state and local level in the event of nuclear attack.

State Civil Defense Agency

Following a review of the Civil Defense Act as found in chapter 37-17, it was determined by the Committee that the chapter should be completely revised in order to make it more workable and to coordinate civil defense activities of the office of Civil Defense with other state and local agencies. In general, the recommended new Act broadens the responsibility and authority of the Governor and the State Civil Defense Agency to take action in the event of natural disaster, foreign attack, or imminent danger of such attack. The State Civil Defense Council would be reorganized under the proposed bill by making it an entirely advisory commission and lodging all authority for civil defense action in the Governor and Civil Defense Director. The present council consisting of the Governor, two ex officio state officials, and 12 individuals from various parts of the state appointed by the Governor has been found to be too cumbersome to take effective action in civil defense matters. An advisory body will aid in obtaining coordination and cooperation among state and local officials but will not handicap effective administration or decisive action.

One of the principal changes under the proposed bill would establish the office of the Civil Defense Director as a civilian division of the office of the Adjutant General with the Director appointed by the Governor from a list of active or retired National Guard officers upon the recommendation of the Adjutant General. While this change does not have the blessing of some federal civil defense officials, it is strongly felt by the Committee that this step is essential in order to make full use of the resources available for civil defense in North Dakota.

With the exception of some sound state planning and the implementation of civil defense plans in several of the larger cities of the state, and some interest at the county level in a few counties, there is very little in the way of organized resources upon which the state or local communities can rely in the event of foreign attack or large-scale natural disaster. This may be due to lack of sufficient financing of these activities, lack of interest on the part of political subdivisions, or the fact that the state civil defense law did not require political subdivisions to take active steps to implement a civil defense program. Regardless of the reason for the lack of organized civil defense resources, the fact remains that North Dakota does not now possess sufficient independent resources of organized personnel and equipment of the type necessary to meet the needs of the state in the event of atomic attack or even a large-scale natural disaster.

The weakness in the state civil defense program can be corrected in part by the integration in state and local civil defense programs of plans to make use of North Dakota National Guard units that are geographically distributed throughout the state and which contain trained and well equipped engineer-type troops. These engineer troops, possessing heavy construction equipment as well as various types of small tools, and equipped with over 1200 vehicles in addition to field kitchens and other emergency-type field equipment, represent a resource that North Dakota cannot afford to overlook in civil defense planning, nor can the state or the political subdivisions ever hope to procure equipment and independent civil defense forces of this size distributed geographically across the state.

Although testimony of civil defense personnel when appearing before the Committee was to the effect that the state should organize and equip civil defense forces and provide supply depots in various parts of the state with heavy

equipment available to counties and municipalities, coupled with full-time maintenance and operating personnel, the Committee feels that it is beyond the capacity of the state to hope to provide such an organization and equipment. At present it costs approximately $10 million per biennium to maintain and equip the forces of the North Dakota National Guard, most of which is paid by federal funds, and it is not practicable to expect the state and its political subdivisions to appropriate a sum of this magnitude for independent civil defense forces.

In the opinion of the Committee the most practical and expedient means of providing for the integration of the North Dakota National Guard in civil defense planning is to make the office of the Director of Civil Defense a civilian division of the Adjutant General's department. If the Director of Civil Defense is, in addition, a qualified National Guard officer, he will be completely aware of the capabilities of the units of the North Dakota National Guard and the manner in which they may aid local civil defense agencies in the various communities. Also, by virtue of being a qualified National Guard officer he may assume actual command over such National Guard forces as well as directing all other civil defense personnel. The converse is true if such coordination is not provided. In the event an atomic attack occurs with our present organization, and recognizing that North Dakota will continue to have inadequate civil defense forces in the foreseeable future, the Governor would be forced to use whatever means were at his disposal to meet the needs of the hour. One of his first steps would no doubt be to order all available units of the National Guard to the assistance of the authorities of the stricken area. Because of a lack of knowledge by the local authorities of the capabilities of National Guard units and lack of understanding of the type of task the local authorities might desire them to perform, the full potential of the National Guard in assisting local authorities would be substantially lost. By the same token, should the Governor direct the National Guard to assume the responsibility for the stricken area, the National Guard would be completely unaware of the organization and capabilities of local civil defense forces and agencies to aid in the disaster, and in turn, the capabilities of those local forces would be largely lost.

The North Dakota Constitution substantially limits the type of action that the Legislature can empower a Civil Defense Director or even the Governor to take in meeting needs in case of natural disaster or foreign attack. The purpose of these constitutional restrictions is to protect the citizens from arbitrary action on the part of the Governor or other state civil authorities. Yet the circumstances of a foreign attack or a large-scale natural disaster may be such that the normal processes and powers of government may not be sufficient to meet the needs of the moment for the protection of lives and property during short periods of extreme emergencies. To meet such needs the doctrine of martial law or martial rule has developed wherein the Governor through use of National Guard troops may take action beyond the normal powers of government to such degree as may reasonably be necessary to meet the extreme emergency conditions that may exist at that moment. If such a situation should arise it would be necessary for the Governor to declare martial law in a given area of the state and give some degree of unusual powers to the National Guard in order to permit action that civil defense forces would be unable to take because of lack of power and authority. In this event it would be necessary for the National Guard to take complete or limited control of a given disaster area, and if there had been no joint prior planning, the National Guard would be unaware of local civil defense potential and unable to make use of it.

Placement of the office of Civil Defense within the Adjutant General's office, with the civilian Director of Civil Defense also being a qualified National Guard officer, can and should provide for complete integration of National Guard units in civil defense planning as well as provide for complete integration in the use of local civil defense organizations and equipment in the event the Governor should find it necessary to declare martial law and place the National Guard in charge of disaster areas.

Federal civil defense agencies urge the various state directors of civil defense to completely ignore the potential of National Guard units in their civil defense planning upon the grounds that they would be unavailable for use in the event of atomic attack and would immediately be called to federal duty and sent off to other assignments to perform military duties in combat. The Committee feels that such a view is completely unrealistic and is contrary to statements by the Chief of Staff of the United States Army, and contrary to the opinions expressed by the governors of all the states at the 1960 Governors Conference. Without question, the greater share if not all of North Dakota National Guard

units would be available to aid in civil defense activities for a period of days if not weeks immediately following an atomic attack. While they may be withdrawn for federal military purposes some days or weeks after the disaster when transportation becomes available and the necessary resources are provided to receive them at their destination, the Committee is of the opinion that such units can and will be available for at least a short period immediately following the attack, and this is the period during which the need of organized forces is the greatest.

A section-by-section explanation of changes the bill would make in chapter 37-17 is available in the Committee files.

Because the North Dakota National Guard may be withdrawn at a date subsequent to the attack, the state cannot place its principal reliance upon the National Guard to perform the civil defense functions except to a degree during the period of shock and chaos immediately following an attack. Therefore, a well organized civil defense program coordinating all governmental agencies and personnel, and containing civilian volunteers who are trained as well as resources permit, is essential in North Dakota.

It is the opinion of the Committee that the passage of the various bills recommended to provide for continuity in government and a more workable state civil defense law, together with the integration of the potential of the North Dakota National Guard in civil defense planning, can and should provide for a workable civil defense program in the state.

HIGHWAYS, ROADS and STREETS

The respective House and Senate Legislative Research Committee Resolutions Committees of the Thirty-sixth Legislative Assembly included in their reports, which were adopted by the House and the Senate, a provision directing the Legislative Research Committee to "study the feasibility of returning to the state secondary highway system, highways which have in recent years been dropped from such system and transferred to the various county highway systems, and methods of constructing and maintaining any such highways which may be returned to the state secondary system".

This directive was a result of numerous proposals made in recent sessions of the Legislative Assembly that many miles of fairly heavily traveled roads be placed upon the state secondary system for construction and maintenance, especially those highways which at one time were a part of the state highway system, but were subsequently dropped for various reasons.

An amendment to section 24-01-02 during the past Session authorized the State Highway Commissioner in his discretion to add up to 100 miles per year to the state highway system. As a result of this amendment the State Highway Department reports that approximately 85 miles of county roads have been added to the state system. These were usually short stretches of road that were necessary to connect sections of the state highway system, or consisted of roads once included within the state highway system and located in counties having such a low tax base that it was impossible for the counties to ever hope to construct or even properly maintain them.

However, the State Highway Commissioner reports that funds made available by the past Session of the Legislative Assembly are not sufficient to permit further substantial additions to the state highway system unless additional revenue is provided.

At present there are approximately 2,600 miles of highways upon the state's secondary system. The State Highway Department has available each year a little over $4 million in state and federal funds to meet the almost $100 million construction cost of reconstructing state secondary highways. It can therefore readily be recognized that at the present rate of improvement it will be almost 20 years before all highways upon the state's secondary system are reconstructed. If many additional miles of highways were placed upon the state's secondary system without provision of additional revenue to the State Highway Department, it would so dilute the construction program on this system as to practically prevent any realistic program of improvement.

It appeared necessary that an estimate be made of the number of miles of highways that should be considered for transfer to the state highway system. Since the state highway system was at one time set at 7,700 miles and now contains only about 6,200 miles, there were at one time about 1,500 miles of highways designated as state highways that are not presently on the system. Some of these routes were never constructed or maintained as highways, some have been abandon-

ed, and others have been transferred to the county highway systems.

In the Committee's opinion, the fact that a road at one time had been a part of the state highway system should not of itself automatically mean that it should be considered for return to the state highway system, since its present use may not be sufficient to warrant its construction and maintenance at higher state standards.

The Committee therefore requested the State Highway Department to review the county road systems of the state to determine which county highways might have special justification for being placed on the state's secondary system, and to classify such county roads in accordance with the State Highway Department's opinion of their priority. Following a review, the State Highway Department reported that there appeared to be 149 miles of county roads that had special priority, based upon use and local conditions, to be considered for placement upon the state highway system. Two hundred and ninety-six miles of county roads might be considered in a second priority class. In addition to this, 445 miles of county roads might be considered as having some priority. In the event further large additions are made to the state system, there are many other miles of county roads that might subsequently warrant consideration for placement upon the system.

The Committee then requested the State Highway Department to prepare estimates of the cost to the Highway Department in the event it should place 100 miles of county roads upon the state's secondary system annually during the course of the next 13 years and to reconstruct and maintain such highways during this period. The State Highway Department estimated the cost of adding 100 miles per year to the state highway system over a 13-year period at $69 million.

After reviewing the cost estimates and noting that increased revenue in excess of $5 million per year would have to be provided to the State Highway Department if it were to add 100 miles of county roads to the state secondary system each year, it became obvious to the Committee that such a program was far too costly to be seriously considered. The amount of additional funds required would far exceed the income from any motor vehicle tax increases that might be considered by the Legislative Assembly. In the opinion of the Committee, the state simply cannot afford to build an additional 100 miles of county highways to the higher standards of the state highway system every year and, therefore, it will be necessary that most of these highways be improved to county standards which are much less costly.

Following this determination the Committee sent a questionnaire to all boards of county commissioners in the state to determine whether they felt it desirable to add such number of miles of county roads to the state system each year as might be within the financial ability of the state, or whether they would prefer to have additional funds made available to them for the reconstruction of these roads upon their own county systems, in view of the fact that over twice as many miles of road could be improved to county standards than would be possible if a limited number of miles were placed upon the state highway system. Thirty-nine counties returned this questionnaire to the Committee. Of these counties, 9 expressed a preference for adding a few miles to the state system each year and that the State Highway Department be given increased revenue. Twenty-seven boards of county commissioners expressed a desire to retain such roads upon their county systems, but for the state to provide additional highway-user revenue for their improvement.

Financial Position of State Highway Department

During the course of the study it was brought to the attention of the Committee that for the past several years the expenditures of the State Highway Department in the construction and maintenance of the state highway system has exceeded the income of the department by about $1.5 million per year. The result of such a situation has been to lower the reserve or working capital of the State Highway Department by about $1.5 million per year until at present the working capital of the department is a little less than $5 million. This annual decline in balances has resulted from the substantially increased federal aid construction program which requires additional state matching funds; from increases in the obligations of the department through the payment of the entire cost of purchasing of state highway rights-of-ways in accordance with an Act passed at the last Session of the Legislature; and from the cost of a substantially improved annual maintenance program.

A further complicating factor is that gas tax revenues may not continue the annual rise that has occurred every year since 1946 because of the trend toward smaller automobiles which use less

motor fuel. In addition, this same trend toward light or more compact cars is beginning to affect the revenue available from motor vehicle registration fees, since these vehicles fall into weight categories that are licensed for substantially lower fees than is the case for standard-sized automobiles. Unless additional revenue is made available to the State Highway Department, it will be necessary for the department to curtail its construction program, thereby not fully utilizing all federal aid that may be available, or else to substantially lower the level of maintenance upon state highways, which may cause unwarranted deterioration of our investment in our present highway system. In the opinion of the Committee, neither of these alternatives would be in accordance with the wishes of the majority of the citizens of the state. It therefore turned its attention to methods that might be available in providing increased revenue to the State Highway Department as well as to the problem of providing funds to counties for improvement of their more heavily traveled roads.

City Street Problems

It was brought to the attention of the Committee by numerous city officials and representatives of the League of North Dakota Municipalities that municipal finance problems are becoming more and more critical and that it would soon be necessary for the Legislative Assembly to give sympathetic consideration to the financial problems of cities. It was reported that in 1954, 174 cities and villages were levying the maximum permissible general fund levy while 178 were not levying this maximum. By 1959, 231 cities were levying the maximum amount while only 125 were not. The increase in costs of city government, together with levy restrictions, has forced the cities to borrow in order to provide the services that they need. Consequently, municipal debt, excluding special assessment bonds issued for the payment of special assessment-type improvements, amounts to $218.80 per capita in cities as compared to a county debt of only $2.08 per capita.

In addition to normal tax levies, it is noted that city residents must pay completely for improvements in the vicinity of their property, including streets, although the maintenance of city streets is paid for by city general taxes. At present, while a substantial number of miles of streets are maintained by the cities, no portion of gasoline tax revenue or motor vehicle registration fees are allocated to the cities to aid them in the improvement and maintenance of the street system. While city property is subject to the county road and bridge levy, only 20% of the tax revenue collected by road and bridge levy taxes on property within the corporate limits of municipalities is returned to the cities for street purposes. Obviously, a substantial portion of the gas tax and registration fees is paid by city residents and no doubt a substantial percentage of the mileage driven by motor vehicles in North Dakota is driven upon city streets.

In the opinion of the Committee, fairness requires that the municipalities receive some portion of highway-user tax revenue in view of the streets that are provided by municipalities for use of motor vehicles. The pressing financial needs of municipalities make it especially important that the Legislative Assembly give sympathetic consideration to their problems at the Thirty-seventh Legislative Session.

RECOMMENDATIONS

2% Tax on Sales Price of Tax-Exempt Fuel

Prior to 1946 North Dakota operated under an exemption system of motor fuel taxation. Under this system motor fuel purchased for non-highway use was not subject to motor fuel taxes and because of this exemption the sales price of all such motor fuel was subject to the 2% sales tax. Through an initiated measure passed in 1946 the North Dakota motor fuel tax system was changed to a refund system. Under this system, still currently used, all purchasers of gasoline pay the full state tax and in the event such gasoline is used for non-highway purposes the user may file a claim for refund which, after proper justification, results in the full return of all taxes paid. However, an unforeseen tax loophole resulted from the 1946 initiated measure. Since the gasoline taxes are initially paid upon non-highway gasoline the 2% sales tax does not apply to such sales. Regardless of the fact that motor fuel taxes upon gasoline used off the highways are later refunded to the purchaser, the sale completely and permanently escapes taxation under the sales tax. In view of the fact that the North Dakota sales tax is intended to be a general sales tax applying to all sales unless another special excise tax is paid, it appears that sales of tax-exempt or refundable gasoline should be subject to a sales or use tax.

The Committee therefore recommends that a special 2% use tax be levied against the sales price of gasoline upon which gasoline excise taxes are refunded. This tax could be collected by the

State Auditor by deducting it from the refund payment to the refund claimant.

It is the further recommendation of the Committee that the estimated $700,000 of annual proceeds of this 2% use tax be divided equally among the 53 counties for use upon their county road systems. The proceeds of this tax will be of substantial assistance to the counties in improving their county road systems and will make possible further improvements on county roads which have previously been proposed for transfer to the state system. By dividing it equally among the counties it will be of special assistance in those low tax base counties which otherwise have special problems in matching any county federal aid money that may be available. This method of providing and distributing additional funds for counties was approved by the majority of the boards of county commissioners answering a questionnaire forwarded to them by the Committee upon the subject, and was approved by members of a special committee of the County Commissioners Association which met periodically with the Committee in the course of the study.

Adjustments in Motor Vehicle Registration Fee Schedules

Regardless of the existence of any present shortages of revenue on the part of the State Highway Department, it is essential that, recognizing the trend toward lighter small cars, adjustments be made in the registration fee schedule at the earliest possible date. If this trend continues not only will the annual increase in registration stop, but as a greater number of automobiles move into the lighter car class, the total registration fee revenue will begin to fall. Other trends are apparent in motor vehicle registrations. On the average, trucks under 24,000 pounds are getting older, since there is not a sufficient number of new light truck purchases to maintain the same average age. These aging light trucks are therefore falling into lower registration fee brackets, resulting in a decrease in registration fee revenue per vehicle. It is also recognized that large 3-axle trucks weighing over 24,000 pounds usually travel almost the same number of miles each year for at least the first six years of their life; yet, under North Dakota's registration fee schedule, the total fees substantially decrease as the trucks get older. This raises the question of whether the schedule of registration fees for heavy trucks in this category should be amended to prevent this rapid lowering of registration fees. In addition, there is no realistic minimum registration fee to cover the cost of issuing motor vehicle license plates and providing minimum highway service.

If the Legislative Assembly acts now to adjust the registration fee schedule in advance of the full impact of the trends that are becoming apparent, it is possible for such changes to result at least temporarily in increased income from registration fees.

At the request of the Committee, the State Highway Department prepared and presented to the Committee four sets of motor vehicle registration fee schedules which would increase motor vehicle registration fees for passenger cars, especially in the light-car field; adjust the age brackets in regard to light trucks with some small increases in registration fees; and adjust the age bracket for heavy trucks with some increases in fees.

Following a detailed review of these schedules, it was recommended that two alternative schedules, one raising approximately $1,108,000 in increased registration fees and a second raising approximately $1,553,000, be submitted to the Legislative Assembly.

The Committee recommends the schedule which would produce $1,108,000 additional revenue per year. However, the Legislative Assembly may wish to seriously consider the schedule providing for an increase of $1,553,000. These schedules, together with a comparison of principal differences in present fee schedules, are as follows:

Schedule for Approximately $1 million Increase

PASSENGER CARS

Weight	Years 100% 1st, 2nd, 3rd	Years 80% 4th, 5th, 6th	Years 60% 7th, 8th, 9th	Years 40% 10th & Older
1,999 or less	$ 26.00	$ 20.75	$ 15.50	$10.50
2,000 - 2,399	28.00	22.50	16.75	11.25
2,400 - 2,799	30.00	24.00	18.00	12.00
2,800 - 3,199	32.00	25.50	19.25	12.75
3,200 - 3,599	36.00	28.75	21.50	14.50
3,600 - 3,999	40.00	32.00	24.00	16.00
4,000 - 4,499	50.00	40.00	30.00	20.00
4,500 - 4,999	66.00	52.75	39.50	26.50
5,000 - 5,999	94.00	75.25	56.50	37.50
6,000 - 6,999	124.00	99.25	74.50	49.50
7,000 - 7,999	154.00	123.25	92.50	61.50
8,000 - 8,999	184.00	147.25	110.50	73.50
9,000 & Over	214.00	171.25	128.50	85.50

Present fee schedule produced $5,331,396 or an average fee of $23.53 in 1959. This schedule should produce $6,029,850 or an average fee of $26.61, an increase over 1959 of $698,454 on 226,600 units.

Comparison of Present Fee Schedule and Above Schedule Showing the Dollar Increase Over Present Full Fee

Weight	Proposed Schedule Full Fee	Present Full Fee	Dollar Increase
1,999 or less	$ 26.00	$ 16.50	$ 9.50
2,000 - 2,399	28.00	16.50	11.50
2,400 - 2,799	30.00	22.00	8.00
2,800 - 3,199	32.00	27.50	4.50
3,200 - 3,599	36.00	33.00	3.00
3,600 - 3,799	40.00	38.50	1.50
4,000 - 4,499	50.00	49.50	.50
4,500 - 4,999	66.00	66.00	-
5,000 - 5,999	94.00	93.50	.50
6,000 - 6,999	124.00	121.00	3.00
7,000 - 7,999	154.00	148.50	5.50
8,000 - 8,999	184.00	176.00	8.00
9,000 - Over	214.00	203.00	11.00

SMALL TRUCKS

Here a new schedule was used regrouping 1st, 2nd and 3rd years at 100%, 4th & 5th years at 80%, 6th and 7th years at 60% and 8 years and older at 35%.

Weight	Years 100% 1st, 2nd, 3rd	Years 80% 4th & 5th	Years 60% 6th & 7th	Years 35% 8th & Older
4,000	$18.00	$14.50	$10.75	$10.00
6,000	23.25	18.50	14.00	10.00
8,000	28.50	22.75	17.00	10.00
10,000	33.75	27.00	20.25	11.75
12,000	39.00	31.25	23.50	13.75
14,000	44.25	35.50	26.50	15.50
16,000	49.50	39.50	29.75	17.25
18,000	54.75	43.75	32.75	19.25
20,000	60.00	48.00	36.00	21.00
22,000	65.25	52.25	39.25	22.75
24,000	70.50	56.50	42.25	24.75

The present schedule produces $1,929,884 or an average fee of $18.55 in 1959. This schedule should produce $2,188,940 or an average fee of $21.04 or an increase over 1959 of $259,056 on 104,036 units.

Comparison

Weight	Present Fee Full Fee	Proposed Schedule Full Fee	Dollar Increase	Present Fee - 7th & Older	Proposed Schedule 8th & Older	Dollar Increase
4,000	$15.75	$18.00	$2.25	$4.25	$10.00	$5.75
6,000	21.00	23.25	2.25	6.50	10.00	3.50
8,000	26.25	28.50	2.25	8.50	10.00	1.50
10,000	31.50	33.75	2.25	10.50	11.75	1.25
12,000	36.75	39.00	2.25	12.75	13.75	1.00
14,000	42.00	44.25	2.25	14.75	15.50	.75
16,000	47.25	49.50	2.25	17.00	17.25	.25
18,000	52.50	54.75	2.25	19.00	19.25	.25
20,000	57.75	60.00	2.25	21.00	21.00	-
22,000	63.00	65.25	2.25	23.25	22.75	(.50)
24,000	68.25	70.50	2.25	25.25	24.75	(.50)

LARGE TRUCKS

R.G.W.	Years 100% 1st thru 4th	Years 80% 5th thru 9th	Years 70% 10th & Older
26,000	$155.00	$124.00	$108.50
28,000	190.00	152.00	133.00
30,000	225.00	180.00	157.50
32,000	260.00	208.00	182.00
34,000	295.00	236.00	206.50
36,000	330.00	264.00	231.00
38,000	365.00	292.00	255.50
40,000	400.00	320.00	280.00
42,000	435.00	348.00	304.50
44,000	470.00	376.00	329.00
46,000	505.00	404.00	353.50
48,000	540.00	432.00	378.00
50,000	575.00	460.00	402.50
52,000	610.00	488.00	427.00
54,000	645.00	516.00	451.50
56,000	680.00	544.00	476.00
58,000	715.00	572.00	500.50
60,000	750.00	600.00	525.00
62,000	785.00	628.00	549.50
64,000	820.00	656.00	574.00
66,000	855.00	684.00	598.50
68,000	890.00	712.00	623.00
70,000	925.00	740.00	647.50
72,000	960.00	768.00	672.00
73,280	995.00	796.00	696.50

Present schedule produces $1,336,127 or an average fee of $406.74. This schedule should produce $1,487,258 or an average fee of $452.74 or an increase of $151,131 on 3,285 units.

Comparison

Here the important difference is in the units 10 years and older.

R.G.W.	Present Fee 10 Years or Older	Proposed Schedule 10 Years or Older	Dollar Increase
26,000	$ 96.00	$108.50	$ 12.50
30,000	132.00	157.50	25.50
34,000	171.50	206.50	35.00
38,000	211.00	255.00	44.00
42,000	251.00	304.50	53.50
46,000	290.50	353.50	63.00
50,000	330.00	402.50	72.50
54,000	370.00	451.50	81.50
58,000	409.00	500.50	91.50
62,000	449.00	549.50	100.50
66,000	488.50	598.50	110.00
70,000	535.00	647.50	112.50
72,380	594.00	696.50	102.50

Schedule for Approximately $1.5 million Increase

PASSENGER CARS

Weight	Years 100% 1st, 2nd, 3rd	Years 80% 4th, 5th, 6th	Years 60% 7th, 8th, 9th	Years 40% 10th & Older
1,999 or Less	$ 27.00	$21.50	$16.25	$10.75
2,000 - 2,399	29.00	23.25	17.50	11.50
2,400 - 2,799	31.00	24.75	18.50	12.50
2,800 - 3,199	34.00	27.25	20.50	13.50
3,200 - 3,599	38.00	30.50	22.75	15.25
3,600 - 3,999	42.00	33.50	25.25	16.75
4,000 - 4,499	52.00	41.50	31.25	20.75
4,500 - 4,999	68.00	54.50	40.75	27.25
5,000 - 5,999	96.00	76.75	57.50	38.50
6,000 - 6,999	125.00	100.00	75.00	50.00
7,000 - 7,999	155.00	124.00	93.00	62.00
8,000 - 8,999	180.00	144.00	108.00	72.00
9,000 & Over	210.00	168.00	126.00	84.00

Present schedule produces $5,331,396 or an average fee of $23.53 in 1959. This schedule should produce $6,381,056 or an average fee of $28.16 or an increase over 1959 of $1,049,660 on 226,600 units.

Comparison

Weight	Proposed Schedule Full Fee	Present Full Fee	Dollar Increase
1,999 or Less	$ 27.00	$ 16.50	$ 10.50
2,000 - 2,399	29.00	16.50	12.50
2,400 - 2,799	31.00	22.00	9.00
2,800 - 3,199	34.00	27.50	6.50
3,200 - 3,599	38.00	33.00	5.00
3,600 - 3,999	42.00	38.50	3.50
4,000 - 4,499	52.00	49.50	2.50
4,500 - 4,999	68.00	66.00	2.00
5,000 - 5,999	96.00	93.50	2.50
6,000 - 6,999	125.00	121.00	4.00
7,000 - 7,999	155.00	148.50	6.50
8,000 - 8,999	180.00	176.00	4.00
9,000 or Over	210.00	203.00	7.00

SMALL TRUCKS

Here the present fee schedule is used - age regrouped 1st, 2nd, 3rd years at full fee; 4th, 5th and 6th years at 80%; 7th, 8th and 9th years at 60%. The 10th year and older are at the present 30 to 40% of the full fee except a $10.00 minimum fee is used. This would result in an increase of $353,187 and a change of from $18.55 to $21.94 for the average fee on 104,036 units, the number registered in 1959. There would be no change in the rate tables, only a minimum of $10.00 was added. The increased income is from age regrouping.

LARGE TRUCKS

R. G. W.	Years 100% 1st thru 4th	Years 80% 5th thru 9th	Years 70% 10th & Older
26,000	$155.00	$124.00	$108.50
28,000	190.00	152.00	133.00
30,000	225.00	180.00	157.50
32,000	260.00	208.00	182.00
34,000	295.00	236.00	206.50
36,000	330.00	264.00	231.00
38,000	365.00	292.00	255.50
40,000	400.00	320.00	280.00
42,000	435.00	348.00	304.50
44,000	470.00	376.00	329.00
46,000	505.00	404.00	353.50
48,000	540.00	432.00	378.00
50,000	575.00	460.00	402.50
52,000	610.00	488.00	427.00
54,000	645.00	516.00	451.50
56,000	680.00	544.00	476.00
58,000	715.00	572.00	500.50
60,000	750.00	600.00	525.00
62,000	785.00	628.00	549.50
64,000	820.00	656.00	574.00
66,000	855.00	684.00	598.50
68,000	890.00	712.00	623.00
70,000	925.00	740.00	647.50
72,000	960.00	768.00	672.00
73,280	995.00	796.00	696.50

Present schedule produces $1,336,127 or an average fee of $406.74. This schedule should produce $1,487,258 or an average fee of $452.74 or an increase of $151,131 on 3,285 units.

Comparison

Here the important difference is in the units 10 years or older.

R. G. W.	Present Fee 10 Years or Older	Proposed Schedule 10 Years or Older	Dollar Increase
26.000	$ 96.00	$ 108.50	$ 12.50
30,000	132.00	157.50	25.50
34,000	171.50	206.50	35.00
38,000	211.00	255.00	44.00
42,000	251.00	304.50	53.50
46,000	290.50	353.50	63.00
50,000	330.00	402.50	72.50
54,000	370.00	451.50	81.50
58,000	409.00	500.50	91.50
62,000	449.00	549.50	100.50
66,000	488.50	598.50	110.00
70,000	535.00	647.50	112.50
72,380	594.00	696.50	102.50

It is the recommendation of the Committee that 70% of the additional revenue resulting from the proposed adjustment in motor vehicle registration fees be allocated to the State Highway Department in order to substantially make up revenue shortages in carrying on the current highway program. Since it is possible that changes in the federal aid program, slight variances from income and expenditure estimates, and other factors could occur it is possible that an increase of slightly less than highway department estimates might be sufficient to maintain the State Highway Department's financial position.

It is recommended by the Committee that 30% of the increased revenue, which would result in proposed motor vehicle registration fee adjustments (about $332,000) be distributed to the incorporated cities and villages of the state in proportion to their population. This revenue can provide substantial relief to the cities in solving their street construction and maintenance problems, and make a material contribution to the solution of the financial problems of the cities and villages. In addition, it gives recognition to the fact that a substantial amount of highway user revenues are actually earned by the cities in providing streets which carry a substantial portion of the motor vehicle traffic of the state.

Conclusions

In the event the recommendations of the Committee are followed by the Legislative Assembly, it will result in material relief to highway finance and construction problems of the State Highway Department, counties, cities and villages. Further details of the Committee recommendations will be apparent in examining the drafts of bills which accompany this report to carry out these recommendations.

SALARY CLASSIFICATIONS AT INSTITUTIONS OF HIGHER LEARNING

The respective House and Senate committees on Legislative Research Committee Resolutions of the 36th Legislative Assembly in their reports, adopted by the House and the Senate, directed the Legislative Research Committee to study the salary scales of personnel of the various institutions of higher learning in the state and to consider the establishment of statewide salary scales and classifications for similar positions in the various institutions, for the primary purpose of aiding the Legislative Assembly in making decisions to equitably appropriate funds for salaries to the various institutions of higher learning.

At the request of the Committee, the Board of Higher Education prepared and submitted for comparative purposes a list of all faculty members at all institutions in the state, giving their current salaries, degrees held, experience, and fields of instruction. In the course of the study, the Committee met with the Board of Higher Education, the Council of College Presidents, and the Salary Schedule Committee of the North Dakota Education Association.

Between the years 1946 and 1954, there was very little in the line of substantial salary increases for college faculty and, consequently, salaries were out of line with those in other fields and with the cost of living. However, following the larger appropriations made in the 1957 and 1959 sessions, substantial improvements in faculty salaries have been made. As a result of such improvements in salaries, the turnover among faculty members was cut from a rate as high as 30% a year down to approximately 9% in 1959. In spite of such salary improvements, the average salary of a college faculty member in the state of North Dakota is aproximately $5,900, which is about $1,000 less than the national average salary for college faculty members in the year 1959. The proposed budget submitted by the Board of Higher Education to the Budget Board would provide substantial improvements in the salary position of North Dakota faculty members if allowed by the Budget Board and the Legislative Assembly, but to bring the average salary of North Dakota faculty members up to the national average would probably require further budget increases in excess of $3 million for the biennium.

Perhaps the principal reason why salary increases were not so large during the 1946-1954 period was that increased enrollment continually required the hiring of additional faculty. Consequently, increases in appropriations went largely to salaries for new faculty members rather than toward improving the salary structure for older faculty members. In order to attract competent new instructors it was necessary for the institutions to offer higher and continually higher starting salaries, which naturally narrowed the salary difference between new faculty members and older faculty members. As a result, the state had difficulty in holding outstanding faculty members during this period because of its failure to properly reward them for their outstanding performances.

Following the 1955 Session, and more especially in 1957 and 1959, improved appropriations made it possible to substantially improve salaries of faculty members, especially those older faculty members who were considered outstanding in their fields by the institutional presidents and Board of Higher Education. In addition, the increased funds permitted the establishment of faculty ranking in order to distinguish between positions of instructors, associate professors, and professors, and to give suitable recognition for the different positions in the form of salary differences. Faculty ranking has now been accomplished in all but one four-year institution.

In spite of increased appropriations for salaries at institutions of higher learning, it does appear that the needs of some institutions have been met to a greater degree than others. This is shown by the fact that a few of the institutions have practically no reserve funds to meet contingencies or unexpected emergencies while others appear to have ample reserves for such situations. Therefore, while increased appropriations for salaries have been substantial, and greater uniformity of salaries has resulted through faculty ranking made possible by more adequate appropriations, not all institutions have shared in this improvement to the same degree.

Arguments For and Against a Salary Scale

Some of the principal arguments usually given in favor of the establishment and publication of a fixed salary schedule are that such schedules would eliminate salary differences among professors at the institutions doing similar work and having similar academic degrees and experience. It is argued that it would eliminate salary discrimination against established faculty members in favor of new instructors who may be more difficult to obtain or hold, and further that it would eliminate discrimination against individuals because of personal prejudice. It is often stated that a salary schedule will encourage advanced training since the amount of return for advanced degrees is definitely known. It is suggested that it will aid the college presidents in solving one of their most difficult problems, which is the determination of salaries for faculty members, and that it will generally improve faculty morale.

A further argument often presented is that it will provide a yardstick for use by the Legislative Assembly in determining the needs of the various institutions and permit them to more equitably appropriate funds among the institutions in accordance with their individual needs. Some proponents of salary schedules argue that no provision for merit should be inserted in a salary schedule because of the difficulty of measuring superior classroom ability or special effectiveness or contribution to the institutions. Other proponents suggest that an increment can be included in the schedule, which could be awarded at the discretion of the president to persons he feels especially deserving.

The principal arguments presented in opposition to a fixed salary schedule are that it is difficult to classify all the various positions in an entire educational system because of their diverse nature. In this regard, it is generally recognized that the programs of the University of North Dakota, the North Dakota State University, and the Wahpeton School of Science are so different from those of the teachers colleges and the Bottineau School of Forestry that they could hardly be considered for inclusion within the same salary schedule. It is suggested that if a salary scale does not recognize the necessity of salary increases for outstanding classroom ability or special performance or contribution to the institution, it will in part destroy the incentive for faculty members to do an outstanding job, and may take away one of the principal means used by the president of an institution to encourage special efforts and cooperation on the part of faculty members. Without provision for substantial merit payments, it might result in constant improvement of salaries for weak or mediocre faculty members who, through obtaining tenure, must be retained upon the faculty.

It is argued that years of experience and degrees held are not of themselves an adequate measure for the classroom ability of a faculty member. In the event of limited funds for the payment of salaries, it might necessitate the use of all available funds for the payment of minimum scales and prevent the allowance of merit increases to outstanding faculty members. The oustanding faculty members are usually the ones who can most readily find other employment and advancement at other institutions, and the result might be the retention of weaker faculty members and the loss of the outstanding leaders on the campus.

It is often argued by governing boards of institutions that there is no guarantee that the Legislative Assembly can provide funds to meet salary schedules if they are established, and consequently that embarrassment and dissatisfaction

might result if it were necessary to reduce salaries below the schedule that had been promised. It is suggested that it would require substantially larger appropriations to pay all faculty members on a fixed scale than are required when the weaker members are paid in accordance with their ability and contribution, and outstanding faculty members are paid in accordance with their contribution.

Conclusions

The Committee is of the opinion that fixed salary schedules can result in benefits to some faculty members; can make the job of establishing salaries at institutions easier for the president; and would be of some help to the Legislative Assembly in its efforts to equitably appropriate available funds to the various institutions of higher learning. The Committee wishes to note, however, that it is firmly opposed to any salary schedule which does not have adequate provision for substantial merit increases for outstanding faculty members showing special classroom ability and otherwise making outstanding contributions to the college and its students. If adequate merit provisions are provided, a salary schedule might more properly be called a minimum salary scale.

It is the opinion of the Committee, however, that the arguments against a salary schedule, together with the practical problems faced by the Legislative Assembly and the Board of Higher Education in implementing such a schedule, are even more compelling than those arguments and benefits that might result from it. The Committee, therefore, cannot recommend the establishment of a fixed salary schedule at institutions of higher learning at this time. In the opinion of the Committee, it is necessary for the college presidents and the Board of Higher Education to have a greater range of discretion under current conditions in matters of salary than would be possible under a fixed schedule. The Committee recognizes that because of a scarcity of certain types of instructors, which scarcity can change fairly rapidly from field to field over the years, that it it often necessary for salaries in some fields to be higher than those in others if competent personnel is to be attracted and retained. It is especially desirable that the deans, presidents, and members of the Board of Higher Education have some means of encouraging cooperation and special contributions and improvement among faculty members since under present tenure policies once a faculty member acquires tenure, he must be retained upon the faculty unless substantial cause can be shown for his removal.

However, an equally compelling argument in the opinion of the Committee is that in all probability North Dakota does not have financial resources available to compete fully with the collleges and universities of some of the more wealthy states in the payment of salaries of faculty members. The shortage of faculty members in institutions of higher learning will become more acute as the flood of increased enrollments continues during the 60's and early 70's, and it will be the outstanding faculty members who will be the most mobile and most in demand by other institutions. If we wish to retain those outstanding faculty members who provide the leadership upon the campus and set the standards of quality that are desired at institutions of higher learning, freedom must exist on the part of deans, presidents, and the Board of Higher Education to provide adequate compensation to retain them, even though this might mean somewhat smaller salaries for the weaker or more mediocre members of the faculty who are less in demand by out-of-state institutions. Without a fair quota of these outstanding faculty members, the standards of quality at our institutions cannot help but fall.

Recommendations

It was suggested to the Committee by members of the North Dakota Education Salary Schedules Committee that at times competent and outstanding faculty members are not always adequately compensated in accordance with their ability and contribution when compared to salaries offered to some new members of the faculty, to whom a premium salary may have been paid to fill positions in fields of scarcity. While it is recognized that the freedom to pay premium salaries in fields of scarcity must exist or classrooms in some fields will remain vacant, it is the opinion of the Committee that existing faculty members within the same field should be recognized by improvement in their salaries in accordance with the going rate in that field. The fact that outstanding and capable faculty members may have established community ties, purchased homes, and may have other reasons why they would be reluctant to leave an institution, should not be grounds for failure to compensate them in accorance with the going rate of salaries in their fields.

It was also pointed out to the Committee that at times college presidents hire new faculty members at rates substantially less than the going

salaries at the institution, and when this is realized by a new faculty member he soon becomes dissatisfied. In an attempt to retain him, at times it is necessary for the president to authorize inordinately large salary increases. Such unusually large increases to new faculty members, caused by too low a starting salary, can also create dissatisfaction among the faculty, and this situation should be avoided whenever possible. In this regard, it may be desirable for the Board of Higher Education to establish certain minimum starting salaries in various common fields as a guide to presidents of the institutions.

Perhaps the most important recommendation of the Committee relates to the equitable appropriation of funds between the institutions of higher learning. The Board of Higher Education has made special efforts during the present biennium to evaluate the relative financial position of each institution. As a result of this intensive study the recommended budgets will go far in removing previous inequities that existed in appropriations between institutions. The proposed budgets for educational services or salaries are based upon salaries paid during the last year of the present biennium. To this amount the Board has added amounts necessary to take care of normal growth of faculty resulting from new enrollments; a cost of living increase; provision for merit allowances to faculty members for outstanding ability and contributions; allowances for special projects; and a distress factor based upon the size of any reserve funds that the institution might possess. In the opinion of the Committee, the relationship between appropriations of the various institutions should be retained by the Legislative Aassembly. In the event the Legislative Assembly is unable to provide sufficient funds to meet the requested appropriations for educational services, any cuts in the budget should **not** be made in such a manner as to destroy the relative differences between the appropriations to the different institutions. Under no circumstances does the Committee believe the Legislature should base its appropriations upon flat percentage increases from the previous biennium's budget, since such action would only compound present inequities that the Board of Higher Education is attempting to remove through the budgets proposed for the next biennium.

Taxation

House Concurrent Resolution X directed the Legislative Research Committee to make a complete study of all phases of our tax system and structure with special emphasis on the fairness of the system, its administration, and its effect on economic development in the state of North Dakota. To carry on this study, the Subcommittee on Taxation consisting of Senator A. W. Luick, Chairman, Senators H. B. Baeverstad, Adam Gefreh, O. S. Johnson, C. G. Kee, Bronald Thompson, John E. Yunker; and Representatives George R. Berntson, William L. Guy, Otto Hauf, C. Hilleboe, Stanley Saugstad, Albert Schmalenberger, Elmer Strand, S. Bryce Streibel, Richard J. Thompson and Ben J. Wolf were appointed.

In addition to House Concurrent Resolution X an appropriation in the amount of $30,000 was added to the budget of the Legislative Research Committee for the purpose of carrying on the tax study. It was felt by the sponsors of the resolution that additional personnel would have to be employed to aid the Legislative Research Committee in making the taxation study, due to the large amount of time that would have to be devoted to it and because of the very technical nature of the subject.

The Committee acquired the services of Dr. William E. Koenker, Professor of Economics and Director of the Bureau of Business and Economic Research at the University of North Dakota, and Dr. Glenn W. Fisher, Associate Professor of Economics at the North Dakota State University. The research undertaken by these men covered a span of some 13 months, and the final report as prepared by them was presented to the Committee in October of 1960.

The primary purpose of the research undertaken by Drs. Koenker and Fisher was to provide the basic data and an analysis of it to aid the Committee in determining what improvements should be made regarding the equity of the North Dakota tax system. The report presented to the Committee on Taxation by Dr. Koenker and Dr. Fisher can be divided into two general fields of taxation. The first part of the report dealt with the assessment and taxation of real property, while the remainder of the report dealt with the sales tax, income tax, personal property tax, and other special taxes.

Assessment of Real Property

Most of the research done in the field of real property taxation was carried on by Dr. Glenn W. Fisher of the North Dakota State University of Agriculture and Applied Science. He found that in North Dakota, as in most other states, the property tax has become a minor source of state tax revenue but is still the major source of local tax revenue. It was also found that many types of property have been exempted from taxation for reasons of equity, administrative feasibility, or because of constitutional provisions.

There is a wide county-to-county variation in North Dakota in the importance of various types of property in our tax base. For example, it was found that farm lands make up 42.7% of taxable value in the state as a whole, but account for as much as 65.9% in one county and as little as 17.9% in another. On a statewide basis locally assessed real estate makes up 63.3% of the total taxable valuation, locally-assessed personal property makes up 22.3%, and public utility property 14.5%.

The report also brought out the fact that slightly over 35% of the North Dakota property tax levies are on farm land, 5.2% are on lots, leased sites and unplatted sites, 7.8% are levies on business structures, and 14.6% are on nonfarm residences. Slightly over 22% are levies on livestock, farm machinery, household goods, merchants inventories and other miscellaneous personal property. Fourteen per cent of the property tax levies are against public utility property. In addition, 18.2% of the North Dakota property taxes are levied against property used for consumption purposes, while almost 82% are levied against property used in business or farming.

In the United States as a whole, property taxes levied against farm property are considerably higher, as a percentage of farm income, than our total property taxes as a percentage of total income. However, the difference in North Dakota is not as great as in many states. Farm real estate taxes in North Dakota are lower in relation to farm income than in any of the states compared in the study or in the United States as a whole.

The United States Census Bureau data for 1956 shows that farm property is assessed on the average of 33.2% of its actual value, while non-

farm residential property is assessed at an average of 26.4%. These figures are computed without allowing for the fact that farm buildings are exempt from taxation in North Dakota. Data gathered for this report in seven counties indicate that rural land without improvements is assessed at a higher percentage of true value than are urban residences. In one county, for example, rural lands were assessed at 50% of their true value while urban residences were assessed at 20%. Assessments from one farm to another and from one urban residence to another varied tremendously. It is not uncommon for some land to be assessed four times higher in relation to its true value than other land in the same county. The same is true as to assessments between buildings in cities. This means that some taxpayers pay four times as much in real property taxes in relation to the value of their property as do others.

As a part of the study undertaken by Dr. Fisher, 800 questionnaires were sent to persons in seven counties who had recently sold their property, to find out the market value of their property, and of these 800 questionnaires 30% of them were forwarded back to Dr. Fisher with the sales price data. Dr. Fisher then checked the assessed valuation of property sold in normal sales to see if all had been assessed at about the same percentage of the actual sales value. It was found that the variance in the assessment was wide, ranging from a low of 27.6% in Ward County, to a high of 67% in Stutsman County. City residence assessments averaged from a low of 17.9% in Ward County to a high of 37.7% in Dickey County.

Variations of assessment between individual taxpayers within a county were even greater. For example, one residence in a village in Barnes County was assessed at only 3.3% of its actual value while another in Valley City was assessed at 38.7% of its actual value. Thus, the owner of the residence in Valley City was paying 12 times as much in county, state and other taxes for each dollar of actual value of his property than was the taxpayer in the small village. It was also found that individual assessments in Richland County for farm real estate, which is probably one of the best-assessed counties as far as real estate is concerned, ranged from 20.8% of actual market value to a high of 52.1%. This means that some farmers pay over 2½ times as much property tax based on the actual value of their property as do other farmers in the same county. These are just a few of the inequities regarding real property taxation that were found. While only a few specific counties and cities were mentioned, it can be generally stated that nearly the same inequities as found in these cities and counties can be found in nearly all the cities and counties in the state.

An analysis of the effect of variations in the level of assessment reveals the greatest property tax inequities result from lack of uniformity of assessments within a county. Data concerning assessment of farm lands reveals tremendous variation in the level of assessment within a county of the type cited above. Since these are properties which are subject to many of the same mill levies, there is a direct correspondence between the level of assessment and the level of taxation. The level of farm land assessment is inversely correlated with value. That is, high-priced lands in a county tend to be assessed at a lower percentage of value than do the low-priced lands. In some counties the tendency to assess good land and poor land at about the same value per acre is so strong that the taxes almost become a "per acre" tax rather than an ad valorem tax. Although data is less complete, the variations in the level of nonfarm residential property assessment seemed to be even greater than the variation in land assessment.

Dr. Fisher stated that experience in other states, as well as in North Dakota, suggests that four conditions must be established before substantial statewide improvements in real estate assessments are attained. The four principal recommendations made by Dr. Fisher for improvement of real property assessments are:

1. Professional full-time assessors must be employed. Assessing real estate is a highly technical job, and only rarely will a part-time assessor have the necessary knowledge or the time to acquire the technical skill needed;

2. Accurate sales-assessment ratio studies must be made so that assessors have data on actual real estate sales as one of the bases for establishing value;

3. In order for the sales data to be useful all property must be classified. This means soil classification for farm land and classification by type, construction, and location for urban property; and

4. The state must provide assistance to the assessors in certain aspects of their work.

Dr. Fisher comments that these suggestions do not constitute a magic wand which will solve

all of the assessment problems. Many adjustments would have to be made and much opposition would have to be overcome before they could be successfully applied.

Adoption of the four principal recommendations for correcting inequities of real property assessment, as presented by Dr. Fisher, **would not** increase total taxes. The recommendations are directed only toward equalizing assessments between taxpayers within a county and between counties.

After receiving the first part of the report prepared by Dr. Fisher, the Committee discussed and considered the findings and recommendations at great length. After two public hearings at which county commissioners, county auditors, assessors, state department officials, and other interested individuals were heard, the Committee decided that the basic step toward attaining uniform assessments of real property would have to be the employment of full-time professional assessors, if possible. In the opinion of the Committee, uniform assessments cannot be obtained through the largely uncoordinated efforts of approximately 1700 separate assessors, each valuing property in accordance with his personal judgment. The Committee recommends an optional Uniform Assessment Bill which would provide for either a full-time assessor on the county level, and which would authorize cities having a population of 5,000 or more to employ a full-time city assessor, or for a full-time or part-time county supervisor of assessments who could be the county auditor or his deputy, or other elected county official or person appointed by the county commissioners for that purpose, to supervise all assessors in the county under the present assessment system.

Any county not desiring to establish the office of county assessor need not do so. However, upon the presentation to the county commissioners of a petition containing the signatures of not less than five percent of the electors voting at the last countywide election requesting the establishment of the county assessor system, the county commissioners must submit to the people of the county the question of establishing a full-time county assessor system at the next countywide election. If at such election, a majority of the people voting on such question favor the establishment of the county assessor system, it will be the duty of the county commissioners to put such system into effect.

The Committee felt that many of the larger cities of this state which are employing full-time assessors have been developing sound systems for the assessment of urban property. In consideration of this fact and in consideration of the financial burden it would place upon the county to require the county assessor, in counties adopting the county assessor system, to assess all urban property in larger cities, it is recommended that every city having a population of 5,000 or more be given the option of maintaining the office of city assessor. In order to obtain uniformity of assessment, it is recommended that the city assessor be under the general supervision of the full-time assessor on the county level insofar as assessment procedures and methods are concerned, and that the county assessor be authorized to appeal any assessment made by the city assessor to the county board of equalization.

In counties adopting the county assessor system, the county assessor would be responsible for the assessment of all property, both real and personal, in the county except in cities of 5,000 or more which have a full-time city assessor. However, it should be pointed out that if a city does not desire to employ a full-time city assessor, the city could then be assessed by the full-time county assessor. In that event the mill levy authorization in the recommended bill would be spread over the city in the same manner as it would be spread over the balance of the county for the purpose of maintaining such assessor.

In counties not adopting the county assessor system it is mandatory that they provide for a county supervisor of assessments as provided above. It would be such supervisor's duty to carry out the policy of the state tax commissioner and the county commissioners regarding methods and procedures of taxation and to generally supervise all assessors in the county with respect to such assessment methods and procedures.

The Committee also recommends that a system of self-listing be used for all personal property. It is obvious that the full-time county assessor could not go out and assess the personal property of each individual taxpayer in the same manner as is now done by the township, city and village assessor. The county would send out to each taxpayer a self-listing blank upon which the taxpayer would list certain major items of personal property by age and cost or value if such item was acquired other than by purchase. Clothing would be given a lump sum value by the taxpayer, rather than listing each item.

In the Committee's opinion, success in obtaining uniform assessments in a large measure depends upon the ability of the counties to obtain and retain competent persons having adequate education and experience to perform the duties of county and city assessors and county supervisors of assessment. However, the Committee also realizes that the governing bodies of counties and municipalities should have discretion in employing these people. Therefore, it is not recommending that rigid standards of education and qualification be met for such employment. It is the hope of the Committee, however, that competent persons will be employed and given every opportunity to broaden their education and experience in the field of assessments by attending schools and seminars aimed at teaching uniform assessment methods and procedures.

It is the opinion of the Committee that in many counties the long-term cost of maintaining the office of county assessor will not be greater than the cost of maintaining the township and municipal assessment system. Since the creation of the office of county assessor will result in the saving of salaries of township and unorganized district assessors, as well as most municipal assessors, and result in the lessening of the load of the county auditor's office, these savings in many instances will fully pay for the operation of the office of county assessor. In counties having a small population and low valuation, it is recommended that the option be given of joining with adjacent counties for the purpose of jointly maintaining the office of county assessor.

It is a further recommendation of the Committee that the expense of the office of county assessor be paid for from the county general fund except that, at the option of the county commissioners, such additional mill levies as may be necessary may be spread on all taxable property in the county in cases where county general funds are insufficient to maintain a full-time assessor.

The Uniform Assessment Bill also provides that township, village, and city boards of equalization in counties maintaining county assessor systems would be retained but that in all cities not maintaining the office of city assessor, and in all townships and villages, that their authority be limited to reviewing the tax assessment rolls in order to determine whether property has been improperly omitted or included on the tax rolls. The actual equalization of individual assessments would be carried on by the county board of equalization. Individual taxpayers would then appeal any individual tax assessments to the county board of equalization in the same way that they are appealed to the township, village, and city boards of equalization at the present time.

It is recommended that the boards of equalization in cities maintaining the office of city assessor in counties maintaining the office of county assessor be continued in the same manner in which they now function, with the exception that the county assessor be allowed to appeal any decision of a city board of equalization to the county board of equalization for a final determination.

The purpose of recommending the restriction of the powers of township, village, and city boards of equalization in cities not maintaining the office of city assessor, is to prevent such boards of equalization from destroying the equalized assessments made on a countywide basis by the assessor. Considering the present means of transportation now available, it is believed by the Committee to be no hardship to require taxpayers desiring to appeal assessments to appear before the county board of equalization at their county seat.

It should be pointed out that in counties maintaining a county supervisor of assessments the township, village, and city boards of equalization will perform the same duties as are presently assigned to them.

The Committee would like to again emphasize that the purpose in recommending improvement to our real property assessment system is not to increase the over-all tax base or assessed valuation of the state, and its purpose is definitely not to increase property taxes. This study and the recommended Uniform Assessment Bill is simply to obtain uniformity of assessments between individual taxpayers and between the various subdivisions within the state. Any change in the over-all assessed valuation of the state resulting from improvement in tax assessment methods should not be used as a means of obtaining increased revenues from taxes upon property. For the purpose of preventing any substantial increase in taxes as a result of assessment methods the Committee recommends that taxes not be permitted to increase more than 3% above the amount that could have been levied the year previous to the establishment of the county assessor system.

The authority of the people to vote increased mill levies in certain instances should not be abridged, but the amount of tax payments resulting from such increases should be limited to the total of such increased mill levies applied to the tax valuations of the year immediately preceding the year in which the county established the county assessor system. New property coming upon the tax rolls subsequent to the assessment of the year immediately preceding the year in which the county established the county assessor system should be exempt from this limitation. This limitation of 3 percent over and above the amount of tax they could have levied in the year immediately preceding the year in which the county established the county assessor system will not in any manner affect the present 50 percent tax base in this state. These restrictions will therefore prevent any substantial increase in taxes as a result of the operation of the new assessment system.

These tax increase limitations do not apply, however, to the twenty-one mill county levy for school purposes, nor prohibit a political subdivision from extending a mill levy sufficient to acquire the amount of tax money received during the year immediately preceding the year in which the county established the county assessor system, plus money received from mill levies extended to property coming upon the tax rolls since such year.

Another recommendation made by Dr. Fisher for improved assessments of real property is that sales-assessment ratio studies be made so that the assessors have actual data on real estate sales as a basis for establishing value. It is felt that one of the best tools that can be used by the assessor to determine the value of real property is to find out what that property sold for at an arms-length sale. An arms-length sale is one between a willing seller and a willing buyer and not sales such as a father selling real property to his son, real property sales between relatives, or forced sales, but rather those sales made in the general course of business for which the only consideration was money. The Uniform Assessment Bill requires that the county assessor, as one of his duties, must make accurate sales-assessment ratio studies of all sales of real property within the district of the full-time assessor and that county supervisors of assessment make such studies to the extent time and funds are available.

A third finding of Dr. Fisher's was that in order for sales data to be useful, all property must be classified. This means soil classification for farm and ranch land and classification by type of construction for urban property. As far as urban real estate is concerned, schedules will have to be prepared to aid the assessor in classifying lots in cities, both business and residential. In addition, all buildings on real property, both business and residential, will have to be classified on the basis of their construction.

The classification of rural land is a very difficult job and requires much time and study before a workable and accurate land classification system can be completed and made useful. During the 1951-53 biennium, the Legislative Research Committee made a study of a rural land classification program for the purpose of equalizing taxes upon farm lands and to aid in equalizing assessments between townships and between counties in the state. In the report of the Legislative Research Committee to the Legislature in 1953, it recommended that an appropriation of $50,000 be given to the State Agricultural College for the purpose of a soil reconnaissance survey which could be used for tax assessment purposes in North Dakota. In 1955 the Legislature appropriated an additional $75,000 to the State Agricultural College to continue the soil reconnaissance survey and to begin the gathering of economic data to determine the valuation of soils of various types. Again in 1959, the Legislative Assembly appropriated $50,000 to the Agricultural College to complete the soil reconnaissance survey of the state.

The land classification system is a step beyond the soil reconnaissance survey and is essential in the establishment of accurate assessed valuations on farm land. The basis for land classification is, first, a soil survey which maps the areas of different kinds of soil and predominant slopes of such soils in all portions of the state. Kinds and amounts of crops that are normally grown and produced on each soil type are then determined by study production records of such soil types.

It is recognized that the value of farm land is dependent upon the income it will produce and therefore a determination of the average or expected income that the various soil types will yield in the various parts of the state is essential. After average yields of crops are obtained for each soil type in each area, together with the average sales price for the crops, the average cost of production are deducted therefrom. This income per acre is then capitalized at about 5%

and a dollar value placed upon each acre of land of that soil type in the various parts of the state. Such results are further verified by checking against actual sales in the vicinity of the land. This dollar value per acre is usually expressed in numbers from 1 to 100 and called index numbers.

The soil reconnaissance survey undertaken by the North Dakota Agricultural College will be completed on or about January 1, 1961. Although the complete program of land classification will not be finished for a number of years until the detailed mapping of the state is completed by the Soil Conservation Service, there is sufficient information available to provide for a much improved assessment program.

It should not be inferred that merely because a soil reconnaissance survey is complete and for some areas land classification data is available that the assessor will not have many individual decisions to make. Again, soil reconnaissance surveys and land classifications are only tools to aid the assessor in determining the final assessed valuation of any real property. Although soil reconnaissance surveys and land classifications are basic steps toward improved assessments of any real property, the assessor will have to become completely familiar with all of the types of soils and other economic data available to him in his assessment district.

Another recommendation made by Dr. Fisher was that the state provide assistance to the assessors regarding certain aspects of their work.

It is recognized by the Committee that at present the State Tax Commissioner is charged with the general duty of supervising the assessment of property and advising the State Board of Equalization in regard to the equalization of assessments between counties. He must further advise the board upon matters relating to public utility assessment which is carried on by the board. At the present time, there is no provision in the State Tax Department for any person or division to assume the responsibility of supervision of assessors, to assist political subdivisions in difficult assessment matters, to provide information regarding public utility assessments, or to provide the State Board of Equalization with adequate information and assistance to enable it to perform a true job of equalization. It is therefore recommended that a second bill be passed creating the position of State Supervisor of Assessments within the State Tax Department to aid the Commissioner in performing the duties of his office relating to assessments. In addition to these duties, the State Supervisor of Assessments would generally supervise all phases of methods and procedures of both real and personal property assessments in the state, so that all assessors in North Dakota would assess both real and personal property on a uniform basis, using the same methods and procedures. The person appointed to the position of Supervisor of Assessments should be highly qualified, with the greatest amount of education, training, and experience in the field of valuation and assessment that can be obtained. The establishment of this position with a highly competent appointee is an essential step in the improvement of assessment and equalization in the state. Therefore, the bill should provide that such position be filled only after the applicant has successfully passed examinations made available by the North Dakota Merit System Council.

It should be stressed that although the adoption of a Uniform Assessment Bill as recommended by the Committee will be a major step forward in accomplishing improved assessment in the state of North Dakota, especially in those counties maintaining the county assessor system, the appointment of qualified persons to the position of assessor will be necessary to actually carry out improved assessment procedures in North Dakota. It is hoped that the Tax Commissioner can make arrangements with the North Dakota State University to conduct formal training courses as soon as possible after the passage of this bill for all county assessors and any other assessors able to attend. These training courses could be conducted at such times as would least interfere with the assessors' busy schedules. In attending these formal training courses, the assessors will learn the basic methods and procedures of real and personal property assessment and, therefore, become qualified to more uniformly assess real and personal property in the state.

Personal Property, Income, and Other Miscellaneous Taxes

The second portion of the report presented to the Committee by Drs. Koenker and Fisher deals with taxation in fields other than real property. This portion of the report was prepared primarily by Dr. Koenker and contains findings and recommendations in the following taxation areas: personal property taxation; general and selective sales taxes; highway user taxes; special taxes on financial institutions such as commercial banks, savings and loan associations,

and domestic insurance companies; and taxation of personal and corporate income and estates. The portion of the report dealing with these tax areas could not be presented to the Committee until October of 1960, and therefore the Committee had very little time to study all phases of the report. The original resolution directing the Legislative Research Committee to study all phases of the tax structure in North Dakota was overwhelming in scope. The Committee simply could not adequately review and analyze the findings in all of these tax fields. Therefore, the Committee was forced to limit its attention to the field of personal property taxation, insofar as that phase of the report was concerned. It is recommended by the Committee, however, that the portions of this report that did not receive the attention of the Committee, together with any other additional research, be continued during the next biennium.

It was the opinion of the Committee that the greatest inequities in the field of personal property assessment are found in household goods, musical instruments, clothing, farm machinery, livestock, tools and business and professional equipment, and stocks of goods and merchandise. It was decided that if the Committee could make some recommendations regarding these fields of personal property, the Committee would have done all that was possible during this biennium.

It is a well known fact no taxpayer has all of his personal property listed on the tax rolls, although the percentage so listed might vary from practically nothing, to perhaps as high as almost 100%. The complete lack of uniformity in obtaining even the listing of personal property on the tax rolls is the most unfair tax situation that can be found. In addition, personal property (most of which is used) is probably the most difficult type of property to uniformly assess since its market value varies so widely. It is almost impossible to obtain uniformity in assessments between the various classes or types of personal property, and it is exceedingly difficult to obtain uniform assessments even within a given class of property of a similar type. Some states, and most provinces of Canada, have given up this almost hopeless task of attempting to equitably assess personal property, and have exempted most of it from taxation. In addition, the personal property tax is often subject to criticism because the ownership of such property is not necessarily related to ability to pay taxes. For instance, a crop failure can result in a farmer having no income, yet his personal property taxes continue at the same level. In addition, personal property taxes strike heavily on farmers and businessmen having substantial amounts of personal property, while most professional men and some service businesses pay very little, and those who receive most of their income from investments escape the tax entirely except as to household goods.

The Committee realizes that nearly all areas of personal property assessment are highly inequitable and that there is no doubt but that a complete revamping of personal property assessments will have to come about in the near future or substitute taxes found. Since the tax structure and laws have been in effect since before statehood, our fiscal policies, budgeting, bonding laws, and other related fields have been geared to them. While the results of minor changes might be forecast with some accuracy, the impact and ramifications of major revisions can not be completely foreseen without detailed study of proposed changes. Because the Committee did not have adequate time available to study and determine the full impact of major changes, it is their feeling that the tax study regarding the personal property assessments be continued by the Legislative Research Committee during the next biennium to further probe into this vast area of taxation so that recommendations for improvement can be made and the resulting changes forecast with accuracy.

It was recommended to the Committee that a "farm" be defined for assessment purposes. In many instances it was found that people had moved just outside the limits of municipalities on very small acreage and had engaged in some aspects of farming but only realized a portion of their income from this operation. This is a real problem because improvements to farms are exempt from taxation. The Committee recommends that a "farm" be defined for tax purposes as containing a minimum of five acres and farmed by a person who obtains not less than 50 percent of his income from farming. The Committee found it was very difficult to define a farm and be fair to all interested individuals, but because of the difficulty political subdivisions are having in determining what constitutes a farm the Committee felt an obligation to provide by law for such definition.

The State Tax Department brought another matter to the attention of the Committee. This was the issuance of receipts upon payment of income tax. The Tax Department stated that in

their opinion receipts were not needed if the taxpayer paid his income tax by other than cash or currency, since then there would be evidence of payment. The Committee agrees with this and is recommending that receipts be issued only for payment of income tax if paid by cash or currency. This would mean a saving to the state of approximately $28,000 a biennium since this has been the cost to the department to issue such receipts.

As was pointed out earlier in this report, the Committee did not have the time available to study all phases of the tax laws and tax structure, nor did the Committee have the time to study all of the aspects and recommendations in the Tax Equity Study as prepared by Drs. Koenker and Fisher. However, the Committee does recommend to the Legislative Assembly that the study of those areas of tax laws and structure that the Committee was unable to study this biennium be continued during the next biennium by the Legislative Research Committee.

Explanation of Legislative Research Committee Bills

Senate Bills

Senate Bill No. 1 - North Dakota Century Code
This bill consists of the entire 14 volumes of the North Dakota Century Code, which is intended to be passed as an emergency measure by both houses as the first matter of business in each house and signed as a law by the Governor. See Committee report on Judiciary and Code Revision.

Senate Bills Nos. 2 through 38 - Appropriation Bills

Senate Bill No. 39 - Presumption of Drainage
This bill, under certain conditions, would establish a presumption of drainage when a producing oil well exists upon land adjacent to an undeveloped tract. See report of Committee on Natural Resources.

Senate Bill No. 40 - Fractional Interests, Integration
This bill provides a method of recovering the cost of drilling and operating an oil well when fractional tracts are pooled by the order of the Industrial Commission to make up a minimum-size drilling unit. See report of Committee on Natural Resources.

Senate Bill No. 41 - Voluntary Unitization Agreements
This bill revises present law in regard to voluntary unitization agreements. Such agreements may be submitted to the Industrial Commission for approval in order to remove the possibility of prosecution under anti-trust laws, but also permits voluntary unitization programs to be placed in operation without the approval of the Industrial Commission. If Industrial Commission approval is given, it must be shown that all tracts in the pool containing measurable amounts of oil and gas are permitted to participate in the unit agreement. See report of Committee on Natural Resources.

Senate Bill No. 42 - Compulsory Unitization
This bill authorizes the Industrial Commission, upon petition of 75% of the oil operators in a given pool and 75% of the mineral owners of such pool, to order a field-wide unitization program in order to provide the greatest maximum recovery of oil and gas from the reservoir. See report of Committee on Natural Resources.

Senate Bill No. 43 - Marketing Districts - Appointment of Director of Oil and Gas Conservation
This bill authorizes the Industrial Commission to establish separate marketing districts in the proration of oil and gas allowables in the state. In addition, it authorizes the State Industrial Commission to select the State Geologist as its staff, or an independent staff selected and appointed by it, with concurrence of the Legislative Assembly. See report of the Committee on Natural Resources.

Senate Bill No. 44 - Obligation to Pay Royalties
This bill would make the obligation to pay royalties to the mineral owner the essence of the contract, and under certain conditions the breach of this obligation might constitute grounds for cancellation of the oil and gas lease in the discretion of the court. See report of Committee on Natural Resources.

Senate Bill No. 45 - Field Examiner System
This bill would authorize the Industrial Commission to establish a field examiner system for the purpose of holding field hearings in matters relating to oil and gas conservation in the area of the state affected. See report of Committee on Natural Resources.

Senate Bill No. 46 - Licensing of Restaurants, Motels, Hotels, etc.
This bill would eliminate duplication in licensing or inspection of this type of establishment by transferring all authority from the State Laboratories Department to local health authorities and in some areas to the State Health Department. See the report of the Committee on Governmental Organization.

Senate Bill No. 47 - Community Mental Health Service Units
This bill would authorize counties, cities, districts or any combination thereof to establish local mental health service units or "community clinics"

to aid in the care and treatment of the mentally ill. See the report of the Committee on Governmental Organization.

Senate Bill No. 48 - Transfer of Children's Psychiatric Clinic to State Health Department

This bill would transfer the jurisdictional control of the Children's Psychiatric Clinic from the Board of Administration to the State Health Department in order to correlate its function with that of the State Mental Health Authority and to provide for the joint use of personnel. See the report of the Committee on Governmental Organization.

Senate Bill No. 49 - State Mental Health Authority

This bill would establish a State Mental Health Authority within the Department of Health for the primary purpose of aiding in the establishment of local mental health programs and also assisting other state and local agencies in their mental health activities. The bill would also establish a state coordinating committee made up of representatives of state agencies having duties in the field of mental health for the purpose of coordinating state efforts and preventing duplication of activities. See the report of the Committee on Governmental Organization.

Senate Bill No. 50 - Investment of State Trust Funds

This bill would broaden the permitted list of investments for a number of state trust funds to include corporate bonds rated "A" or better by national rating agencies. It provides for the establishment of a state investment board to provide professional investment counsel in investing state trust funds. See report of the Committee on Finance.

Senate Bill No. 51 - Costs of Institutional Care

This bill would do away with a number of revolving funds relating to institutional collections and income and place all such revenue in the state general fund. The cost of charitable institutions would be paid for entirely by appropriations of the general fund. The counties would be relieved from paying any portion of these institutional costs, and the state would assume the function of collecting patient cost from the patients or responsible relatives where they are able to pay such cost without hardship. See report of the Committee on Finance.

Senate Bill No. 52 - Optional County Assessor - County Supervisor of Assessor Systems

This bill would authorize, at the discretion of the board of county commissioners, the establishment of a county assessor system. If the county commissioners of a county, in their discretion, choose not to establish a county assessor system, the county would be required to designate the county auditor or some other person to serve as supervisor of assessors. See the report of the Committee on Taxation.

Senate Bill No. 53 - State Supervisor of Assessments

This bill would provide for the establishment of the position of Supervisor of Assessments within the office of the State Tax Commissioner for the purpose of supervising the assessors and assessment system of the state, and in advising the State Board of Equalization in regard to the equalization of real and personal property assessments between counties. See the report of the Committee on Taxation.

Senate Bill No. 54 - Receipts for Payment of State Income Tax

This bill would remove the requirement that a receipt be issued by the State Tax Commissioner for all state income tax payments, and would require such receipt only when income tax payments are made in cash. See the report of the Committee on Taxation.

Senate Bill No. 55 - Definition of a "Farm"

This bill would establish a "presumption" of what would constitute a farm within the meaning of the North Dakota tax exemption for farm improvements. See the report of the Committee on Taxation.

House Bills

House Bills Nos. 501 through 538 - Appropriation Bills

House Bill No. 539 - School District Laws

This bill would consolidate the four separate sets of laws governing the four tyes of school districts in the state and establish a single set of laws to govern all school districts in the state, with the exception of the special school district in the city of Fargo. See the report of the Committee on Education.

House Bill No. 540 - Licensing of Taxicabs and Soft Drink Dealers, Consolidated Tobacco License

This bill would consolidate the present cigarette license with the cigar and tobacco license, to be administered by the Attorney General's Department. The bill would also eliminate the special license required for soft drink dealers and taxicabs presently issued by the Attorney General's Licensing Department upon the grounds that these licenses serve no useful purpose. See the report of the Committee on Governmental Organization.

House Bill No. 541 - Board of Review for Occupational Examinations

This bill would authorize any applicant to request the Secretary of State to appoint a Board of Review to review the examination given for a license to practice any occupation or profession. See the report of the Committee on Governmental Organization.

House Bill No. 542 - Sterilization of Persons at Institutions

This bill would remove the mandatory requirement that certain persons be sterilized before being released from public institutions and would make it discretional with the superintendents and the review boards. See the report of the Committee on Governmental Organization.

House Bill No. 543 - Voluntary Admissions to Grafton State School

This bill would authorize the Superintendent of the Grafton State School, in his discretion, to accept voluntary patients to the school without the necessity of formal court commitment procedures. Safeguards are provided for a patient to request his release and for obtaining a court review upon such request. See the report of the Committee on Governmental Organization.

House Bill No. 544 - Special Education

This bill would permit counties to establish a county board of special education for the purpose of developing a countywide special education program and to make contracts with schools within the districts to carry out such programs. Such programs would, in effect, be optional with the Board of County Commissioners in accordance with their determination of local desires and need. See report of the Committee on Education.

House Bill No. 545 - Juvenile Delinquents and Program of State Training School

This bill would provide for the establishment of a disciplinary committee at the State Training School to advise the superintendent in regard to punitive action to be taken against children at the school; require the employees of the Public Welfare Department and county public welfare boards to supervise parolees from the Training School and find foster homes for them if necessary; change the official name of the institution to "Heart Valley"; require the judge of each district court to appoint at least one full-time juvenile commissioner and authorize the establishment of a closed treatment-orientation unit at the State Training School for disturbed children or newly admitted children. See report of the Committee on Education.

House Bill No. 546 - Reorganization of the State Board of Administration

This bill would provide for the reorganization of the State Board of Administration by making it a 7-man, part-time per diem board appointed by the Governor with the consent and approval of the Senate, for staggered 7-year terms, which board would appoint a full-time executive director to make the day-by-day decisions in regard to institutional management, similar to the present State Board of Higher Education. See report of the Committee on Education.

House Bill No. 547 - Revision of State Civil Defense Agency Law

This bill would generally revise and strengthen the law presently governing the state civil defense agency, and would make such agency a civilian division of the office of the Adjutant General in order to provide for the integration and coordination of civil defense activities with the North Dakota National Guard. See the report of the Committee on State, Federal and Local Government.

House Bill No. 548 - Continuity of Government, Executive and Judicial Branch

This bill would require each principal executive of the Executive Branch of Government and each judge of a court of record to appoint several emergency interim successors to their offices who could perform their duties, in the event they were unavailable following an atomic attack, until their regular successors could be appointed or elected. It would also authorize political subdivisions to appoint similar emergency successors. See the report of Committee on State, Federal and Local Government.

House Bill No. 549 - Continuity of Membership in Legislative Assembly

This bill would authorize members of the Legislative Assembly to appoint emergency interim successors until their regular successors could be appointed or qualified. This bill can become effective only after the passage of a constitutional amendment authorizing this action. See the report of the Committee on State, Federal and Local Government.

House Bill No. 550 - Motor Vehicle Registration Fees

This bill would substantially raise the fees presently charged for the registration of motor vehicles in the light and compact car class and would make other less important adjustments in the schedule of age brackets affecting trucks. This bill would provide slightly more than $1 million of additional revenue to the State Highway Department and the municipalities each year. See report of the Committee on State, Federal and Local Government.

House Bill No. 551 - Use Tax on Exempt Fuel Purchases

This bill would impose a 2% use tax upon the sales price of motor fuel when the special motor fuel excise tax is refunded. The approximately $700,000 of proceeds of this type would be distributed equally among the counties for use upon the county road systems. See report of the Committee on State, Federal and Local Government.

House Bill No. 552 - Duties of Governor and Superintendent of Public Instruction

This bill would attempt to lighten the duties of the Governor and the Superintendent of Public Instruction in regard to their service upon various boards and commissions. Some boards or commissions are recommended for repeal. On others, it is recommended that these two officials be removed as members, and in other instances it is recommended that they be authorized to appoint representatives to attend such meetings as they may be unable to attend. See the report of the Committee on Governmental Organization.

House Concurrent Resolution "A" - Civil Defense, Authority of Legislative Assembly

This resolution would authorize the Legislative Assembly to provide for the appointment by individual legislators of emergency interim successors to their office in the event that individual legislators should be unable to serve following an atomic attack, and would also strengthen the authority of the Legislative Assembly to provide by law for meeting the needs of civil defense. See report of the Committee on State, Federal and Local Government.

House Concurrent Resolution "B" - Organization and Operation of State Training School

Through this resolution the Legislative Assembly would set forth the legislative intent in regard to certain policies to be followed at the State Training School including the establishment of the position of Assistant Superintendent and Director of Treatment and the position of Director of Cottage Life, the establishment of a closed treatment-reception unit, use of personnel of Children's Psychiatric Clinic, development of a staff training program, use of case conference committees, providing information to local officials, and farming operations at the State Training School. See report of the Committee on Education.