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# Summary

## Briefly - - - This Report Says

### **CONSTITUTIONAL REVISION**

The magnitude and scope of the work accomplished by the Subcommittee on Constitutional Revision cannot be adequately stated in brief. At most only the major areas where revision took place can be presented here. The Committee to date has completed revision of the Declaration of Rights sections with minor changes. The Legislative Branch sections, where most of the sections are found which were concerned with legislative powers, procedures, operation, and authority, were consolidated, polished, and expanded, and antiquated sections were deleted. In the Executive Branch sections there was a strengthening of the executive powers to reorganize and centralize authority within the executive department and an elimination in the Constitution of certain elected offices by changing these offices to appointive or to statutorily elected offices. In the Judicial Branch sections all the sections relating to court administration were deleted to provide the Courts an opportunity to cope with their increasing workload. Changes are proposed in the method of selecting supreme court and district court judges from a strictly elective method to an appointive-elective system. Each section which was changed is presented in the main report with an explanatory comment as to the Committee's reasons for doing so. Because of the importance of this subject, the reader is urged to read this report in its entirety.

### **HIGHER EDUCATION**

#### **Generally:**

In the field of higher education the Committee and the Board of Higher Education were fortunate in securing the services of outside consultants. These outside consultants were Dr. John Dale Russell, in the field of instructional programs, and Harland Bartholomew and Associates in the field of space utilization. In a highly specialized area such as higher education, consultants such as these can prove invaluable to the Committee assigned the study.

#### **Instructional Programs:**

In this area, the work of the Committee centered principally around



the study and report of Dr. John Dale Russell. The major recommendations contained in Dr. Russell's report are summarized in this report. In general, the report spoke quite highly of the system of higher education in the state of North Dakota. The one main exception, and one which was emphasized several times in the Russell report, was in the field of faculty salaries wherein North Dakota ranks very low in comparison with other States.

Other principal recommendations of the study included: no substantial expansion of graduate programs at present; the continuance and improvement of Ellendale as a state-supported institution; discontinuance of the two-year teacher training curriculum; and the conversion of the Williston Center into a locally-supported junior college.

The Committee is substantially in agreement with the recommendations of the Russell report, and at the same time realizes that most of the recommendations are policy matters within the responsibility of the Board of Higher Education rather than the legislative field. The Committee is of the opinion that there should be absolutely no major expansion of programs in the field of higher education until such time as adequate financing is available in present areas. The Committee also feels that the matter of higher faculty salaries, particularly for the more experienced and capable faculty members, is a matter of high priority.

#### **Space Utilization:**

A comprehensive analysis in this field was the work of Harland Bartholomew and Associates. Separate reports were prepared for each of the state-supported institutions of higher education. Each report contains detailed estimates of enrollments, future building space needs, and an analysis of teaching loads. Also contained are estimates of space needs for administrative and service functions and student housing.

The report reveals that classrooms and laboratories are utilized for varying percentages of the total time available, ranging generally in the area of 30 to 40 percent. In most cases the recommendation is made that these percentages should be increased to 75 or 80 percent. This proposed increase in utilization is stated to require an increase in the size of faculties, as teaching loads are characterized as being near optimum.

#### **Recommendations:**

To assist the Board of Higher Education and institutional heads in planning for the future of higher education in the state, the Committee recommends that funds be made available for the purpose of employing a research director upon the staff of the Board.

In the area of expansion at state institutions of higher education, the Committee is aware that highly desirable property occasionally becomes available at times when it is impossible to secure legislative authority for its acquisition. Thus the Committee recommends legislation which would give the State Emergency Commission authority to approve acquisition of such property and also grant money from the State Contingency Fund on request of the Board of Higher Education and upon a proper showing of need.

Also in the field of legislation, the Committee recommends a bill which would clarify the definition of the term "nonresident" for tuition purposes at state colleges and universities, and a bill prescribing the method of computing tuition for nonresidents. These matters have been the subject of some confusion to institutional heads, and it is hoped that the amendments recommended by the Committee will aid in clarifying these matters.

A final bill recommended by the Committee creates a Higher Education Facilities Commission, consisting of the members of the State Board of Higher Education; one representative of locally-operated junior colleges; and two representatives of private colleges, to be appointed by the governor. The basic purpose of this commission would be to plan for and administer the federal funds allocated to the state for the various institutions of higher education, both public and private.

## **SECONDARY EDUCATION**

### **Vocational Education:**

From the results of a survey conducted by the Committee among high school administrators within North Dakota, it appears that the problem of the student who drops out of high school prior to graduation is not nearly as great in North Dakota as it is nationally. In North Dakota the dropout rate is about 2.75 percent per year, or 11 percent over the four years of high school. The remaining 89 percent of each freshman class completes their high school education.

While the Committee is of the opinion that the provision of greatly expanded vocational education programs in North Dakota high schools would reduce the dropout rate to an even lower figure, the Committee does not recommend any substantial expansion of vocational education programs in North Dakota high schools. No expansion is recommended because to do so would require that education dollars be diverted from the field of general education, thus causing problems of even greater magnitude than the present dropout problem.

The Committee devoted a considerable portion of its time to a study of the role of the Federal Government in vocational education. Recommended by the Committee is a bill which appropriates funds for the position of Director of Vocational Education within the Department of Public Instruction. The functions of such director would center principally around the formulation of a state plan for vocational education, in order that the state may qualify for federal funds under the Federal Vocational Education Act of 1963.

### **High School Correspondence:**

Once again the Committee conducted a survey among high school superintendents and county superintendents of schools in regard to the operation of the state high school correspondence division. Results of this survey are summarized in this report, and in general tend to indicate a

lessening need for the broad operations of the division and a need for closer supervision over the curriculum and operations of the division.

The Committee is of the opinion that the making-up of courses previously failed in the high school attended is by far the leading reason for students taking courses through the correspondence division. To the extent that this amounts to the State duplicating courses offered by the local high school, in cases where the regular high school courses are available to the student, this practice is highly undesirable. Another matter coming to the Committee's attention was that of approval of enrollments, wherein if a high school student's enrollment in a correspondence course was not approved by his local superintendent, the student could still be enrolled by securing the approval of the county superintendent. This obviously tends to weaken the control of local school authorities. Among the other matters noted by the Committee were the offering of courses which are patently not suited for correspondence-type instruction such as certain laboratory or music courses, and the offering of courses that, while suited to correspondence-type instruction, are still of questionable value.

The Committee recommends approval of a bill which would more clearly define the authority and responsibility of the State Board of Public School Education over the high school correspondence division. The board would be given the responsibility for approving course content and credits, assuring that teachers are validly certified, guarding against duplication of public school facilities, and assuring that the operation of the division does not encourage high school dropouts. Approval of enrollments for high school age students must be given by the local high school superintendent, rather than merely certified by the county superintendent as is now the law.

#### **Miscellaneous:**

The Committee recommends approval of a bill which would permit a pupil to attend a public school outside his district of residence if such attendance will not overcrowd or injure the school and if the pupil's parents or guardian pay the tuition.

### **LEGISLATIVE PROCEDURE, ORGANIZATION, AND ADMINISTRATION**

#### **Appropriations Subcommittees:**

The Committee noted that the fiscal problems facing the state have become more crucial in recent years. It is not possible for every legislator to have detailed knowledge of every budget request or appropriation, but it is believed that it is possible to provide machinery which would allow a greater number of legislators to have a more detailed knowledge of at least a portion of appropriation requests. In order to permit more legislators to have a better understanding of the expenditure of public funds, and the operations of governmental programs and of the executive branch of government, the Committee has prepared changes in the Rules of the Senate and of the House which would place every member of the Senate and House upon a Subcommittee of the Committee on Appropri-

ations of his respective House. These Subcommittees would meet every morning of a legislative day, for the first fifteen days of the Legislative Assembly, for the purpose of reviewing departmental budget requests and making recommendations to the Appropriations Committee and standing Committees would meet in the afternoon.

#### **Pre-Session Orientation and Organization Conference:**

In order to make greater use of the early days of the limited legislative session it is recommended that a pre-session legislative orientation and organization conference be established. The conference would be held for three days early in December preceding each legislative session, for the purpose of organizing the forthcoming legislative session, and providing orientation classes upon legislative rules and procedure and information on legislative interim committee activities.

#### **Fiscal Notes:**

A new section of the Legislative rules is recommended calling for the use of fiscal notes on bills having a fiscal impact upon the State of \$5,000 or more. A fiscal note is a notation attached to each bill or resolution affecting the revenues of the State, which spells out the impact such measure will have on the expenditures or income of the State. The fiscal note would be prepared by the State agency or department responsible for collecting or expending the affected revenues, and would be read before the final passage of the bill to which it is attached.

#### **Procedural Rules Changes:**

The Committee recommends several House and Senate Rules changes which it is believed will aid the Legislative Assembly in utilizing its time. It is recommended that the final introduction date for bills be changed from the twenty-fifth day to the twentieth day; and the final introduction date for resolutions be changed from the forty-fifth day in the Senate, and the thirtieth day in the House, to the thirty-fifth day for both Houses. It is also recommended that the Rules be changed to provide that all bills must be reported out of Committees by the thirty-eighth day, instead of the forty-third day; and that such bills must pass from one House to the other by the fortieth day, instead of the forty-fifth day. Bills introduced by the opposite House will have to be reported out of Committees by the fifty-sixth day, instead of the fifty-eighth day. The Committee believes that through these Rules changes bills will be introduced earlier, and the Committees will be able to give their consideration earlier and more adequately to such bills, and thus avoid at least part of the logjam of bills during the final two days of the legislative session.

#### **Legislative Costs:**

In order to reduce the printing costs for Senate and House Journals it is recommended that a new printing format be adopted that would provide for the use of narrower margins; the use of four columns when listing names of legislators; listing number of bills and resolutions in messages of transmittal and otherwise in a linear form, as distinguished from a columnar form; and the use of abbreviations. Under the authori-

zation of Senate Rule 31 and House Rule 32, allowing the Legislative Research Committee to prescribe the form and style of legislative bills and resolutions, it has by rule provided for a new format for the printing of bills and resolutions to allow for narrower margins, and generally provide for a more compact printing form resulting in an estimated \$7000 saving.

The Committee also recommends that the Department of Accounts and Purchases be authorized to furnish necessary office and administrative equipment to the Legislative Assembly at a rental fee of 10 percent of the cost of such items, and that such equipment then be re-sold to other State departments at the end of the session at a 10 percent discount. This procedure will result in savings of about \$2,500 each session and also provide new equipment for the use of the Legislative Assembly.

## **NATURAL RESOURCES**

### **Water Law Revision:**

The Committee completed its work begun during the previous biennium, of revising the water laws of the State. The Committee recommends legislation to provide:

- (1) Better administrative procedures for the State Water Commission when dealing with water permits;
- (2) Uniform expiration dates for the terms of office of the commissioners of water management districts;
- (3) Better administrative procedures for the State Water Commission when dealing with the construction and repair of dams;
- (4) For the repeal of water statutes which are unnecessary and repetitious;
- (5) A contract fund for moneys paid out by and reimbursed to the State Water Commission;
- (6) For the joint use of drains located within drainage districts by water management districts;
- (7) A statute of limitations pertaining to claims against drainage districts; and
- (8) For the control of artesian wells by the State Water Commission.

### **Outdoor Recreation:**

Since 1958 there has been an increasing interest in the development of more and better outdoor recreation areas and facilities on Federal, State, and local levels. This increased interest finally led to the passage of the Land and Water Conservation Fund Act of 1965 by Congress in

September of 1964. This Act provides funds on a matching basis to assist the States and their subdivisions in the preservation and development of outdoor recreation areas and facilities. The matching funds may be used for planning, acquisition, and development of needed land and water facilities. The Committee agreed that North Dakota should take advantage of the Act.

North Dakota does not have a central agency for the planning and development of outdoor recreation. A central agency which would work to coordinate the various activities and developments in outdoor recreation throughout the State is desirable. Also, the Federal Land and Water Conservation Fund Act requires an overall State Outdoor Recreation Plan before funds will be made available. For this reason the Committee recommends that a State Outdoor Recreation Agency, consisting of a committee made up of department heads having duties in the field of outdoor recreation, be created to plan and coordinate related outdoor recreation programs and, incidental thereto, act as the focal point within North Dakota for the many activities related to outdoor recreation.

In the past, North Dakota's parks have been historically-oriented and thus have been under the auspices of the State Historical Society. In recent years, outdoor recreation on both land and water has become the primary purpose for parks in North Dakota as well as throughout the United States. Yet, North Dakota has no identifiable parks division or department. The Committee recommends that a State Historical and Parks Board be re-created consisting of nine appointed and four ex officio members and that this board be made responsible for two separate and independent divisions under it. These two divisions should be referred to as the State Historical Society Division and the State Parks Division and each would be administered by a Superintendent and a Director respectively. Under such a system, neither area need be neglected and both can be coordinated in their development to provide this State with better historical and recreation areas and facilities.

## **PARDON AND PAROLE**

A special study of the jurisdiction and powers of the Board of Pardons and the Parole Board was made at the request of the Governor. The Committee found that at times the Boards did not exercise their powers to the fullest extent and the Committee recommendations would clarify the laws relating to indeterminate sentences, commutations, and conditions for parole.

## **STATE, FEDERAL, AND LOCAL GOVERNMENT**

### **County Consolidation and Governmental Reorganization:**

The Committee found through public hearings, research, and studying recent reports made by other States that our present laws regarding consolidation, division, and various county government plans were basically adequate. Although our county consolidation statutes have been in our Code since the early thirties, seldom has consolidation of counties

been attempted. Further, the laws setting forth other alternative types of county governments which can be adopted by counties have never been used since their adoption in the early 1940's. Possibly the two main reasons for the lack of use of these statutes can be laid to public apathy towards county government and the restricted method provided for changing a county's status.

The Committee recommends that the method used to initiate a county consolidation or adoption of a different form of county government be changed from requiring or allowing any one individual to draw up a consolidation plan or select a different county government to that of petitioning the board of county commissioners to establish a county consolidation committee. This committee could also be established by the board of county commissioners without a citizen's petition. This committee would, after hearings and study, recommend consolidation, a change in county form of government, or that the present situation is still the best arrangement for the county. Any recommended changes would have to be approved by the county electorate.

#### **Welfare Study:**

The Committee recommends a bill providing for the Secretary of State to promulgate rules for the destruction of welfare records which have become outdated or duplicated. The Committee also recommends legislation which would allow the Registrar of Vital Statistics to disclose information deemed necessary for welfare purposes to state's attorneys, welfare officials, and the Attorney General.

The law in regard to the authority of public officials to bring support actions for dependent children to enforce parental obligations is vague. The Committee recommends that such law be clarified to specifically provide that "a representative of the county or state Public Welfare Board or any of the authorities charged with its support" may bring a child support action on behalf of an illegitimate child. Also recommended is a bill providing for the denial of eligibility for aid to dependent children payments, so long as the parent who has custody of the child refuses to give welfare and law enforcement officials reasonable assistance in enforcing the parental obligations of the absent parent. There is no provision in the law penalizing a person for using assistance grants for a purpose other than the necessary support of needy children and their caretaker, although there is a penalty provision for knowingly obtaining assistance greater than one is entitled to pursuant to law. The Committee recommends legislation making it a misdemeanor to use ADC assistance payments for purposes other than the support of dependent children and their caretaker.

Determining the liability of a stepfather to support his stepchildren has proved to be administratively troublesome in providing aid to dependent children assistance. It is not always clear whether a stepfather has legally committed himself to support his stepchildren. The Committee recommends a bill which provides that a stepfather is liable for the support of his stepchildren, if without such support they would be eligible for ADC assistance. Thus the income of the stepfather could be considered when aid to dependent children grants are being determined for his stepchildren.

The frequent problem of enforcing child support payments, or alimony combined with child support, was noted by the Committee. The Committee recommends legislation which it is felt will help to alleviate this problem. Basically, this legislation provides that child support payments, or alimony combined with child support, may be made to the clerk of court upon decree of the court, and that contempt of court citations may be issued within ten days after notification to the one charged with such support, that his support payments are in arrears. Upon notification by welfare officials that a person entitled to child support has made application for assistance, or upon the request of the one entitled to support, the contempt procedure provided for in this legislation may also be used. The remedy provided for in this legislation would be in addition to those already existing.

Noting that the frequency of child abuse by parents and guardians seems to be on the increase, the Committee recommends legislation which would make it mandatory for physicians and other persons charged with the treatment of physically abused children to report such fact to the local juvenile commissioner, or if none is available, to the state's attorney. This legislation makes provision for investigation of the reported abuse, and also provides for immunity from liability which otherwise might be incurred by those participating in the making of a report of investigation. The doctor-patient privilege or the husband-wife confidentiality privilege would not be applicable in such cases of child abuse.

A major part of the welfare study is concerned with welfare problems arising on Indian reservations. The Committee believes that Indian children and citizens are entitled to the same protections and privileges available to any other citizen of North Dakota, but such protection and privileges have not been available because of the lack of civil jurisdiction on the reservations. The Committee recommends two bills which it is hoped will provide Indian citizens and welfare authorities with proper legal and judiciary remedies to overcome the many problems now found on Indian reservations. The Committee tentatively recommends a bill providing for the docketing and enforcement of civil judgments and decrees rendered by tribal courts and Courts of Indian Offenses, in a district court of North Dakota at the discretion of the district judge. If such judgments were to be docketed in the district court, the court would then have jurisdiction over the litigant and his property and all executions, writs, and other processes issued by a district court would have full force and effect in all areas of the state, including Indian reservations and Indian country. This recommendation is contingent upon the enactment of a uniform code of laws on all reservations of the state affecting domestic relations and welfare matters, and the improvement of the Indian court systems to a degree satisfactory to the Committee. If firm and substantial progress in law and court improvement is not evident when the legislative session begins, the Committee recommends an alternative bill providing for the assumption of civil jurisdiction by the State over domestic relations and welfare matters on Indian reservations, especially those causes of action necessary for the protection of children.

The final recommendation of the Committee in the welfare field is a concurrent resolution asking Congress to secure the enactment of legislation which will provide for federal reimbursement in welfare programs on North Dakota Indian reservations equal to that paid to the



states of New Mexico and Arizona. These States presently receive federal matching funds for Indian welfare assistance equal to 80 percent of welfare costs.

## **TAXATION**

### **Taxation of Telephone Companies:**

The Committee continued its study of the taxation of mutual and cooperative telephone companies undertaken during the preceding biennium. The Thirty-eighth Legislative Assembly, as a stopgap measure in establishing equity in this field, placed small commercial telephone companies providing the same type of service as mutual and cooperative companies under the 50c per phone tax system in the same manner as mutuals and cooperatives.

The Committee recommends a bill which uses as its basic yardstick for taxing mutual and cooperative telephone companies and small commercial companies providing the same type of services, the number of telephone stations a company maintains per mile of telephone line in its operations in North Dakota. Thus the rates for this gross earnings tax would range from one-half of one percent of gross revenues for companies maintaining less than 1.25 stations per mile of telephone line to two percent of gross revenues for companies maintaining over 2.25 stations per mile of line. In no event would the tax liability be less than the present rates of 50c per phone.

### **Sales and Use Taxation:**

In order to provide more flexibility in the collection of sales and use taxes the Committee recommends that the Tax Commissioner be authorized to provide for annual or less than quarterly sales and use tax returns for certain businesses, in addition to the quarterly returns now prescribed for all businesses. It is recommended that the present 50c sales tax permit fee be eliminated and the fee for the reissuance of a revoked permit be raised from \$1 to \$5. In order to provide a more careful screening for the issuance of sales tax permits, it is recommended that the Tax Commissioner be clothed with the authority to reject an application for a sales tax permit by an applicant whom he finds not to be a bona fide retailer. It is also recommended that a minimum penalty fee for the late filing of sales and use tax returns be set at \$5 or 5 percent of the amount due, whichever is greater, instead of the present rate of only 5 percent of the amount due, to encourage prompt payment by those delinquents who have a very small amount of tax to remit, and for whom the 5 percent penalty is really no penalty at all.

The Committee noted that under present law it can take almost four months for a delinquent taxpayer to be brought into court for failure to pay his tax, in which time the tax debt may become uncollectible. The Committee therefore recommends legislation to shorten the period of time for the assessment of sales taxes and to shorten the time for an appeal from such assessment. This will facilitate the administration of delinquent accounts, but still retains the protection that

each taxpayer is entitled to against incorrect or excessive assessments.

The Committee makes three other recommendations designed to improve the collection of sales and use taxes. The first would provide for the collection of use taxes from a purchaser at retail from whom no sales taxes were collected. Presently the use tax law exempts a transaction from the use tax for which the sales tax should have been collected. Thus when a retailer fails to collect the sales tax from a consumer and becomes judgment proof, there is no one from whom to collect the tax due because the use tax does not apply to purchases "subject to" the sales tax. The second recommendation would provide that vendors who make deliveries into this state in their own vehicles or by contract carriers, and vendors sending catalogs or other circulars into this state offering merchandise for sale to North Dakota customers, shall obtain sales tax permits. The third recommendation would place the administration of the motor vehicle use tax under the jurisdiction of the Tax Commissioner, with the Motor Vehicle Registrar acting as the agent of the Tax Commissioner. It is contemplated that under this recommendation the collection of motor vehicle use tax would not change substantially but greater uniformity should result in the collection of all use taxes. The use tax on motor vehicles would be placed in the general fund.

The Committee recommends that the present exemption that electric cooperatives have from the payment of sales and use taxes on goods they purchase be eliminated. The Committee is of the opinion that, while there may have been good reasons for exempting electric cooperatives from the payment of sales and use taxes during their infancy in North Dakota, there is no real reason why these cooperatives should not pay sales and use taxes today.

Other recommendations of the Committee would make the sales tax permanent at a 2 percent rate, instead of reenacting it every two years, and would provide that any additional amount over the 2 percent rate be reenacted every two years at a rate to be established by the legislative assembly; place the sales and use tax on the sale of liquor, wine, beer, cigars, tobacco, cigarettes and cigarette products, and oleomargarine; change the method of imposition of the sales and use tax on articles purchased for rental purposes; make casual sales by retailers of goods normally carried in their stock subject to the sales and use tax; and repeal the wholesale taxes on cigars and tobacco products and on commodities used in mixed drinks. The Committee noted that the wholesale taxes on cigars and tobacco products, and commodities used in mixed drinks, were enacted to prevent any gaps which might result in the administration of the sales tax, and since the Committee now recommends that all these articles be placed under the sales tax the need for the wholesale taxes would no longer exist.

#### **Taxation of Large Electrical Energy Generation Plants:**

The Committee recognizes that the large electrical energy generation facilities presently being constructed, and those facilities which are proposed to be constructed in North Dakota, differ substantially from any electrical facilities presently operating in North Dakota in their size and operation, and the effect they will have on the economic structure of North Dakota. The Committee believes that it is essential to the economic growth of North Dakota that a favorable tax climate be developed in

reference to these new facilities but the increased governmental costs to the State and its political subdivisions must be considered.

The Committee recommends that a franchise tax for the privilege of doing business in the State be imposed upon companies with an electrical energy generation unit capable of generating 100,000 kilowatts or more. The rates imposed would be measured by the gross receipts and would be one percent for the first two years of operation, and two percent thereafter. All property of the companies subject to the franchise tax would be classified as personal property except land, and the tax would be in lieu of personal property taxes. Land would be taxed under the ad valorem method at the local level. Transmission lines of two hundred thirty kilovolts or more are to be taxed at the rate of \$150 per mile of line, in lieu of any property tax upon lines and substations. All revenues received from the taxation of transmission lines would be allocated to the counties through which such lines run, and the revenue received from the taxation of the plants would be allocated to the counties of the plants' locations and the State, pursuant to an allocation formula. Revenue received by counties from the taxation of generation plants would be allocated within the county to the county general fund, school districts, and incorporated cities and villages. It is the belief of the Committee that the tax plan proposed will provide a favorable tax climate in North Dakota conducive to economic growth, but also capable of reimbursing state and local subdivisions for additional governmental costs.

#### **Personal Property Tax:**

The Committee recognizes that many inequities exist in this field and that many credible arguments can be developed as to why certain classes of personal property should be eliminated from the tax rolls, or as to why all personal property taxes should be replaced, but it is felt that to immediately replace, or attempt to immediately replace, all personal property taxes with another tax system could result in chaos on the local governmental levels. The Committee recommends a gradual replacement of the balance of personal property taxes.

The Committee noted that the most inequitable aspect of the personal property tax, and the one which affects almost every citizen of the State, is the taxation of household goods, clothing, and musical instruments. Another area that is very troublesome is the assessment and taxation of smaller, miscellaneous farm machinery, and tools. The revenue received through the taxation of these items is approximately \$3.7 million, including the mandatory 21-mill school levy.

Basically, the Committee's recommendation results from the fact that Items 6f, 7, 8, and 9 are the most difficult to assess, result in the highest administrative costs, are the most difficult to collect, have the largest amounts of delinquency, result in the highest degree of inequity, and are owned by the greatest number of taxpayers. The Committee is of the opinion that the proper course is to start with the most troublesome items. The Committee further recommends the approval of a resolution which would direct the Legislative Research Committee to continue its study of the means of eliminating and replacing personal property taxes, including the feasibility of gradually phasing out the balance of the tax through a gradual percentage reduction in the remaining personal property tax base.

The revenue lost from the exemption of these goods would be replaced by an income tax of one-half of one percent of net income. This replacement revenue would be allocated to the local subdivisions on the basis of a formula reflecting local tax effort.

## **TRANSPORTATION**

In this field the Committee received comments and suggestions from representatives of the transportation industry and the Public Service Commission, as well as reviewing existing statutes in the transportation field.

The Committee noted that present law requires that the value of a utility's property be determined in all cases wherein such utility seeks a rate change. Recognizing that the cost of providing the service is often more material than property valuation, the Committee recommends a bill that would require the determination of the value of property only in such cases as the Public Service Commission shall determine.

In regard to rail and motor carrier equipment, the Committee recommends the repeal of a number of sections of the law which either conflict with Interstate Commerce Commission rules or have been outmoded by the times. Along with these repeals the Public Service Commission would be given authority to prescribe necessary safety and equipment rules and regulations.

The Committee also recommends approval of legislation which requires the registration of interstate carriers and which would make a violation of a carrier's ICC authority also a violation of North Dakota law, punishable in state courts. This recommendation is made because the current level of ICC enforcement within the State is extremely low, and it was felt that state authorities could give the ICC as well as legitimate carriers valuable assistance through such enforcement.

A final bill recommended by the Committee would amend the law governing the suspension or revocation of agricultural carrier permits in order to clarify authority of the PSC in this field.

# **Report of the North Dakota Legislative Research Committee**

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



**Thirty-ninth Legislative Assembly**

**1965**

# North Dakota Legislative Research Committee

Senator George Longmire, Grand Forks  
Chairman

## SENATE MEMBERS

Edwin C. Becker, Jr., Willow City  
A. W. Luick, Fairmount  
\*Rolland Redlin, Crosby  
\*\*Wm. R. Reichert, Dickinson  
Bronald Thompson, Oberon

## HOUSE MEMBERS

Oscar Solberg, Mylo,  
Vice Chairman  
Walter Christensen, Mercer  
Leonard J. Davis, Killdeer  
Chester Fossum, Maxbass  
Harold R. Hofstrand, Leeds  
Ralph M. Winge, Litchville

## STAFF MEMBERS

C. Emerson Murry, Director  
Serge H. Garrison, Code Revisor  
Fritz J. Roth, Assistant Counsel  
Philip J. Teigen, Assistant Counsel  
Paul E. Rohde, Assistant Counsel

## Subcommittees

### CONSTITUTIONAL REVISION:

#### Senators

Wm. R. Reichert, Chairman  
Lee F. Brooks  
George A. Sinner  
Aloys Wartner, Jr.

#### Representatives

R. Fay Brown  
Walter O. Burk  
James E. Leahy  
Thomas R. Stallman  
Jacque Stockman

#### Public Members

Honorable Fred G. Aandahl  
Honorable Ralph Beede  
Honorable Adam Gefreh  
Honorable F. W. Greenagel  
Honorable Frank F. Jestrab  
Honorable Thomas S. Kleppe  
Honorable Henry J. Tomasek  
Honorable Jerrold Walden

### HIGHER EDUCATION:

#### Representatives

Chester Fossum, Chairman  
Ed N. Davis  
Don Halcrow

S. F. Hoffner  
Robert F. Reimers  
S. Bryce Streibel  
Raymond G. Vendsel

#### Senators

R. E. Meidinger  
Dave M. Robinson  
Leland Roen  
George Saumur  
Bronald Thompson

### SECONDARY EDUCATION:

#### Senators

Rolland Redlin, Chairman  
H. O. Beck  
Philip Berube  
C. F. Harris  
Alex Miller  
Theron L. Strinden

#### Representatives

Howard F. Bier  
Arthur G. Bilden  
Sam O. Bloom  
Walter Christensen  
Treadwell Haugen  
Ernest N. Johnson  
Ted G. Maragos  
Mike Olienyk  
Harold G. Skaar

\* Resigned November 5, 1964

\*\* Appointed November 16, 1964

## Subcommittees (CONT.)

### LEGISLATIVE PROCEDURE, ORGANIZATION, AND ADMINISTRATION:

#### Senators

George Longmire, Chairman  
Edwin C. Becker, Jr.  
A. W. Luick  
Rolland Redlin  
Bronald Thompson

#### Representatives

Oscar Solberg, Vice Chairman  
Walter Christensen  
Leonard J. Davis  
Chester Fossum  
Harold R. Hofstrand  
Ralph M. Winge

### NATURAL RESOURCES:

#### Representatives

Oscar Solberg, Chairman  
Lawrence G. Bowman  
Ole Breum  
L. D. Christensen  
M. E. Glaspey  
Donald W. Loder  
Kenneth C. Lowe  
L. C. Mueller  
Ralph M. Winge

#### Senators

J. H. Mahoney  
Oscar J. Sorlie  
Grant Trenbeath  
Harry W. Wadson

### PARDON AND PAROLE:

#### Senators

Wm. R. Reichert, Chairman  
George Longmire

#### Representative

Walter Burk

#### Public Members

Adam Gefreh, District Judge  
Linn Sherman, Attorney  
Wm. S. Murray, Attorney  
Wallace E. Warner, Attorney  
J. Arthur Vandal, State Parole Officer  
Iryin Riedman, Warden, State  
Penitentiary

### STATE, FEDERAL, AND LOCAL GOVERNMENT:

#### Senators

George Longmire, Chairman  
Richard E. Forkner

Emil E. Kautzmann  
Kenneth L. Morgan  
Elton W. Ringsak  
Iver Solberg

#### Representatives

Gordon S. Aamoth  
Emil Anderson  
J. L. Connolly  
Richard Elkin  
Wm. N. Gietzen  
Brynhild Haugland  
Harold R. Hofstrand  
Sybil Baker Kelly  
Anna Powers  
M. C. Tescher  
Vernon E. Wagner

### TAXATION:

#### Representatives

Harold R. Hofstrand, Chairman  
Richard J. Backes  
Leonard J. Davis  
Arne Dahl  
Eldred N. Dornacker  
Donald Giffey  
Otto Hauf  
Milo Knudsen  
Arthur A. Link  
A. R. Miller  
Stanley Saugstad  
Frank Shablow  
Gerhart Wilkie

#### Senators

H. B. Baeverstad  
Edwin C. Becker, Jr.  
Gail H. Hernet  
Donald C. Holand  
Dan Kisse  
Evan E. Lips  
Duane Mutch  
Clark Van Horn

### TRANSPORTATION:

#### Senators

A. W. Luick, Chairman  
Leonard A. Bopp  
Walter Dahlund  
C. G. Kee  
Emil T. Nelson

#### Representatives

Harry Bergman  
Donald L. Hertz  
James E. Leahy  
Louis Leet  
Kenneth Tweten

NORTH DAKOTA  
LEGISLATIVE RESEARCH COMMITTEE  
STATE CAPITOL  
BISMARCK

SENATORS:

GEORGE LONGMIRE, GRAND FORKS,  
CHAIRMAN  
EDWIN C. BECKER, JR., WILLOW CITY  
A. W. LUICK, FAIRMOUNT  
ROLLAND REDLIN, CROSSBY  
BRONALD THOMPSON, OBERON

REPRESENTATIVES:

OSCAR SOLBERG, MYLO,  
VICE CHAIRMAN  
WALTER CHRISTENSEN, MERCER  
LEONARD J. DAVIS, KILLDEER  
CHESTER FOSSUM, MAXBASS  
HAROLD R. HOFSTRAND, LEEDS  
RALPH M. WINGE, LITCHVILLE

●  
C. EMERSON MURRY  
DIRECTOR

PAUL E. ROHDE  
CODE REVISOR

SERGE H. GARRISON  
ASST. COUNSEL

The Honorable William L. Guy  
Governor of North Dakota

Members, Thirty-ninth 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-ninth Legislative Assembly.

This report includes the reports and recommendations of the Legislative Research Committee in the fields of constitutional revision; education; legislative procedure, organization, and administration; natural resources; pardon and parole; state, federal, and local government; taxation; transportation; 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

George Longmire  
Chairman



# 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.

The legislative research committee movement began in the state of Kansas in 1933 and has now grown until 42 States have established such interim committees with further States considering this matter at their 1965 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; revision of motor vehicle laws; school district laws; investment of State funds; mental health program, civil defense; tax structure; school district reorganization; school bus transportation; corporate farming; Indian affairs; legislative post audit and fiscal review; water laws; and fields of taxation.

Among the major fields of studies included in the work of the Committee during the present biennium are: constitutional revision; higher and secondary education; legislative procedure, organization, and administration; water laws and outdoor recreation; pardon and parole; county government reorganization and welfare laws; taxation; and transportation.

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 1965 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 sub-

ject 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 compiles all the laws after each session for the session laws and the supplements to the North Dakota Century Code. Also, during the interim, the Legislative Research Committee staff provides stenographic and bookkeeping services to the Legislative Audit and Fiscal Review Committee.

### **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 As-

sembly 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 and the Department of Economics of North Dakota State University. In studies relating to sales and use taxes and curriculums at institutions of higher education the services of national authorities in these fields were secured. 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 Midwestern Regional Conference and the Four-State Legislative Conference which held a meeting at Rapid City, South Dakota.

# Reports and Recommendations

## Constitutional Revision

The Thirty-eighth Legislative Assembly directed the Legislative Research Committee to commence a study and revision of the State's seventy-five-year-old Constitution. This study was assigned to the Subcommittee on Constitutional Revision consisting of Senators William R. Reichert, Chairman, Lee F. Brooks, George A. Sinner, Aloys Wartner Jr.; Representatives R. Fay Brown, Walter O. Burk, James E. Leahy, Thomas R. Stallman, Jacque Stockman; Public Members Fred G. Aandahl, Ralph Beede, Adam Gefreh, F. W. Greenagel, Frank F. Jestrab, Thomas S. Kleppe, Henry J. Tomasek, and Jerrold Walden. The resolution directing the study follows next in its entirety.

### Senate Concurrent Resolution "P-P"

#### Thirty-eighth

#### Legislative Assembly of North Dakota

A concurrent resolution directing the legislative research committee, with the assistance of outstanding citizens of the State, to conduct a study of the Constitution of the State of North Dakota, and to make its recommendations in regard to the revision thereof, to the Thirty-ninth Legislative Assembly.

WHEREAS, the basic Constitution of the State of North Dakota was adopted in the year 1889; and

WHEREAS, in spite of numerous amendments since that time, the basic Constitution remains mainly unchanged; and

WHEREAS, many of the ideas of the late 1800's which found their way into the Constitution have, in later state constitutions, been discarded as not the most desirable in light of modern conditions; and

WHEREAS, our present Constitution is quite lengthy and detailed when compared with more recently adopted constitutions or with the United States Constitution; and

WHEREAS, constitutions, while not design-

ed to have the flexibility of laws, should be examined periodically with a view toward their adequacy in light of changing conditions;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the legislative research committee is hereby directed to conduct a study for the purpose of proposing revisions of the Constitution of the State of North Dakota. The committee may appoint such subcommittees as it may deem necessary for the purpose of studying and proposing revisions of various areas of the Constitution. The committee shall call upon citizens of the State who have distinguished themselves by service in and knowledge of fields of endeavor especially qualifying them to assist in the study. Citizens thus appointed shall participate fully in the conduct of the study and all subcommittee meetings but shall possess no vote in any final matter or recommendation to be decided by the committee or its subcommittees. Citizen members may be compensated at the same rates as are legislative members for their time spent on the business of the committee, and may be reimbursed for actual and necessary expenses at the same rates as are legislative members. The committee and its subcommittees shall hold such hearings throughout the state as may be necessary to enable it to ascertain the views of all interested citizens, and may contract for the employment of specialized personnel in such areas as may be deemed desirable. The committee shall submit its recommendations on the revision of the Constitution, or such portions thereof as shall have been completed, to the Thirty-ninth Legislative Assembly, together with such legislation and resolutions as may be required to carry out such recommendations.

### Why Change Our State Constitution?

Our state Constitution as adopted on October 1, 1889, consisted of twenty articles totaling 217 separate sections. In 75 years we have added to, amended, and repealed various sections

82 times. The United States Constitution is approaching 200 years of age and has been amended only 24 times. Most States have found it necessary at some time in their history to revise their constitutions to meet the rapidly changing times. Because so much specific detail had been written into the constitutions, they could not meet the current needs of citizens. If we had been all-knowing when our state Constitution was written, then we could very well have put in all the detail and procedure which every person must follow. But men, then as now, do not have that all-knowing nature. However, we do know from our history what specific human rights, needs, and freedoms we want to secure for ourselves. These rights, needs, and freedoms are the ones which should be placed in our Constitution, not every detail of government or every procedure a public official must follow. Our constitutional creators fell into error by doing this very thing. They created a state and local government which could not, in most instances, change to meet the needs of the times. The Constitution continues state and local governmental structures and activities after the need for them has passed. Archaic procedures must be followed long after better ways of doing business have developed. What good does it do to elect heads of our state and local government and then not clothe them with the power to effectively meet their responsibilities? It is an old axiom that if you delegate responsibility you must also delegate power to meet that responsibility. Our Constitution is not only unreasonably restrictive in regard to the state executive branch, but also in county government, county reorganization, public land control, the state and local judicial branches, and municipal control.

As the basic policymaking branch, the Legislative Assembly remains the basic instrument of responsible state and local government. The respective legislatures are, therefore, the key to the vitality and strength of the states as vital political institutions in the American state-federal system. It is principally upon this branch that the self-imposed restrictions of state constitutions most effectively throttle vital decisions affecting state and local government.

It is the philosophy of constitutional law that the Congress is clothed only with such powers as are specifically delegated to it under the United States Constitution. The governmental power exercised by the legislative assemblies of the states is not circumscribed by such inherent limitations. Legislatures were intended to have all governmental power not delegated to the

national government or specifically denied the legislative assemblies by their own state constitutions.

In practice, however, the specific limitations and restrictions found in states' constitutions are almost without number. In addition, most state constitutions contain specific delegations of power to the legislative assemblies, which, in fact, become restrictions, for when a constitution states that a given matter "may" be handled by the legislative assembly in a certain way, it has been construed by the courts to mean that it must be handled in that way. We therefore have many specific and intentional restrictions and, often, accidental restrictions upon legislative power. Rather than serving as authority for the Legislative Assembly to act in the face of new problems, the Constitution has become a device which too often prevents an effective legislative response to growing and expanding needs and demands of the citizens and local government. The people of the states have denied themselves their strongest instrument for effective state government. It has been denied to the only agency of state government that could exercise this over-all residual power effectively—the Legislative Assembly. A no-man's land results in which the state and its political subdivisions may not enter. The states themselves have created a vacuum which they refuse to permit themselves to fill. The political or governmental world is no more tolerant of a vacuum than is the physical world, and this self denial on the part of the states has become one of the clear causes of the increase in the power of the federal government. Yet, while the states loudly lament this increase in federal power, they fail to put their own houses in order so as to make federal action unnecessary.

How did all this come about? By the end of the eighteenth century and during the early part of the nineteenth century popular confidence in state legislatures was shaken. Land scandals, improper issuance of special privilege corporate and banking charters, reckless spending, borrowing and investment of public funds in internal improvements, and the passage of notorious laws for the special interest of private persons and particular localities are perhaps to blame. This fear and distrust resulted in the detailed restrictions, specific delegations, and a huge volume of statutory material that is found in the constitutions. The philosophy of a strong governor did not exist among the states, a carry-over of the distaste we still felt as a nation against the early governors of the colonial days who were appointed by the King of England and sent forth

to govern us without our consent. The scandalous action of the carpetbagger legislatures of the reconstruction days in the South contributed to this loss of prestige of the legislative assemblies and state government in general, from which it has never fully recovered.

These restrictions and inhibitions reached their height in 1889 when four new states—North Dakota, South Dakota, Montana, and Washington—were admitted to the Union. Their new constitutions were all similar in that they adopted the most restrictive provisions of legislative power found in the constitutions of older states, and went far beyond many of them in enacting extensive legislation and even administrative detail in the constitutions. Consequently, these states are locked in chain step to fears, details, and solutions to problems as they existed in 1889. The framers of these constitutions seemed to have thought that the governments of these states would be entrusted only to untrustworthy officials and scoundrels and that it was necessary to set forth the details of state government and compel them to forever follow the detailed course laid out by their opinions. They failed to recognize that a constitution was to be a statement of principles for the protection of the people from their government, and not to protect people one from another, which is the purpose of statutes. They also failed to recognize that the constitution should provide only the solid framework to hang the provisions for state and local government upon, and not to completely create and forever govern them in detail.

In practice, state constitutional conventions have not been all wise and did not see into the future so completely that their judgment was better than that of the citizens who came after them. These restrictions have not prevented state legislatures from finding ways of occasionally repeating the shortcomings of the earlier day, and there is ample reason to believe that the good they accomplished by these restrictions has been far outweighed by the harm that has been done. Today, with a highly literate citizenry, rapid communication, and an alert press using radio, television, and newspapers, we need not rely only upon the Constitution to save us from bad public officials. The new and unforeseen problems that were naturally beyond the comprehension of the Constitution makers have served to prevent good legislators and other state and local officials from functioning effectively in meeting the challenges

of state government today.

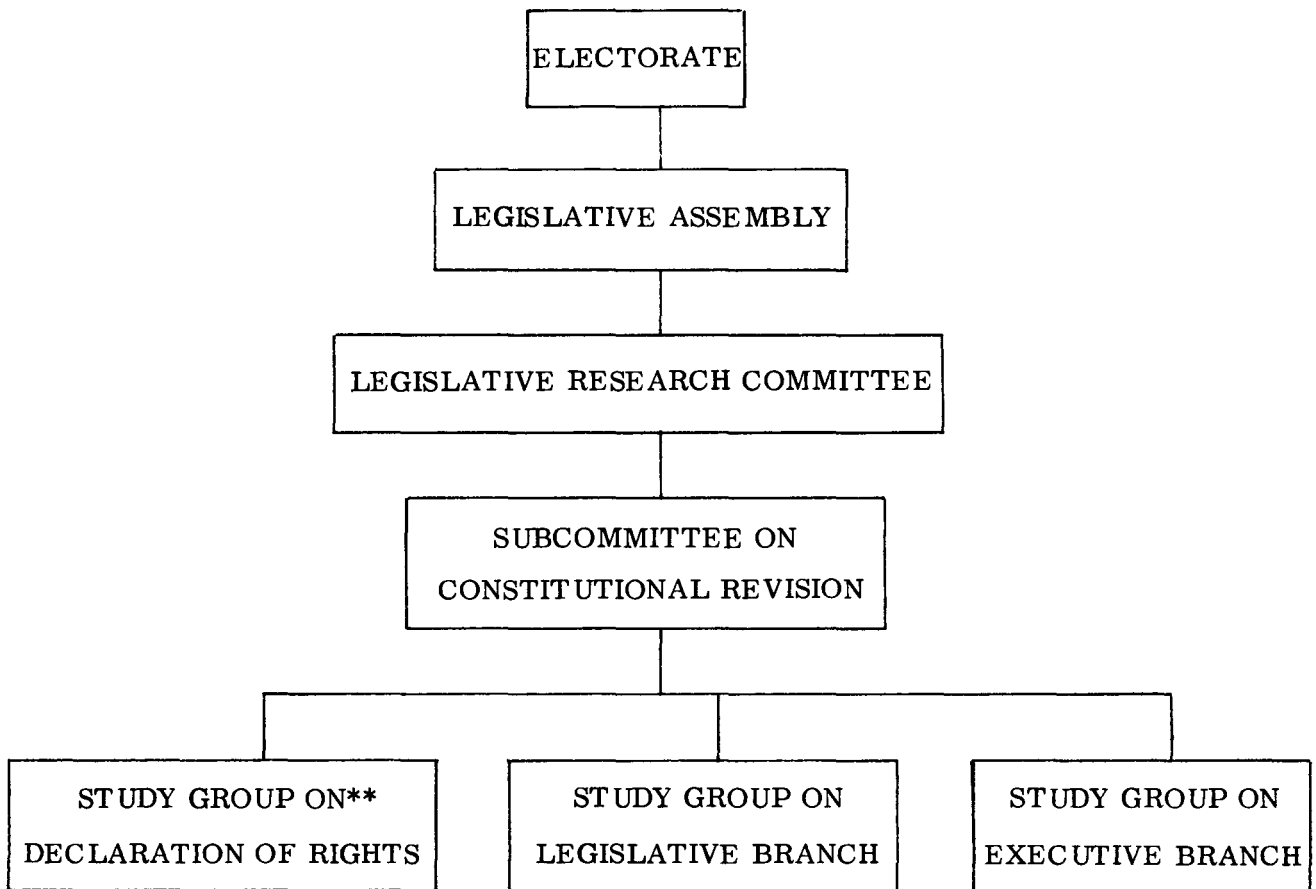
Fortunately, we have seen some recent moves to reverse this trend which existed for so many years in this country. There has been a move back in the direction of placing legislative power and responsibility in the Legislatures and confining constitutions to the job of establishing principles of government. This pattern can be seen to a greater or lesser degree in the new constitutions of Georgia, Missouri, New Jersey, Michigan, Alaska, and Hawaii.

The need today is for a state government capable of exercising all powers reserved to it under the federal system, able to act promptly and decisively in the face of new and critical public problems. The Legislative Assembly and state and local government must be unshackled from unreasonable constitutional restrictions to permit them to be capable of meeting this need. State government cannot be expected to fight the problems of this day with a Constitution tying one arm behind its back. The placing of greater authority and responsibility in state government will in itself create greater public interest in it, resulting in a greater challenge to a greater number of strong and able men to seek public offices, and begin the process of revitalization of state and local government. Perhaps if we are willing to give ourselves the capacity to govern, we might develop the will to govern.

Unless we have the desire and the will to do so, we are confessing the failure of our American dream of the American state-federal system.

### **Constitutional Revision Committee Organization**

The Legislative Research Committee at their April 1963 meeting appointed Senator William R. Reichert as Chairman of the Subcommittee on Constitutional Revision. At the Subcommittee's May 1963 meeting three study groups were appointed to separately study the Declaration of Rights, the Legislative Branch, and the Executive Branch of the Constitution. District Judge Adam Gefreh, former State Representative Ralph Beede, and former Governor Fred G. Aandahl were appointed Chairmen of the study groups respectively. The following is an organizational chart showing the various committees and their relationship to each other.



\*\* The study group on the Declaration of Rights also studied the Judicial Branch of the Constitution.

### Changes — How Proposed

How does a proposed change in the Constitution come about under the present procedure? Let us take one section of the executive branch, for example. This section is first reviewed and studied by the study group on the executive branch. The study group does one of three things to the section: leaves it as is, prepares an amendment, or recommends its repeal. Whatever the study group does, it passes on its recommendation to the Subcommittee on Constitutional Revision. The subcommittee then may concur, reject, or make further recommendations concerning this section. If the subcommittee rejects or makes further recommendations, the section is sent back to the study group to consider these recommendations or suggestions. After further consideration by the study group, it is again re-submitted to the subcommittee.

When the subcommittee agrees to the section it is then submitted to the Legislative Research Committee. The section can undergo the same process between the subcommittee and the Legislative Research Committee as it did between the study group and the subcommittee.

When the Legislative Research Committee finally approves the section it will be presented to the Legislative Assembly. If the Legislative Assembly approves, it will be submitted to the electorate for approval or disapproval in the ballot box.

The following is a Statement of Purposes adopted by the Subcommittee on Constitutional Revision at their first meeting:

### Statement of Purposes

“To recommend to the Legislative Research Committee of the State of North Dakota a good, workable, revised Constitution — a Constitution adapted to our state environment. A Constitution utilizing the experience of other states, but especially the experience of ourselves and our predecessors in this state. Retaining that which has proved good and workable—rejecting that which has hampered, hindered, or arrested our full growth and development in the national federation. To suggest changes, where change appears feasible, to promote and encourage the progress and development of our state.”

**Constitutional Provisions Acted Upon  
By The  
Legislative Research Committee**

**N. D. Constitution**

- |   |   |
|---|---|
| Section 1. No change made.  | Section 28. To be repealed and its provisions included within section 26.           |
| Section 2. To be amended.   | Section 29. To be amended. A bill is recommended which will implement this section. |
| Section 3. No change made.  | Section 30. To be repealed.   |
| Section 4. No change made.  | Section 31. To be repealed.   |
| Section 5. No change made.  | Section 32. To be repealed and its provisions included within section 29.           |
| Section 6. No change made.  | Section 33. To be repealed and its provisions included within section 26.           |
| Section 7. To be amended.   | Section 34. To be repealed and its provisions included within section 26.           |
| Section 8. To be repealed.  | Section 35. To be repealed.   |
| Section 9. To be amended.   | Section 36. To be repealed.   |
| Section 10. To be amended.  | Section 37. To be amended. A bill is recommended which will implement this section. |
| Section 11. No change made.   | Section 38. To be repealed.   |
| Section 12. No change made.   | Section 39. To be repealed.   |
| Section 13. No change made.   | Section 40. To be repealed.   |
| Section 14. No change made.   | Section 41. To be repealed and its provisions included within section 26.           |
| Section 15. No change made.   | Section 42. To be amended.  |
| Section 16. No change made.   | Section 43. No change made.   |
| Section 17. No change made.   | Section 44. To be repealed.   |
| Section 18. No change made.   | Section 45. To be repealed.   |
| Section 19. No change made.   | Section 46. To be repealed.   |
| Section 20. No change made.   | Section 47. To be repealed and its provisions included within section 26.           |
| Section 21. To be repealed.   | Section 48. To be amended.  |
| Section 22. No change made.   | Section 49. To be repealed and its provisions included within section 65.           |
| Section 23. No change made.   | Section 50. No change made.   |
| Section 24. To be repealed.   | Section 51. To be amended.  |
| Section 25. To be amended by including the provisions of section 52 therein. A bill is recommended which will implement this section. | Section 52. To be repealed and its provisions included within section 25.           |
| Section 26. To be amended and includes the provisions of sections 27, 28, 33, 34, 41, and 47 therein.                                 |   |
| Section 27. To be repealed and its provisions included within section 26.   |   |

Section 53. To be amended. A bill is recommended which will implement this section.

Section 54. To be repealed.

Section 55. To be amended. A bill is recommended which will implement this section.

Section 56. To be amended.

Section 57. To be repealed.

Section 58. To be amended and includes the provisions of section 63 therein.

Section 59. To be repealed.

Section 60. To be repealed.

Section 61. To be repealed.

Section 62. To be amended.

Section 63. To be repealed and its provisions included within section 58.

Section 64. To be amended.

Section 65. To be amended and includes the provisions of section 49 therein.

Section 66. To be amended.

Section 67. To be amended.

Section 68. To be amended and includes the provisions of sections 69 and 70 therein.

Section 69. To be repealed and its provisions included within section 68.

Section 70. To be repealed and its provisions included within section 68.

Section 77. To be repealed.

Section 139. To be repealed.

Section 148. To be amended.

Section 155. To be amended.

Section 163. To be repealed.

Section 165. To be repealed.

Section 167. To be amended.

Section 174. To be amended.

Section 175. To be repealed.

Section 177. To be repealed.

Section 180. To be repealed.

Section 181. To be repealed.

Section 188. To be amended and includes the

provisions of section 193 therein.

Section 189. To be repealed.

Section 190. To be repealed.

Section 191. To be repealed.

Section 192. To be repealed.

Section 193. To be repealed and its provisions included within section 188.

Article 14 of the Amendments to the Constitution. To be repealed.

New Section. Provides that the Legislative Assembly may prescribe the form, style, and sequence of the amended Constitution.

Section 71. To be amended.

Section 72. To be amended.

Section 73. To be amended.

Section 74. To be amended.

Section 75. To be amended.

Section 76. No change made.

Section 78. No change made.

Section 79. No change made.

Section 80. To be amended.

Section 81. No change made.

Section 82. To be amended.

Section 83. To be amended.

Section 84. No change made.

Article 51 of the Amendments to the Constitution. To be repealed.

New Section. Provides for executive department reorganization.

A bill is recommended which will provide for the appointment by the governor, subject to senate confirmation, of a state treasurer, commissioner of insurance, commissioner of agriculture and labor, tax commissioner, and superintendent of public instruction and amend sections 54-06-01, 54-16-01, and 57-13-01.

Section 85. To be amended.

Section 86. No change made.

Section 87. No change made.

Section 88. To be repealed and its provisions included in a new section.



- Section 89. To be repealed and its provisions included in a new section.
- Section 90. To be amended.
- Section 91. Previously repealed.
- Section 92. To be repealed.
- Section 93. To be repealed.
- Section 94. To be amended.
- Section 95. To be repealed.
- Section 96. To be repealed.
- Section 97. To be repealed.
- Section 98. To be repealed.
- Section 99. Previously repealed.
- Section 100. To be amended.
- Section 101. No change made.
- Section 102. To be repealed.
- Section 103. No change made.
- Section 104. To be repealed and its provisions included in a new section.
- Section 105. To be repealed and its provisions included in a new section.
- Section 106. To be repealed and its provisions included in a new section.
- Section 107. To be repealed.
- Section 108. To be repealed.
- Section 109. To be repealed.
- Section 110. To be repealed.
- Section 111. To be repealed and its provisions included within sections 85 and 94.
- Section 112. To be repealed.
- Section 113. To be repealed and its provisions included within section 85.
- Section 114. To be repealed.
- Section 115. To be repealed.
- Section 116. To be repealed and its provisions included within section 85.
- Section 117. To be repealed.
- Section 118. To be repealed.
- Section 119. No change made.
- Section 120. To be repealed and its provisions included within section 85.
- New Section. This section will adopt the latter portion of section 89 which is to be repealed.
- New Section. This section provides for the division of the state into judicial districts and will replace section 106 which is to be repealed.
- New Section. Adopts provision of Alaska's Constitution pertaining to the removal of judges.
- New Section. Provides for a judicial council.
- A bill restricting judges from practicing law or presiding over cases in which they may have an interest and implementing the selection of judges by appointment.
- New Section. Scheduling effective dates of certain provisions of the amended sections 82 and 90.

## DECLARATION OF RIGHTS

Article 1 of the state Constitution consists of twenty-four sections and is known as the "Declaration of Rights". These sections deal with the rights of the individual; to enjoy and defend life and liberty; to alter and reform the government "whenever the public good may require"; to remain an inseparable part of the American union; to enjoy the free exercise of religious profession and worship; to be entitled to the privilege of the writ of habeas corpus which is not to be suspended "unless when in case of rebellion or invasion, the public safety may require"; to give bail when charged with criminal offense; to trial by jury, and to be free from star chamber processes; to free speech and free assembly and equality in standing before the law; to the subordination of the military to the civil power and to the assistance of the state in his defense; to be certain he shall not twice be "put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law"; to possess and enjoy his own private property which shall not be taken from him or "damaged for public use without just compensation having been first made to, or paid into court" for him; to be free from imprisonment for debts; to be secure in his person and home and in his papers and effects against any unreasonable searches and seizures; to be free to obtain employment; to be certain that "no bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed"; to be certain that "all laws of a general nature shall have a uniform operation" and to know that "no special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens". (State Ex Rel. Harry C. Cleveringa v. E. M. Klein, 63 N. D. 514, 525 (1933).)

One will readily see that the Committee has not changed these twenty-four sections very much. The changes that have been made are mainly those to eliminate surplus language and to eliminate sections which are inherent and so embedded in our constitutional philosophy and case law as to not require their inclusion in our state Constitution.

NOTE: In reviewing each section of the Constitution, language which is to be deleted

is shown by triple parentheses ((( ))), and language to be added is shown by underlining the new language.

Section 2. All political power is inherent in the people. Government is instituted for (((the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require))) their equal benefit, security and protection.

COMMENT: This section was replaced with the equivalent Michigan constitutional section because it was short and contained less superfluous language. The people by this section retain the right of reformation of their government.

Section 7. The right of trial by jury shall (((be secured to all, and))) remain inviolate (((; but a jury in civil cases, in courts not of record may consist of less than twelve men, as may be prescribed by law))), but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law. The legislative assembly may make provision for a verdict in civil cases by not less than three-fourths of the jury and in courts not of record may provide for a jury of not less than six nor more than twelve.

COMMENT: This section as amended follows portions of equivalent sections of the Alaska and Michigan constitutions. This section in its original form preserved as settled law the right to a jury trial as it existed under the common law and federal Constitution which requires in all criminal cases in courts of record, and most civil cases a jury of twelve and a unanimous concurrence in all decisions made. Under the amended form one would not have a jury trial unless demanded in civil cases and the Legislature could provide by law that only three-fourths of a jury must agree in a civil case. See also Rule 38 of the North Dakota Rules of Civil Procedure and subsection 5 of section 29-01-06. It is also settled law that constitutional provisions securing trial by jury do not extend the right; they only secure it in cases in which it was a matter of right before and in doing this it preserves the historical jury of twelve with all its incidents, unless a contrary purpose clearly appears. (See Power v. Williams, 53 N. D. 54, (1925).)

**Section 8. Repeal.)**

**COMMENT:** This section required an indictment to be used in felonies until the Legislature provided other means by law and also allowed the Legislature to change, regulate, or abolish the grand jury system. Presently an information and indictment are provided for in chapter 29-11. The grand jury is provided for in chapter 29-10.

**Section 9.** Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends(((; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases))).

**COMMENT:** This section retains the right of freedom of speech and press. The deleted portion vested in a jury the right to render a general verdict in a libel case and to determine the law as in other cases where a general verdict is returned. (State v. Tolley, 23 N. D. 284.) Section 12-28-05 practically reiterates the deleted portion.

**Section 10.** ((The citizens have a right, in a peaceable manner, to assemble together for the

common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.))) The right of the people peaceably to assemble and to petition the government shall never be abridged.

**COMMENT:** This section was merely shortened to eliminate surplus wordage. As amended, it follows the similar provisions of Alaska.

**Section 21. Repeal.)**

**COMMENT:** This section stated that all sections of the Constitution are mandatory and prohibitory unless otherwise stated. The Committee felt that all the provisions of this section should be deleted as surplus since the provisions are covered by an adequate body of case law as well as by section 25 of the Constitution.

**Section 24. Repeal.)**

**COMMENT:** This section declared that all sections under Article 1 were excepted from the general powers of government and was felt to be superfluous because it merely reiterates what is inherent in the interpretation of our great body of constitutional law, both federal and state, and this restriction on the Legislature would remain regardless of whether this section was set forth or not.

## LEGISLATIVE SECTIONS

Section 25. The legislative power of this state shall be vested in a (((legislature consisting of a))) senate and a house of representatives which jointly shall be designated as the legislative assembly of the state of North Dakota. The people, however, reserve to themselves the power, first, to propose measures and to enact or reject the same at the polls, which power is the initiative; and second, to approve or reject at the polls any measure or any item, section, part or parts of any measure enacted by the (((legislature))) legislative assembly, except measures or portions of measures appropriating public funds, which power is the referendum.

The legislative assembly shall provide by law for the use of the initiative and the referendum, for the effective date of initiated and referred measures, and for resolving conflicts between such measures.

(((The first power reserved is the initiative. Ten thousand electors at large may propose any measure by initiative petition. Every such petition shall contain the full text of the measure and shall be filed with the Secretary of State not less than ninety days before the election at which it is to be voted upon.

The second power reserved is the referendum. Seven thousand electors at large may, by referendum petition, suspend the operation of any measure enacted by the legislature, except an emergency measure. But the filing of a referendum petition against one or more items, sections or parts of any measure, shall not prevent the remainder from going into effect. Such petition shall be filed with the Secretary of State not later than ninety days after the adjournment of the session of the legislature at which such measure was enacted.

Each measure initiated by or referred to the electors, shall be submitted by its ballot title, which shall be placed upon the ballot by the Secretary of State and shall be voted upon at any statewide election designated in the petition, or at a special election called by the Governor. The result of the vote upon any measure shall be canvassed and declared by the board of canvassers.

Any measure, except an emergency measure, submitted to the electors of the state, shall become a law when approved by a majority of the votes cast thereon. And such law shall go

into effect on the 30th day after the election, unless otherwise specified in the measure.

If a referendum petition is filed against an emergency measure such measure shall be a law until voted upon by the electors. And if it is then rejected by a majority of the votes cast thereon, it shall be thereby repealed. Any such measure shall be submitted to the electors at a special election if so ordered by the Governor, or if the referendum petition filed against it shall be signed by thirty thousand electors at large. Such special election shall be called by the Governor, and shall be held not less than one hundred nor more than one hundred thirty days after the adjournment of the session of the legislature.

The Secretary of State shall pass upon each petition, and if he finds it insufficient, he shall notify the "Committee for the Petitioners" and allow twenty days for correction or amendment. All decisions of the Secretary of State in regard to any such petition shall be subject to review by the supreme court. But if the sufficiency of such petition is being reviewed at the time the ballot is prepared, the Secretary of State shall place the measure on the ballot and no subsequent decision shall invalidate such measure if it is at such election approved by a majority of the votes cast thereon. If proceedings are brought against any petition upon any ground, the burden of proof shall be upon the party attacking it.

No law shall be enacted limiting the number of copies of a petition which may be circulated. Such copies shall become a part of the original petition when filed or attached thereto. Nor shall any law be enacted prohibiting any person from giving or receiving compensation for circulating the petitions, nor in any manner interfering with the freedom in securing signatures to petitions.

Each petition shall have printed thereon a ballot title, which shall fairly represent the subject matter of the measure, and the names of at least five electors who shall constitute the "committee for the petitioners" and who shall represent and act for the petitioners.

The enacting clause of all measures initiated by the electors shall be: "Be it enacted by the people of the State of North Dakota." In submitting measures to the electors, the Secretary of State and all other officials shall be guided by the election laws until additional legislation shall be provided.

If conflicting measures initiated by or referred to the electors shall be approved by a majority of the votes cast thereon, the one receiving the highest number of affirmative votes shall become the law.

The word "measure" as used herein shall include any law or amendment thereto, resolution, legislative proposal or enactment of any character.))

The veto power of the Governor shall not extend to the measures initiated by or referred to the electors. No measure enacted or approved by a vote of the electors shall be repealed or amended by the ((legislature)) legislative assembly within five years of its enactment or approval, except upon ((a ye and nay vote upon roll call)) an affirmative vote of two-thirds of all the members elected to each house.

((This section shall be self executing and all of its provisions treated as mandatory. Laws may be enacted to facilitate its operation, but no laws shall be enacted to hamper, restrict or impair the exercise of the rights herein reserved to the people.))

COMMENT: In this section the people have reserved the right of the initiative and the referendum regarding statutory law. The people did not reserve these rights in their original Constitution and it was not until 1914 that they reserved these powers to themselves. The original section 25 stated, "The legislative power shall be vested in a senate and house of representatives". Over the years these powers have been exercised to such a degree as to cause in essence a cumulative restriction on the Legislative Assembly. The changing times have caused many of these laws to no longer express the mandate of the electorate; yet the Legislative Assembly is restricted in correcting these laws to meet our present needs — restricted in the sense that it requires a two-thirds vote of the Legislative Assembly to amend any of these laws when they have become useless, no matter how long they have been on the books. With the great number of initiated laws we have accumulated, we are rapidly approaching a government which requires a two-thirds majority to govern rather than our original concept in American government that the majority should rule. A most important change is to allow the Legislative Assembly after five years have passed since the adoption of an initiated measure to a-

mend it by a simple majority but still require a two-thirds majority for these first five years. The proposed changes would also eliminate all of the statutory language and incorporate it into our Code. The Committee felt that the actual mechanical procedure should be handled by statutory law and has drawn a companion bill which sets forth the procedural aspects of these two powers. One will realize in studying the companion bill that the procedure to follow in using these two powers has been greatly strengthened to prevent fraud and misuse. Another major change you will notice while studying the companion bill is that the number of signatures required for the initiative and referendum has been changed from a set amount of ten thousand to eight percent of the number of votes cast for the office of Governor at the last preceding general election. The number for the referendum has been changed from seven thousand to five percent. These set amounts of seven and ten thousand were realistic for 1914 but since then we have more than doubled the number of eligible voters due to the adoption of women's suffrage and increase in overall population. The 5% and 8% requirements are the most common percentages found in states having initiative and referendum procedures. These powers should certainly be kept by the people but they should only be used when a situation of fair importance arises that requires such action and when there is a true ground swell of public opinion on an issue. If such a situation should arise, there should be no greater problem of obtaining sufficient signatures under the amended section than there is under the present section. Section 52 has also been included in the new section 25. Section 52 states: "The senate and house of representatives jointly shall be designated as the legislative assembly of the state of North Dakota." See also the present Code sections 16-01-11, 16-01-12, 16-01-13, and 16-11-07.

Section 26. (((The senate shall be composed of forty-nine members.))) Members of the senate shall be elected for a term of four years. Members of the house of representatives shall be elected for a term of two years. The term of service of members of the legislative assembly shall begin on the third day of January following their election, or at such other time as may be prescribed by law. No person shall be a senator or representative who is not a qualified elector of the district in which he may be chosen, who has not been a resident of the state for two years

preceding his election, and who has not attained the age of twenty-five years in the case of a senator and twenty-one years in the case of a representative, but each house shall be the judge of the election returns and the qualifications of its own members.

**COMMENT:** In the new section 26 there are combined sections 27, 28, 33, 34, 41, and 47. This section now has all the constitutional requirements and restrictions regarding terms, and electoral requirements. The Committee felt that it was better to have all of these related elements in one section rather than to have them strewn about in seven sections. See chapter 54-03 generally for laws regarding the Legislative Assembly and chapter 16-14 for the contest of election of a legislative member by an individual.

**Section 27. Repeal.)**

**COMMENT:** Section 27 states "Senators shall be elected for the term of four years, except as hereinafter provided." and is included in the new section 26.

**Section 28. Repeal.)**

**COMMENT:** This section contained the electoral requirements of senators and is now incorporated into the new section 26.

**Section 29. (((Each existing senatorial district as provided by law at the effective date of this amendment shall permanently constitute a senatorial district. Each senatorial district shall be represented by one senator and no more.)))**  
**The legislative assembly shall as soon as possible after each federal decennial census proceed to fix by law the number of senators not to exceed forty-nine, which shall constitute the senate of North Dakota, and the number of representatives not to exceed ninety-eight, which shall constitute the house of representatives of North Dakota. The legislative assembly shall divide the state into legislative districts and apportion to each district the number of senators or representatives so that as nearly as possible all inhabitants of this state entitled to representation shall be equally represented in the legislative assembly. The legislative assembly may provide for single member districts, multimember districts, or both. Each district shall be composed of contiguous territory and the districts as thus ascertained shall continue until changed by law.**

**COMMENT:** Sections 26, 29, and 35 relating to our state's legislative reapportionment were held unconstitutional by the United States District Court in light of the United States Supreme Court decision on state reapportionment. This section as amended is now written so as to conform with these courts' decisions in that it sets forth in a general way the number of members of the legislative assembly and requires the legislative assembly to reapportion itself every ten years. Further it states in an all-encompassing way the doctrine of "one-man, one-vote" as stated by the United States Supreme Court. This provision also gives the legislature a wide latitude in determining and setting the actual legislative districts. A more detailed discussion of this matter is presented at the end of the legislative sections in this report.

**Section 30. Repeal.)**

**COMMENT:** This section initiated in 1890 the staggered terms of the senators so as to have only one-half of the senate members up for election at any one time. This has been accomplished and section 30 is now obsolete.

**Section 31. Repeal.)**

**COMMENT:** This section required the senate to elect one of its members a president pro tempore who may take the place of the lieutenant governor as prescribed by law. This has been prescribed by section 54-03-08 and hence section 31 is no longer needed.

**Section 32. Repeal.)**

**COMMENT:** This section states "The house of representatives shall be composed of not less than sixty, nor more than one hundred forty members." and is now incorporated into the new section 29.

**Section 33. Repeal.)**

**COMMENT:** This section states "Representatives shall be elected for the term of two years." and is now incorporated into the new section 26.

**Section 34. Repeal.)**

COMMENT: This section sets forth the residence and other requirements to qualify for election as a representative and these requirements are now included in the new section 26.

**Section 35. Repeal.)**

COMMENT: This section related to the state's legislative apportionment and has been declared unconstitutional by the United States District Court in light of the United States Supreme Court decision on reapportionment. A new apportionment section has been written and is presented in section 29.

**Section 36. Repeal.)**

COMMENT: This section states "The house of representatives shall elect one of its members as speaker." and this is also provided for in section 54-03-08. It is procedural matter not needed in the Constitution.

**Section 37.** (((No judge or clerk of any court, secretary of state, attorney general, register of deeds, sheriff or person holding any office of profit under this state, except in the militia or the office of attorney at law, notary public or justice of the peace, and no person holding any office of profit or honor under any foreign government, or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of \$300, shall hold any office in either branch of the legislative assembly or become a member thereof.))) No member of the legislative assembly shall concurrently hold another office of the state other than of its political subdivisions, or of the United States, which offices may be prescribed by law.

COMMENT: The section as rewritten now allows all persons who hold an office below that of the state level to also serve in the Legislative Assembly and gives the power to the Legislature to name those state offices which a legislator cannot hold while a member of the Legislature. A companion bill has been drafted naming those state offices and agencies. The Committee also believed that a person should be allowed to serve in the Legislature and still hold a position with any institution of higher learning or upon interim or interstate commit-

tees or commissions which are principally legislative in nature. Also see the comment to Article 51 of the Amendments for further explanation and the companion bill implementing this section.

**Section 38. Repeal.)**

COMMENT: This section states that persons convicted of bribery, perjury, and other infamous crimes could not be eligible for the Legislative Assembly and also a member who had been expelled for corruption. Since the Legislature, under section 47, is a judge of the qualifications of its own members this section, section 38, is superfluous and the courts have held that this type of section does not control legislative membership. See chapter 12-09.

**Section 39. Repeal.)**

COMMENT: This section would not allow any member of the Legislature to be appointed to a civil office which had been created or the emoluments increased during the legislator's term of office. This section is too restrictive because of preventing the election of capable and experienced men to responsible government offices. Also an individual still could not hold a legislative office and civil office at the same time because of section 37.

**Section 40. Repeal.)**

COMMENT: This section relates to promises for exchange of votes or similar practices of bribery among the respective members of the Legislature. This subject is presently covered in sections 12-09-09, 12-09-10, and 12-09-11. This section was thought to be superfluous and best handled by statute and rules.

**Section 41. Repeal.)**

COMMENT: This section relates to the term of service for the members of the Legislature and is now included in the new section 26.

**Section 42.** The members of the Legislative Assembly shall in all cases except (((treason,))) felony (((and breach of the peace))), be privi-

leged from restraint resulting from arrest during their attendance at the sessions of their respective houses, and in going to or returning from the same. For words used in any speech or debate in either house or at any session of any committee or interim committee thereof, they shall not be ((questioned in any other place)) held for slander or libel in any court.

COMMENT: One change in this section is the elimination of the phrase "breach of the peace". This phrase is very difficult to define legally and the Committee felt that a legislator should be allowed to attend the sessions if he has committed a misdemeanor and then be arrested for the offense after the session. This does not excuse the legislative member from punishment but only from restraint during the session. See collateral section 54-03-17.1. In the last sentence of this section legislative immunity has been extended to cover all legislative interim committees.

#### Section 44. Repeal.)

COMMENT: This section reads "The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislative assembly." It was felt that this could be best handled by statute and is presently covered by sections 16-07-09, 16-07-10, and 16-07-11.

#### Section 45. Repeal.)

COMMENT: This section sets the compensation of legislators during the session at five dollars a day and ten cents per mile for travel to and from the session. It is rather ridiculous to have the compensation of legislators locked into the Constitution. Five dollars may have been adequate in 1889 but hardly in 1964. Presently the legislators are paid twenty dollars per day for expenses under sections 54-03-16 and 54-03-20 during the period the Legislature is actually in session.

#### Section 46. Repeal.)

COMMENT: This section relates to the necessary quorum needed for business in the Legislature. This was felt to be superfluous and is covered under Rule 3 of the Senate and House Rules.

#### Section 47. Repeal.)

COMMENT: This section states "Each house shall be the judge of the election returns and the qualifications of its own members." and is included in the new section 26 as well as section 54-03-07.

Section 48. Each house shall have the power to determine the rules of proceedings ((and)), to punish its members ((or other persons)) and others for contempt or disorderly behavior in its presence; to protect its members against violence ((or)), offers of ((bribes)) bribery or private solicitation, ((and with the concurrence of two-thirds, to expel a member;)) to expel a member upon concurrence of two-thirds of its members, and in addition shall have all other ((powers)) power necessary and usual in the legislative assembly of a ((free)) state. ((But no imprisonment)) Imprisonment by either house shall ((continue beyond)) not exceed thirty days((. Punishment)) and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

COMMENT: This section was mostly polished in its language and is also covered and supplemented by section 54-03-17, chapter 12-09, and the Rules of each house.

#### Section 49. Repeal.)

COMMENT: This section relates to the recording of the votes in the Legislative Assembly. This section has been incorporated into the new section 65. It also would clearly permit the use of roll call machines.

Section 51. Neither house shall, without the consent of the other, adjourn at any time for more than three days nor to any other place than that in which the two houses shall be sitting((, except in case of epidemic, pestilence or other great danger)).

COMMENT: This section was merely changed to eliminate surplus language and to require both houses to, in effect, be in session at the same time at the same place. The place of meeting may be changed by the governor in case of a pending enemy attack. See section 54-48-08.

#### Section 52. Repeal.)



**COMMENT:** This section gives the name of "Legislative Assembly" to both houses and is now incorporated into the new section 25.

**Section 53.** The legislative assembly shall meet at the seat of government at 12 o'clock noon on ((the first Tuesday after the first Monday in January,)) January third in the year next following the election of the members thereof. If January third shall be a Sunday or legal holiday, the legislative assembly shall convene on the succeeding day.

**COMMENT:** This section was amended so as to have the Legislature meet as early as possible at a set date. Under the old provision it would be possible to not have the session start until the eighth of January. See the companion bill implementing this section.

#### **Section 54. Repeal.)**

**COMMENT:** This section relates to elections of officers by the assembly and the recording of votes. This section is absolutely superfluous and is presently covered under section 54-03-08.

**Section 55.** The sessions of the legislative assembly shall be biennial, except as otherwise provided ((in this Constitution)) by law. Special sessions may be called by the governor or by the legislative assembly itself. Special sessions may be called by the legislative assembly only if such calling is approved by two-thirds of all its members in the manner provided by law.

**COMMENT:** Only the governor under section 75 can now call the Legislature into a special session and then only for extraordinary occasions. The Committee felt that the Legislature should also have the power to improve the system of checks and balances in case a governor should fail to act. This section also permits the establishment of annual sessions if it ever becomes necessary. Please see the companion bill implementing this section.

**Section 56.** ((No regular sessions)) Each session of the legislative assembly shall not exceed sixty legislative days, except in case of impeachment((, but the first session of the legislative assembly may continue for a period of one hundred and twenty days)). However, by joint resolution, approved by a majority of the mem-

bers of both houses after the fiftieth day of any session, the session may be extended not to exceed ten legislative days.

**COMMENT:** The Legislature under this amended section could extend the session if necessary, whereas before nothing was provided. The sixty days would not include Sundays when the Legislature did not meet. Today's society and government is far too complex to do an adequate job under the original 60-day session as provided for in 1889. This amendment would actually permit sixty working or sixty-nine calendar days in a normal session, plus ten additional days if it is required to finish all the work during the session. Also, all definitions of a legislative day have been eliminated and would now be determined by the assembly rules. The Rules of both houses currently state that a legislative day cannot be shorter than a natural day. See present section 63.

#### **Section 57. Repeal.)**

**COMMENT:** This section states "Any bill may originate in either house of the legislative assembly, and a bill passed by one house may be amended by the other." This is superfluous and the Committee felt could best be handled by the Rules of the Legislative Assembly.

**Section 58.** No law shall be passed ((,)) except by a bill adopted by both houses of the legislative assembly((, and no bill shall be so altered and amended on its passage through either house as to change its original purpose)). Every bill shall be read two times in each house, but the first and second reading may not be upon the same legislative day. Each reading may be by title only unless a reading at length is demanded by any member.

**COMMENT:** This section has been amended to include section 63 and to eliminate surplus language.

#### **Section 59. Repeal.)**

**COMMENT:** This section states "The enacting clause of every law shall be as follows: 'Be it enacted by the Legislative Assembly of the State of North Dakota.'" This enacting

clause is not worthy of constitutional status and is surplusage.

#### Section 60. Repeal.)

COMMENT: This section relates to the introduction of appropriation bills after the fortieth day of the session. Rule 29 of the Senate and Rule 30 of the House now set the limit for other bills at the 25th day with exceptions. See Rules; also see section 62 of the Constitution.

#### Section 61. Repeal.)

COMMENT: This section relates to more than one subject in a bill. This section has caused much litigation and should probably never have been in the original Constitution. It dates from the days when only one handwritten copy of a bill was available and it was feared that unrelated subjects would be included in a bill without knowledge of the members. Now all members have printed copies of bills. This section is also repeated in the Rules of the assembly. See also section 62 concerning appropriation bills.

Section 62. ((The general)) General appropriation ((bill)) bills shall embrace nothing but appropriations for the expenses of the executive, legislative and judicial departments of the state, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject. The bills prepared by the budget agency provided by law shall be passed or rejected by the house of the legislative assembly in which they were introduced before that house passes any other appropriation bill except bills supplementing appropriations for the current fiscal period's operation. The legislative assembly shall provide for estimates of income and balances to be available for appropriation during the succeeding fiscal period, and the total of all appropriations for such period shall not exceed the estimate of balances and income.

COMMENT: This section is patterned after a similar new constitutional section of Michigan. This section as amended would require decisions in regard to the existence and regular governmental functions before appropriations for new functions are considered, thereby providing improved fiscal control.

This section also prevents the Legislature from appropriating more than the estimated cash balances and income for each fiscal period.

#### Section 63. Repeal.)

COMMENT: This section concerns the reading of bills before passage and is now to be included in section 58.

Section 64. No bill shall be revised or amended nor the provisions thereof extended or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions, but so much thereof as is revised, amended or extended or so incorporated shall be reenacted and published at length.

COMMENT: This section has been amended only to allow reference to definitions and procedures so as to eliminate unnecessary bulk in the bills. Such practices have generally been approved by the courts.

Section 65. Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and recorded in the journal at the request of one-sixth of those present. No bill shall become a law except by a vote of a majority of all the members-elect in each house, nor unless, on its final passage, the vote be ((taken)) recorded by yeas and nays, and the names of those voting be entered on the journal.

COMMENT: The new material is from section 49 and was incorporated here because of the similar subject matter of the two sections.

Section 66. The presiding officer of each house shall ((, in the presence of the house over which he presides,)) sign all bills and joint resolutions passed by the legislative assembly ((; immediately before such signing their title shall be publicly read)), and the fact of signing shall be ((at once)) entered on the journal.

COMMENT: The signing of bills as required by this section wastes time during the session and the recording in the records without the verbal notice before the legislative body is considered sufficient notice to all concerned.

Section 67. ((No act)) All acts of the legislative assembly shall ((take effect until))

becomes effective on July first after the close of the session or subsequent thereto if specified in the measure, unless the legislature by a vote of two-thirds of the members present and voting, in each house, shall declare it an emergency measure, which declaration shall be set forth in the act(((, provided, however, that no act granting a franchise or special privilege, or act creating any vested right or interest other than in the state, shall be declared an emergency measure))). An emergency measure shall take effect and be in force from and after its passage and approval by the Governor.

In the event a referendum petition is filed before July first following a legislative session, the legislative act or parts thereof subject to the referendum shall not become effective until the sufficiency of the referendum petition has been determined as prescribed by law, or in the event such petitions are determined sufficient until the measure has been upheld at an election.

**COMMENT:** The main change in this section is the new material which was added to prevent a law from going into effect and then having the sufficiency of the petitions in a referendum challenged, causing the Act to be suspended. This results in confusion as to when the law actually becomes effective. See companion bill to section 25.

**Section 68.** The legislative assembly shall pass all laws necessary to carry into effect the provisions of this Constitution. No local or special laws shall be enacted nor shall the legislative assembly indirectly enact such special or local laws by the partial repeal of a general law, but laws repealing local or special acts may be passed.

**COMMENT:** This section now includes provisions from sections 69 and 70 because of the similar subject matter of all three sections. Section 69 has a long list of special laws which could not be passed by the Legislature. This specific detailed list is not needed as it is sufficient to have in the Constitution that these types of laws cannot be passed. The courts have been forced to rule on many cases relating to classification laws in spite of the fact that section 69 had a long list of specific prohibitions. The courts are the countercheck on the Legislature to prevent such local or special legislation.

#### **Section 69. Repeal.)**

**COMMENT:** See comment under section 68.

#### **Section 70. Repeal.)**

**COMMENT:** See comment under section 68.

#### **General Comment**

Sections 25 through 70 which have just been covered make up Article II of the Constitution dealing directly on the legislative branch. There are other sections not in this Article which also restrict or affect the legislative power and were included in the work of the legislative study group. These sections do not progress in an absolute numerical order and sections not mentioned will be reviewed in the future as the constitutional study progresses.

#### **Section 77. Repeal.)**

**COMMENT.** This section provides for the succession to the office of Governor by the Secretary of State when there is no Lieutenant Governor. Further, this section stated that the Lieutenant Governor is to be President of the Senate. By repealing this section the Senate can by law or rule choose its president from its own members or select the Lieutenant Governor whichever it desires. In the event the office of Lieutenant Governor becomes closely related in duties to the office of Governor then perhaps the Senate would prefer to choose one of its own to be President so as to maintain the separation of the two branches of government.

#### **Section 139. Repeal.)**

**COMMENT:** This section is a restriction on the Legislature in that it could not grant any right to a utility to build and operate in a city without the consent of the governing body of that city. It was felt that this section was a needless restriction, as section 68, as amended, and the remaining sections in Article VII are sufficient to prevent this. See the case of City of Grafton v. Otter Tail Power Company, 86 N.W. 2d 197 (1955), for a discussion of this section.

**Section 148.** The legislative assembly shall provide (((at their first session after the adoption of this Constitution,))) for a uniform system of free public schools throughout the state, beginning with the primary and extending

through all grades up to and including (((the normal and collegiate course))) schools of higher education; provided, however, that the legislative assembly may authorize fees and service charges in public schools of higher education.

**COMMENT:** The amendment would remove any question of the validity of current practices of charging fees at state colleges and universities.

**Section 155.** (((After one year from the assembling of the first legislative assembly the lands granted to the state from the United States for the support of the common schools, may be sold upon the following conditions and no other: No more than one-fourth of all such lands shall be sold within the first five years after the same become salable by virtue of this section. No more than one-half of the remainder within ten years after the same become salable as aforesaid. The residue may be sold at any time after the expiration of said ten years.))) The legislative assembly shall provide for the sale of all ((school)) lands ((subject to the provisions of this article)) granted to the state from the United States for the support of the common schools. In ((all)) such sales ((of lands subject to the provisions of this article)) all the minerals ((therein)), including but not limited to oil, gas, coal, cement materials, sodium sulphate, sand and gravel, road material, building stone, chemical substances, metallic ores, uranium ores, ((or)) and colloidal or other ((clays)) clay, shall be reserved and excepted to the state of North Dakota ((,except that leases)). Leases may be executed by the state for the extraction and sale of such ((materials)) minerals in ((such)) the manner and upon such ((terms)) conditions as the legislative assembly may provide.

**COMMENT:** The first portion of this section was deleted as obsolete material. The remaining changes are only to polish the section. See chapters 15-05 and 15-06.

### **Section 163. Repeal.)**

**COMMENT:** This section requires that all public lands must be surveyed before they can be used by any individual, corporation, etc. This is now obsolete because the general land survey was completed in the late 1800's.

### **Section 165. Repeal.)**

**COMMENT:** This section requires the Legislature to pass laws regarding the safekeeping, transfer, investment, and disbursement of state school funds which the Legislature has done. See the first several chapters of Title 15. This section is now obsolete.

**Section 167.** (((The Legislative Assembly shall provide by general law for organizing new counties, locating county seats thereof temporarily, and changing the county lines; but no new county shall be organized, nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than five thousand bona fide inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships the natural boundaries shall be observed as nearly as may be.)))

The legislative assembly shall ((also)) provide by general law for the consolidation of counties, and for their dissolution, but no counties shall be consolidated without a ((fifty-five percent)) majority vote of those voting on the question in each county affected, and no county shall be dissolved without a ((fifty-five percent)) majority vote of the electors of such county voting on such question.

**COMMENT:** The first portion of this section has become obsolete and there is ample statutory law covering this portion. See chapters 11-02, 11-03, 11-04, and 11-06. As to the second paragraph, see chapter 11-05. The important change in this paragraph is to require only a majority vote, thus bringing our Constitution within the concept that the majority rules. The Legislative Research Committee's Subcommittee on State, Federal, and Local Government is also revising the statutory law relating to this section.

**Section 174.** The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the state for each year, not to exceed in any one year when raising revenues based upon an ad valorem tax on property, four (4) mills on the dollar of the assessed valuation of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes, and also a sufficient sum to pay the interest on the state debt.

COMMENT: The addition of the new material merely reflects the law of many cases handed down by our Supreme Court. See the principal cases of City of Fargo v. Wetz, 40 N.D. 299, and State ex rel. Haggart v. Nichols, 66 N.D. 355.

**Section 175. Repeal.)**

COMMENT: This section states "No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied." This section is no longer required. Through court decisions it has been found to be almost meaningless.

**Section 177. Repeal.)**

COMMENT: This section provides for an acreage tax for a hail insurance fund and has been superseded by Article 24 of the Amendments to the Constitution.

**Section 180. Repeal.)**

COMMENT: This section provides for a poll tax. See sections 18-03-09, 37-01-27, and 57-15-23 relating to this subject.

**Section 181. Repeal.)**

COMMENT: This section states "The legislative assembly shall pass all laws necessary to carry out the provisions of this article." This section is pure surplus language since section 25, granting legislative power, would include this authority.

**Section 188.** (((The militia of this state shall consist of all able bodied male persons residing in the state, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this state. Persons whose religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.))) The legislative assembly shall provide for the establishment, organization, and maintenance of a state militia. The members of the militia shall in all cases, except a felony, be privileged from arrest while in the performance of their official duties as such militiamen.

COMMENT: This section is the first of six sections of Article XIII relating to the state militia. All of these sections give a wide latitude of discretion to the Legislature so the Committee felt that only one general section was needed to cover the whole article. See Title 37 which has thoroughly implemented this article.

**Section 189. Repeal.)**

COMMENT: This section states "The militia shall be enrolled, organized, uniformed, armed, and disciplined in such a manner as shall be provided by law, not incompatible with the constitution or laws of the United States." See comment on section 188.

**Section 190. Repeal.)**

COMMENT: This section provides that the Legislature should establish a state militia. See comment on section 188.

**Section 191. Repeal.)**

COMMENT: This section states "All militia officers shall be appointed or elected in such a manner as the legislative assembly shall provide." See comment on section 188.

**Section 192. Repeal.)**

COMMENT: This section states "The commissioned officers of the militia shall be commissioned by the governor, and no commissioned officer shall be removed from office except by sentence of court martial, pursuant to law." See comment on section 188.

**Section 193. Repeal.)**

COMMENT: This section relates to privilege from arrest of militia forces while going or coming from duty and is incorporated into the new section 188.

**Article 14 of the Amendments. Repeal.)**

COMMENT: This article authorizes the Legislature to erect, buy, or lease grain elevators in Minnesota and Wisconsin. This article is now obsolete.

New Section.) The legislative assembly may prescribe or provide for the form, style, numerical sequence, and arrangement of this Constitution, for the purpose of its publication in an integrated and logical form.

COMMENT: This section is self-explanatory.

### General Comment

The following are the bills which have been drafted to effectuate by statute any changes dictated by the new changes in the Constitution. These bills are self-explanatory and require no further comment.

Statutes suggested for implementing section 25 of the Constitution.

### Senate Bill No. 33

#### A BILL

For an Act to provide for the procedure, conditions, manner, and form for submitting measures to a vote of the electorate through use of the initiative and referendum, providing penalties for fraudulent acts and violations in connection therewith; and to repeal section 16-01-11 of the North Dakota Century Code, providing penalties for fraudulent signing of petitions, and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

**Section 1. INITIATIVE PETITIONS - SIGNATURES - FILING.)** Any measure, as provided in section 25 of the Constitution, may be submitted to a vote of the electorate upon the filing of petitions with the secretary of state at least ninety days prior to any statewide primary or general election containing the signatures of qualified electors of the state equal in number to eight percent of the total vote cast for the office of governor at the preceding general election.

**Section 2. REFERENDUM PETITIONS - SIGNATURES - FILING.)** Any measure, as provided in section 25 of the Constitution, passed by the legislative assembly, other than measures or portions of measures appropriating public funds, may be referred to a vote of the electorate upon the filing with the secretary of state not later than one hundred and twenty days after the adjournment of the session of the legislative assembly at which such measure was adopted, of petitions containing the signatures of qualified electors of the state equal in number to five percent of the total vote cast for the office of governor at the preceding general election. In a like manner, any item, section, part, or parts of a measure may be referred, and disapproval of such item, section, part, or parts shall have no effect upon the remaining item, section, part, or parts if such item, section, part or parts can, by themselves, be given effect. The certification to the governor by the secretary of state as to the sufficiency of the number of signatures on a referral petition shall, except in the case of an emergency measure, be effective to suspend operation of the referred measure or item, section, part, or parts thereof pending a determination by vote of the electorate. When the secretary of state makes a proclamation as to the sufficiency or nonsufficiency of any petition and such proclamation has been challenged by a person pursuant to section 9 of this Act, such challenge shall suspend the operation of the referred measure or item, section, part, or parts thereof until such challenge has been determined as prescribed by law.

**Section 3. PETITIONS TO CONTAIN WARNING - COMMITTEE FOR PETITIONERS.)** Each petition for the initiation or referral of any measure shall contain, one and one-half inches from the top of the front sheet thereof the word "WARNING", under which shall be printed in eight point type, single leaded, the following:

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or knowingly sign his name more than once for the same measure, or to sign such petition when he knows he is not a legal voter.

In addition, the petition shall bear the names and post office addresses of at least five qualified electors of the state, who shall constitute the "committee for the petitioners" and who shall represent and act for the petitioners.







he shall immediately make such determination known by issuing a proclamation to that effect or if upon finding the petitions do not contain the legally required number of valid signatures he shall also make that determination known in the same manner. The secretary of state shall certify the initiative or referendum petitions to the governor as containing the legally required number of signatures on the fifteenth day following the issuance of such proclamation, or on the succeeding day if the fifteenth day is a Sunday or a legal holiday. When the secretary of state makes his proclamation any citizen desiring to contest the determination made by the secretary of state shall apply within fifteen days to the district court of Burleigh County for an injunction prohibiting the secretary of state from making such certification or for a writ of mandamus to compel him to make such certification. If it shall be decided by the court that such petition is legally sufficient, the secretary of state shall immediately certify to the governor such petition as legally sufficient. On a showing that any petition filed is not legally sufficient, the court may enjoin the secretary of state and all other officers from certifying such measure or printing it on the official ballot for the ensuing election. All such suits shall be advanced upon the court calendar and heard and decided by the court as soon as possible. Either party may appeal the decision of the district court to the supreme court within ten days after a decision is rendered.

**Section 10. ELECTION PROCLAMATION BY GOVERNOR.)** Upon receipt of the certification from the secretary of state, the governor shall proclaim the date of the primary or general election called for in the petitions as the date upon which the measure is to be voted upon. In cases where, in the judgment of the governor, the best interests of the state and its citizens require, the governor may proclaim a special election upon any referred measure at any date earlier than that specified in the referendum petition.

**Section 11. ELECTION LAWS TO GOVERN - CONFLICTING MEASURES.)** The general laws governing elections and the canvass of the returns thereof shall govern elections on the initiative and referendum in all instances where consistent with the provisions of this chapter. If conflicting measures initiated by or referred to the electors shall be approved at the same election by a majority of the votes cast thereon, the one receiving the highest number of affirmative votes shall become the law.

**Section 12. EFFECTIVE DATE OF INITIATED OR REFERRED MEASURE.)** Any measure, except an emergency measure which shall remain in effect until repealed, submitted to the electors of the state shall become a law when approved by a majority of the votes cast thereon. Such law shall go into effect on the thirtieth day after the election, unless otherwise specified in the measure.

**Section 13. WHO MAY SIGN PETITION - PENALTY FOR WRONGFUL SIGNING.)** Any person who is a qualified elector of the state of North Dakota may sign a petition for the initiative or the referendum on any measure upon which he is legally entitled to vote. No person shall sign any name other than his own to any petition, or knowingly sign his name more than once for the same measure at one election, or sign the same when he is not a legal voter of this state.

**Section 14. FALSE STATEMENTS CONCERNING PETITION UNLAWFUL.)** No person shall willfully or knowingly circulate, publish, or exhibit any false statement or representation concerning the contents or effect of any initiative or referendum petition for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign such petition.

**Section 15. FILING PETITION WITH FALSE SIGNATURES UNLAWFUL.)** No person shall file in the office of any officer required by law to receive the same, any initiative or referendum petition to which is attached, appended, or subscribed any signature which the person so filing such petition knows to be false or fraudulent or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended, or subscribed thereto.

**Section 16. CIRCULATING PETITION WITH FALSE, FORGED, OR FICTITIOUS NAMES UNLAWFUL.)** No person shall circulate or cause to be circulated any initiative or referendum petition knowing the same to contain false, forged, or fictitious names.

**Section 17. FALSE AFFIDAVIT BY ANY PERSON UNLAWFUL.)** No person shall make any false affidavit concerning any initiative or referendum petition, or the signatures appended thereto.

**Section 18. FALSE RETURN CERTIFI-**

CATION, OR AFFIDAVIT BY PUBLIC OFFICIAL UNLAWFUL.) No public official or employee shall knowingly make any false return, certification, or affidavit concerning any initiative or referendum petition, or the signatures appended thereto.

**Section 19. INELIGIBLE PERSON CIRCULATING PETITION.)** No person who is not a qualified elector of the state shall circulate or obtain signatures on any initiative or referendum petition. No person shall procure any person who is not a qualified elector of the state to circulate such petition or obtain such signatures.

**Section 20. OTHER UNLAWFUL ACTS ENUMERATED.)** No person shall offer, propose, or threaten to do any of the following acts in regard to any initiative or referendum petition:

1. To sell, hinder, or delay any initiative or referendum petition or any part thereof or the signatures thereon for any consideration; or
2. To use any petition or power of promotion or opposition to any petition in any manner or form for extortion, blackmail, or secret or private intimidation of any person or business interest.

**Section 21. PENALTY FOR VIOLATIONS.)** Any person violating any of the provisions of sections 13 through 20 shall, upon conviction, be punished by a fine of not to exceed five thousand dollars or imprisonment for a term of not to exceed two years, or by both such fine and imprisonment.

**Section 22. Repeal.)** Section 16-01-11 of the North Dakota Century Code is hereby repealed.

**Section 23. EFFECTIVE DATE.)** This Act shall not become operative unless and until the electors approve the amendment of section 25 of the Constitution submitted for approval to the electorate of this state at the general election in 1966 as designated in Senate Concurrent Resolution "A" of the Thirty-ninth Legislative Assembly.

Statute suggested for implementing section 37 of the Constitution.

**Senate Bill No. 34**

**A BILL**

For an Act to provide a restriction on members of the legislative assembly from concurrently holding another state office except as employees of institutions of higher learning and providing for an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:**

**Section 1. RESTRICTION ON LEGISLATORS HOLDING OTHER STATE OFFICES.)** No member of the legislative assembly unless he shall resign from such office shall hold any office in a department, bureau, commission, institution, or state industry within the executive branch of government of this state or hold the office of judge of the supreme court or of the district courts except that this restriction shall not apply to persons employed by institutions of higher learning.

**Section 2. EFFECTIVE DATE.)** This Act shall not become effective unless and until the electors approve the amendment of section 37 of the Constitution submitted for approval of the electorate of this state at the general election in 1966 as designated in Senate Concurrent Resolution "A" of the Thirty-ninth Legislative Assembly.

Statute suggested for implementing section 53 of the Constitution.

**Senate Bill No. 35**

**A BILL**

For an Act to amend and reenact section 54-03-02 of the North Dakota Century Code, relating to when the legislative assembly meets and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

Statute suggested for implementing section 55 of the Constitution.

**Senate Bill No. 36**

**Section 1. AMENDMENT.)** Section 54-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**A BILL**

54-03-02. WHEN LEGISLATIVE ASSEMBLY MEETS.) The legislative assembly shall meet at the seat of government at twelve o'clock noon on (((the first Tuesday after the first Monday in))) January third in the year next following the election of the members thereof. If January third shall be a Sunday or legal holiday, the legislative assembly shall convene the succeeding day.

For an Act to provide for a procedure whereby the legislative assembly may call itself into special session and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

**Section 2. EFFECTIVE DATE.)** This Act shall not become operative unless and until the electors approve the amendment of section 53 of the Constitution submitted for approval to the electorate of this state at the general election in 1966 as designated in Senate Concurrent Resolution "A" of the Thirty-ninth Legislative Assembly.

**Section 1. SPECIAL SESSION - MANNER OF CALLING BY MEMBERS OF THE LEGISLATIVE ASSEMBLY.)** When one-sixth of the members of the legislative assembly, in writing, request the legislative research committee to conduct a poll by mail of all members of the legislative assembly on the question of whether a special session of the legislative assembly should be called at a designated date, the legislative research committee shall forthwith conduct such poll. If two-thirds of all members of the legislative assembly approve the calling of such special session, the special session shall be called at the time requested. The necessary proclamation calling a special session of the legislative assembly shall be given by the legislative research committee in the name of the legislative assembly, and the legislative research committee shall make the necessary preparations for such special session.

**Section 2. EFFECTIVE DATE OF ACT.)** This Act shall not become operative unless and until the people approve the constitutional amendment submitted for approval to the electorate of this state at the general election in 1966 as designated in Senate Concurrent Resolution "A" of the Thirty-ninth Legislative Assembly.

## NORTH DAKOTA REAPPORTIONMENT

### Introduction

Included in the following discussion is a synopsis of the United States Supreme Court decision on state legislative reapportionment (copies of a memorandum of the Supreme Court decision are available in the Legislative Research Committee office); a brief of the United States District Court opinion on North Dakota's present legislative apportionment; and a presentation of the subcommittee's findings, conclusions, and proposed reapportionment plan.

### STATEMENT OF CONCLUSIONS DRAWN FROM THE UNITED STATES SUPREME COURT'S DECISION ON STATE LEGISLATIVE APPORTIONMENT

In six sweeping decisions the United States Supreme Court ruled on June 15, 1964, that legislative representation in both houses of a bicameral legislature must be based on population. The Court set down the general principles of apportionment in an Alabama case and then decided cases from Colorado, Delaware, Maryland, New York, and Virginia.

The major single premise upon which the Court based its decision is that the right to vote is personal and is preservative of the other basic civil and political rights. Because the right to vote is the most basic right, the Court will not tolerate in the allocation of representation in state legislatures any differentiation of voters which is insufficient to justify discrimination.

The majority of the Court flatly rejected the federal-state analogy, the electoral college, and the admission-to-the-Union arguments as the basis for apportioning a state legislature. The Court will tolerate only a plan which approaches as near as possible the principle of one man-one vote.

The Court rejected the argument that by using the initiative and referendum procedures it is precluded from taking jurisdiction, and that a state's constitutional provisions and laws must first be determined by the state courts before the federal courts can assume jurisdiction.

The Supreme Court and lower federal courts must review a state apportionment plan in its

entirety regardless of whether or not one of the houses has been declared to be apportioned correctly by any state or lower federal court, or by stipulation by the party litigants.

The Court does not feel its decision destroys the concept of bicameralism. The Court said:

"A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of and to prevent precipitate action on, proposed legislative measures."

The Court does tell us in very general and broad terms how we are to apportion. We must apportion ourselves at least once every ten years. We may have some disparity between districts greater than between our congressional districts. We may have inequality of population between districts in one house so long as it is overcome in the other house. We do not have to achieve mathematical preciseness of population in each district if we can show that we have not been arbitrary and have made an honest and good faith effort to avoid any discrepancies. We can use our political subdivision boundaries if they can conform substantially to the ratio of one man-one vote. We can use single member districts, floterial districts, or multimember districts. In large multimember districts we may have to designate subdistricts so as to allow identification of a voter's representative.

Throughout its decisions in the six cases the Court reiterates the following rule to be followed in any state apportionment plan:

"By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a state make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement . . . . But once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote - whatever their race, sex, occupation,

income, or wherever their home may be in that geographical unit."

The Supreme Court stated in its opinions that if a lower court should find that a state's apportionment does not comply with the constitutional requirements it must take immediate action to compel the state to apportion in conformity with constitutional requirements, unless there is an impending election or legislative session in such state which would be greatly disrupted, or if compelling the state to comply with the court's directive would cause financial or inequitable results. However, if there is an impending legislative session the court may order a state to reapportion in conformity with constitutional requirements or the court will reapportion such state itself.

BRIEF OF THE DECISION OF THE FEDERAL DISTRICT COURT ON NORTH DAKOTA'S LEGISLATIVE APPORTIONMENT. (Paulson et al v. Meier, Secretary of State, 232 F. Supp. 183, 1964.

On February 24, 1964, plaintiffs, residents and voters of North Dakota, filed a complaint before a three-judge Federal District Court alleging that sections 26, 29, and 35 of the North Dakota Constitution, and section 54-03-01 of the North Dakota Century Code, as amended in 1963, all relating to apportionment of the Legislative Assembly, were unconstitutional in that they violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. On July 27, 1964, the three-member Court issued its decision with one judge dissenting in part.

The Court, after stating the facts, quoted at length from the United States Supreme Court decision on apportionment handed down on June 15, 1964. (Most of these quotes are contained in the Memorandum entitled "Excerpts from the Supreme Court's Decision on State Legislative Apportionment" prepared by the staff of the Legislative Research Committee and will therefore not be reiterated here.)

The Court then presented its holding on the constitutionality of the above provisions and stated:

"In light of the very recent decisions of the Supreme Court of the United States above cited, and the guidelines therein established, we hold that the existing legislative apportionment system of this state is con-

stitutionally not permissible, and that sections 26, 29, and 35 of Article II of the Constitution of the State of North Dakota, as amended, and section 54-03-01, NDCC, as amended, are unconstitutional as being violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

"The invalidity of the present apportionment system is readily demonstrable. Sections 26 and 29 of the state Constitution, as amended, permanently fix the number of senatorial districts at forty-nine, and section 29 further provides that 'Each existing senatorial district as provided by law at the effective date of this amendment shall permanently constitute a senatorial district. Each senatorial district shall be represented by one senator and no more'. It is therefore apparent that the constitutional amendments not only fail to consider population as the prime factor, but in effect provide and require that the senate be apportioned strictly on an area basis, without regard to population.

"Section 54-03-01, NDCC, provides that 'The senatorial districts of the state shall be formed, and the senators and representatives shall be apportioned as follows:'. Therein after forty-nine legislative districts were established, and one senator apportioned to each. The practical effect of this method of apportionment is significant. According to the federal census of 1960 (of which we take judicial notice), District 43, consisting of Renville County, contained a population of 4,698, whereas District 29, composed of the city of Minot and a designated rural portion of Ward County, had a population of 42,041, and District 9, composed of the Township of Fargo and the city of Fargo in Cass County, contained a population of 38,494. As can be seen from these examples, very substantial differences in the population of at least some of the legislative districts prevail. Such a method of apportioning senators 'is not sustainable under the requirements of the Equal Protection Clause'.

"That the existing system of apportioning members of the state House of Representatives is based primarily on area rather than population is also apparent. The formula provided by section 35, as amended, for the apportionment of representatives is that each senatorial district shall be repre-

sented by at least one representative, that each district comprised of more than one county shall be represented by at least as many representatives as there are counties in the district, and that the balance of the members be apportioned according to population.

"Section 54-03-01, NDCC, as amended, provides that District 39, composed of the counties of Billings, Bowman, Slope, and Golden Valley (and containing a population of 10,660) be apportioned four representatives; District 25, consisting of Dickey County (and having a population of 8,147) be apportioned one representative; District 14, consisting of Ransom County (and having a population of 8,078) be apportioned one representative; and each of Districts 3, consisting of a designated portion of Walsh County (and containing a population of 8,423) and 26, consisting of Emmons County (and having a population of 8,462) be apportioned two representatives. Such a system clearly violates the 'basic constitutional standard' referred to by the Supreme Court. The existing apportionment scheme, taken as a whole, ' . . . result(s) in a significant undervaluation of the weight of the votes of certain of (the) State's citizens merely because of where they happen to reside'. WMCA, Inc., et al., supra, page 4557.

"As we hold section 54-03-01, NDCC, as amended, unconstitutional, it follows that the last valid apportionment, if any, continues ' . . . to be the law governing . . . until it is superseded by a valid apportionment . . . '. Lein et al. v. Sathre, et al., 113 NW 2d 679, at pages 687-8. The last previous apportionment law is Chapter 7, Session Laws N. D. 1931 (Section 54-03-01, NDCC, prior to its amendment). All members of the 1963 Legislative Assembly were elected pursuant to this law.

"We have given careful consideration to the 1931 apportionment law. With one minor exception the respective legislative districts, being forty-nine in number, consist of the same area or areas as provided in the amendment. One senator was apportioned to each district; the apportionment of representatives to the various districts was changed rather substantially by the amendment.

"We therefore hold that the 1931 apportionment statute is vulnerable to the same

constitutional attack as its amendment, and we hereby find and declare it to be constitutionally invalid. We further find and declare that any and all existing laws of this state relating to legislative apportionment which limit or prescribe district areas or boundaries, or apportion the members of the legislative assembly on any basis other than population, are unconstitutional and void. It is our conclusion, and we so hold, that there is no constitutionally valid legislative apportionment law in existence in the State of North Dakota at this time."

The Court next discussed at considerable length the reasons why the Court did not require reapportionment before the November 1964 election. The Court gave as the main reasons for not ordering immediate reapportionment the involved state election laws, the fact that the primary election had already been held, the cost of new elections, and the great difficulty in the short time remaining before the fall election in drafting a constitutional plan. Following these remarks the Court said:

"These comments are made solely to indicate the detailed information and careful study and planning necessarily involved in formulating a constitutionally permissive legislative apportionment law, and the complexities of the subject matter involved. We believe that even a temporary, provisional plan, if adopted by us, should and must comply with the basic constitutional standard as set out by the Supreme Court in its June 15 decisions.

"We also have in mind the judicially well established recognition that legislative apportionment is primarily for the consideration and determination of the legislative body of each state."

The Court also discussed and declared unacceptable two apportionment plans submitted by the plaintiffs. The Court pointed out that disparities in the plans proposed ranged from three representatives for 15,109 people in one district to two representatives for districts having anywhere from 9,373 to 14,934 people.

The Court finally discussed what other Federal District Courts have required states to do whose apportionment plans have been declared unconstitutional and concluded its decision by stating:

"We hold that the Thirty-ninth Legislative Assembly (1965) of North Dakota, consisting of members elected under existing law, will have a de facto status; that at such regular session it should promptly devise and pass legislation creating and establishing a system of legislative districting and apportionment consistent with federal constitutional standards; that the effective date of this Order and Decree will be stayed until after the 1964 general elections have been held and for a reasonable time after the commencement of the 1965 Legislative Assembly in order to afford such Assembly a reasonable and adequate opportunity to enact such apportionment legislation . . .

"The injunctive relief prayed for is denied.

"We retain and reserve jurisdiction herein for such further relief and orders, if any, as may hereafter be deemed proper."

#### Committee Findings and Recommendations

Prior to the United States Supreme Court decision, the Committee had been presented with three constitutional amendments in regard to reapportionment plans. One plan was developed by members of the subcommittee based on an equal-proportions formula; another was based on the 1889 constitutional provisions; and one was prepared by an individual member of the subcommittee. All three plans honored county boundary lines for the legislative districts. However, there were instances where two or more counties were placed in one district. The Committee did not take any action on these plans as it was aware that the United States Supreme Court was about to issue a ruling on state legislative apportionment. Following the Court's ruling and after a careful study of the Court's opinion the Committee found that all three plans did not meet Supreme Court requirements and consequently were unconstitutional. In attempting to create a reapportionment plan based on the Court's opinions two public meetings were held and the Committee asked all interested persons to submit ideas and plans. The public meetings were very poorly attended but those who did attend contributed usable and helpful suggestions.

The Committee agreed that it could not itself spend the great time necessary to draw up a plan which would conform to the "one-man, one-vote" doctrine. To do this also requires that

the population of each township be known and, in the larger cities, it would require knowledge of the population of the various wards and precincts. Because of the urgency of the problem the Committee directed the staff to prepare a plan using any method which would achieve results. The staff obtained the services of Dr. Henry J. Tomasek of the Bureau of Government Research of the University of North Dakota and Mr. R. R. Smith, a Certified Public Accountant, of Grand Forks, to acquire the needed census information and prepare a reapportionment plan.

These gentlemen were briefed on the Committee's philosophy as to how the reapportionment should be done, if possible. These guiding principles were that the approach should be geographical, beginning at some point on the boundary of the state and creating senatorial districts based upon a 49-member Senate, if possible; that the integrity of county boundaries be maintained where this could be done without violating the one-man, one-vote principle and that good judgment be used in attempting to assign townships, wards, etc. on the basis of community interest where this is practical; that like territories should be joined together to form a legislative district in order that community concepts, as well as mutual interests in the field of economics and otherwise, would prevail; that where discretion permits, boundary lines which would disqualify legislators presently serving would not be arbitrarily drawn unless this appeared reasonably necessary; but all of these concepts must be within the framework of the principle of one-man, one-vote. In this regard, the Committee thought that the extreme deviation between the highest and the lowest legislative districts should not exceed 10 percent over or under the desired population factor, and, if possible, a closer relationship should be obtained. In the case of cities which are entitled to more than one senator, it was the Committee's thought that no attempt would be made to draw the exact boundary lines within the cities, since this could have political overtones, and also might unnecessarily disqualify existing legislators. Further, another plan could be prepared upon a different sized Senate — ranging from 43 to 51 senators. The Committee's reason for this discretionary range was that there might be some population factor that would permit the retention of a greater number of county boundaries or that might facilitate the development of more logical and contiguous districts.

A second basis, or approach, was suggested by Senator Gail H. Hernet and was included by

the Committee in its directives upon the preparation of plans. This approach would begin by creating urban districts within all the cities that were large enough to support a senator or more than one senator; then create districts to include those cities that had almost enough population to warrant a senator and attach only as much rural territory as necessary to bring it up to the population factor necessary to warrant a senate seat; thereafter, proceed to form districts to include the balance of the state. This approach had the advantage of not, in effect, disenfranchising rural and small town voters by attaching a sparsely populated area to an urban district where the urban district would completely control the election of the legislators. Again the Committee required that this approach remain within the principle of one-man, one-vote.

### Discussion of Proposed Plan

Mr. R. R. Smith in presenting the proposed reapportionment plan to the Committee stated that he had tried to follow the principles set forth by the Committee and had made over 20 different approaches using a combination of all the suggested ways in doing so. It was found that the best number of senators to use was 49. In attempting to use less it was found that very few county boundaries could be kept intact. Also, the use of a number less than 49 caused too much rural territory to be attached to the urban areas, thus indirectly disenfranchising many rural voters.

Using 49 senators resulted in the figure of 12,907 as the basic number of qualified inhabitants for each legislative district. This figure of course was arrived at by dividing the state's total population of 632,446 according to the 1960 census by 49. Each of the major cities in the plan as presented form a legislative district with only as much rural territory attached as is needed to bring each district up to the basic figure of 12,907 or some multiple of this figure. This resulted in five multimember legislative districts which given by cities are: Minot-3 senators; Grand Forks-3 senators; Fargo-4 senators; Jamestown-2 senators; and Bismarck-3 senators. This breakdown consequently creates 34 single-member districts and 5 multimember districts. In striving to maintain the integrity of county boundaries this plan required only twelve of the 53 counties to be partitioned. In trying to keep the districts as near as possible to the one-man, one-vote principle all but two of the districts are within the 10 percent range of the basic figure as prescribed by the Committee.

In fact the present plan using 49 senators or the total number of possible single-member districts has resulted in 29 legislative districts being within 5 percent of the basic figure per district, and 16 legislative districts slightly over 5 percent of the basic figure. The result is a tremendous achievement in attempting to devise legislative districts to approach the one-man, one-vote principle. (For further detail see the apportionment map accompanying this report.)

In the one instance with a larger variance (District No. 2 composed of Divide and part of Williams Counties) the variance is 15.83 percent from the basic figure. The Committee in discussing this point arrived at a possible solution. This would be to attach the 5 townships immediately west of the first district (City of Williston) to the first district. These five townships had a 1960 population of 736 and if these were added to District No. 1, would create a change in the district's population from 12,667 to 13,403, or a plus 3.84 percent from the basic figure. District No. 2 would then be reduced by 736 from a district population of 14,950 to 13,914 for a variance of only plus 10.13 percent instead of a plus 15.83 percent.

Another possibility would be to take away from District No. 2 (Divide and part of Williams Counties) the eastern townships of Divide County and attach them to Burke County in District No. 3 or take the eastern townships of Williams County and attach them to Mountrail County in District No. 4 to bring the District No. 2 population closer to the basic figure. But this approach would destroy two more county boundaries and attach areas which have no particular community interest.

The other instance where the variance is larger than the 10 percent is that of District No. 32 (Burleigh). There were three primary reasons why this district was created in its present form. First the total population of Burleigh County is 34,016 (1960 census) and presently a very high percentage of the people in the county reside in the City of Bismarck. This district under the proposed plan is given 3 senators and, based on the 1960 census, is actually over-represented. If sufficient population were to be added to this district to bring it as near as possible to the needed population it would require the addition of territory from McLean, Sheridan, Kidder, and Emmons Counties or major portions of two of these counties, thus destroying from two to four county boundaries kept intact by the



plan proposed. Also the County of Emmons could be added but this, of course, would cause all of the surrounding districts to become out of proportion to the basic figure and require all the other districts throughout the state to be proportionately adjusted. This rippling effect would further destroy the integrity of many county boundaries now kept intact by this plan. Further, the 1960 census showed that the City of Bismarck had the highest growth ratio for the 1950-1960 decade of any city in the state. It will very rapidly increase in size and eliminate the over-representation presently shown, thereby approaching more nearly the actual number of inhabitants as is required for 3 senators.

A further comment should be made in regard to the multimember districts created by this plan. It was not the intention of the Committee to imply that these districts could not be subdivided into single - member districts if there is objection in any such districts to members being elected at large. The Committee believed that for them to do so would be presumptive on their part.

If the inhabitants want to subdivide the districts, they would have better knowledge of how it should be done.

The Committee recommends that the number of representatives be set at 98, which number gives a direct ratio of 2 representatives for every senator. This ratio assures that the people will be represented in the House within the principle of one-man, one-vote.

A bill describing the proposed legislative districts is not included in this report because the Committee believed that the map accompanying this report showing the districts would better present the proposed reapportionment plan. (The map can be found in the pocket part attached to the back page of this report.) Also following is a table naming the area within each district, the number of senators, the population of each district, and the percentage variance which each district is above or below the basic figure of 12,907.

SCHEDULE OF PROPOSED DISTRICTS  
by  
POPULATION

With Variances from Average

No.	District	Number of Senators per District	1960 Popu- lation			Variance from Average per Senator
1	Part of Williams	1	12,667	—	240	— 1.86%
2	Divide & part of Williams	1	14,950	+	2,043	+ 15.83%
3	Burke, Renville, & part of Ward	1	14,009	+	1,102	+ 8.54%
4	Mountrail & part of Ward	1	13,228	+	321	+ 2.49%
5	Part of Ward (multimember)	3	37,769	—	317*	— 2.49%
				—	317*	— 2.49%
				—	318*	— 2.49%
6	Bottineau & part of McHenry	1	12,795	—	112	— .87%
7	Parts of McHenry & Ward	1	12,346	—	561	— 4.35%
8	McLean	1	14,030	+	1,123	+ 8.70%
9	Rolette & part of Towner	1	12,659	—	248	— 1.92%
10	Cavalier & part of Towner	1	13,670	+	763	+ 5.91%
11	Pembina	1	12,946	+	39	+ .30%
12	Pierce & part of Benson	1	13,756	+	849	+ 6.58%
13	Eddy, Foster & part of Benson	1	13,370	+	463	+ 3.59%
14	Sheridan & Wells	1	13,587	+	680	+ 5.27%
15	Ramsey	1	13,443	+	536	+ 4.15%
16	Part of Walsh	1	12,879	—	28	— .02%
17	Nelson & part of Walsh	1	12,152	—	755	— 5.85%
18	Part of Grand Forks (multimember)	3	35,451	—	1,090*	— 8.45%
				—	1,090*	— 8.45%
				—	1,090*	— 8.45%
19	Part of Grand Forks	1	13,226	+	319	+ 2.47%
20	Trail & part of Cass	1	12,866	—	41	— .32%
21	Part of Cass (multimember)	4	52,881	+	313*	+ 2.43%
				+	313*	+ 2.43%
				+	313*	+ 2.43%
				+	314*	+ 2.43%
22	Part of Cass	1	11,783	—	1,124	— 8.71%
23	Griggs, Steele & part of Barnes	1	13,030	+	123	+ .95%
24	Part of Barnes	1	13,431	+	524	+ 4.06%
25	Part of Richland	1	12,578	—	329	— 2.55%
26	Sargent & part of Richland	1	13,102	+	195	+ 1.51%
27	Ransom & part of LaMoure	1	12,417	—	490	— 3.80%
28	Dickey & part of LaMoure	1	12,513	—	394	— 3.05%
29	Stutsman (multimember)	2	25,137	—	338*	— 2.62%
				—	339*	— 2.62%
30	McIntosh & Logan	1	12,071	—	836	— 6.48%
31	Kidder & Emmons	1	13,848	+	941	+ 7.29%
32	Burleigh (multimember)	3	34,016	—	1,568*	— 12.15%
				—	1,568*	— 12.15%
				—	1,569*	— 12.15%
33	Mercer, Oliver & part of Morton	1	13,175	+	268	+ 2.08%
34	Part of Morton	1	13,777	+	870	+ 6.74%
35	Grant, Sioux & part of Morton	1	13,365	+	458	+ 3.55%
36	McKenzie & Dunn	1	13,646	+	739	+ 5.73%
37	Part of Stark	1	13,533	+	626	+ 4.85%
38	Hettinger, & parts of Stark & Adams	1	12,804	—	103	— .80%
39	Golden Valley, Billings, Slope, Bowman & part of Adams	1	<u>13,540</u>	+	633	+ 4.90%
			632,446			

\*Variance from average per senator in the multimember districts.

Note: Nos. 5, 18, 21, 29, and 32 are "multimember" 15  
This leaves 34 single-member districts 34  
49

## EXECUTIVE SECTIONS

**Section 71.** The executive power shall be vested in a governor, who shall reside at the seat of government and shall hold his office for the term of four years ((beginning in the year 1965,)) and until his successor is elected and ((duly)) qualified. No person shall be eligible for the office of governor for more than two terms, and the holding of the office or exercising the powers and performing the duties for more than two years of any term shall be considered as the holding of the office for one term under this limitation.

**COMMENT:** This section is self-explanatory. The Committee felt that when the term is for four years it should be limited to two terms for any one individual.

**Section 72.** A lieutenant governor shall be elected at the same time and for the same term as the governor. In case of the death, impeachment, resignation, failure to qualify, ((absence from the state,)) removal from office, or the disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted or the disability be removed, shall devolve upon the lieutenant governor and during the period of the exercise of the powers and the performance of the duties he shall be acting governor. In the event of the absence of the governor from the state, the powers and duties of the office shall devolve upon the lieutenant governor only to the extent that the governor shall specify in writing.

**COMMENT:** The major change in this section is deleting that portion "absence from the state." This phrase could cause our governors many problems. When the governor leaves the state the lieutenant governor becomes governor. In this situation the lieutenant governor could make any changes within his power which could be very contrary to the governor's wishes. As amended, this problem would be eliminated and only those powers and duties that the governor specifies in writing could be exercised by the lieutenant governor.

**Section 73.** No person shall be eligible to the office of governor or lieutenant governor unless he ((be)) is a citizen of the United States, and a qualified elector of the state, who shall have attained the age of thirty years, and who shall have resided five years next preceding the election within the state ((or territory)),

nor shall he be eligible to any other office of the state or its political subdivisions during the term for which he shall have been elected.

**COMMENT:** This section was amended merely to bring it into conformity with section 72 and to clarify the last phrase of this section. This section should not unconstitutionally attempt to add qualifications for seeking any federal office.

**Section 74.** The governor and lieutenant governor shall be elected upon a joint ballot by the qualified electors of the state ((at the time and places of choosing members of the legislative assembly)). The governor and lieutenant governor shall be of the same political party or affiliation. A single vote shall be cast upon a joint ballot by each qualified elector for the joint candidates representing the political party or affiliation of his choice. The ((persons)) joint candidates having the highest number of votes ((for governor and lieutenant governor respectively)) shall be declared elected, but if two or more joint candidates shall have an equal and highest number of votes for governor ((or)) and lieutenant governor, the two houses of the legislative assembly at its next regular session shall forthwith((, by joint ballot,)) in joint session choose one pair of such ((persons)) joint candidates for said ((office)) offices. The returns of the election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

**COMMENT:** This section was amended to set forth the joint ballot requirement in the same manner as the President and Vice President of the United States. If the governor should die or become unable to perform his duties for other reasons, the lieutenant governor would have much more detailed knowledge of current programs and governmental operations than a lieutenant governor of a different political party. It is assumed that when the people elect the governor the voters have given a mandate to him to carry out his ideas as presented in the political campaign. If the governor and the lieutenant governor are of different political parties then this mandate may not be carried out by the lieutenant governor. Also provided is the procedure to determine who shall hold office in case of a tie vote.

**Section 75.** The governor shall be command-

er-in-chief of the military ((and naval)) forces of the state, except when they shall be called into the service of the United States, and may call out the same to execute the laws, suppress insurrection and repel invasion. He shall have power to convene the legislative assembly on extraordinary occasions. He shall at the commencement of each session, and may at other times, communicate to the legislative assembly by message, information of the condition of the state, and recommend such measures as he shall deem expedient. He ((shall transact)) may in his discretion supervise all necessary business with the officers of the government ((civil and military)) of the United States, and other states thereof. He shall expedite all such measures as may be resolved upon by the legislative assembly and shall take care that the laws be faithfully executed.

COMMENT: This section is self-explanatory. The main change is to allow the governor to appoint or designate agents or permit other state agencies to transact business with the federal and other state governments. In the old section only he personally could transact business between the federal and other state governments. The governor's military powers and duties are set forth in title 37 of the Code.

Section 80. The governor shall have power to disapprove ((of)) or reduce any item or items or part or parts of any bill making appropriations of money or property embracing distinct items((, and the)) except any bill making appropriations of money or property for the operation of the legislative assembly or its permanent or interim agencies. The part or parts of the bill approved or approved as reduced shall be the law, and the item or items and part or parts disapproved or reduced shall be void, unless enacted in the following manner: If the legislative assembly be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved or reduced together with his objections thereto, and the items or parts objected to or reduced shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.

COMMENT: The addition of the phrase "or reduce" gives the governor broader powers than he had under the original language. Before, he could only veto a whole bill or item, whereas it seems much more logical

that he may want to only reduce the amount of appropriation and not veto it in total. The material relating to the Legislature was added for the purpose of restricting the gubernatorial veto and the power of reducing appropriations of funds appropriated for the operation of the Legislative Assembly and its interim agencies in order to preserve a proper check and balance system between these two branches of government.

Section 82. There shall also be chosen by the qualified electors of the state at the times and places of choosing ((members of the legislative assembly, a)) the governor and lieutenant governor, ((secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance,)) three public service commissioners, and an attorney general who is qualified to practice law before the supreme court of this state. ((, a commissioner of agriculture and labor, and a tax commissioner, who)) Such persons shall have attained the age of twenty-five years and shall have the qualifications of state electors. They shall severally hold their offices at the seat of government for the term of four years except the public service commissioners who shall serve for a term of six years ((beginning with the year 1965,)) and until their successors are elected and ((duly)) qualified. ((; but no person shall be eligible for the office of treasurer for more than two consecutive terms. The tax commissioner shall be elected on a no party ballot and he shall be nominated and elected in the manner now provided for the nomination and election of the superintendent of public instruction.

The board of railroad commissioners shall hereafter be known as the public service commission and the members of the board of railroad commissioners as public service commissioners and the powers and duties now or hereafter granted to and conferred upon the board of railroad commissioners are hereby transferred to the public service commission. The public service commissioners shall have the qualifications of state electors, have attained the age of twenty-five years, be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, hold office at the seat of government and until their successors are elected and duly qualified. As each of the three public service commissioners now holding office completes his term, his successor shall be elected for a term of six years.))

The legislative assembly may by law provide

for (((a department))) departments of agriculture, labor, and such other departments as may be required (((which, if provided for, shall be separate and distinct from the department of agriculture, and shall be administered by a public official who may be either elected or appointed, whichever the legislative assembly shall declare; and if such a department is established the commissioner of agriculture and labor provided for above shall become the commissioner of agriculture))).

**COMMENT:** This section, as amended, represents the most basic change in the executive branch of state government. The number of elected officials named in the Constitution would be reduced from 13 to 6. Basically it was the belief of the Committee that we have too many elected officials. On the other hand, the Committee does not believe that we should turn to a complete cabinet system and elect only a governor and lieutenant governor, following the pattern of the national government. The Congress is in almost continuous session, and consequently can act as a check and balance upon the executive branch of the Federal Government at all times, but since the Legislative Assembly of North Dakota is in session only 60 days every two years, it is desirable to retain a few elected public officials in order to act as an internal check and balance within the executive branch in varying capacities. For instance, it may be desirable to have a majority of the state board of equalization, which levies taxes and stands in the shoes of the Legislative Assembly in this regard, consist of a majority of public officials. The Emergency Commission, which grants funds in addition to regular appropriations is also acting in a legislative capacity and perhaps a majority should consist of elected public officials.

However, 13 elected public officials are far too many. The voting citizens cannot be expected to know and evaluate the qualifications, ability, and performance of so many people. With the division of authority, it is difficult to hold any of them responsible for state government. Each elected constitutional office, with its attendant duties, in effect creates an independent department that is entirely free from any gubernatorial authority, but for which most people tend to hold the governor responsible. It in effect creates numerous small governments within state government.

Because of this division of authority and responsibility the governor cannot establish the program upon which he ran for election nor can duplication be prevented or adequate coordination obtained. The governor is unable to create an effective integrated executive branch, with the result that state government is weak and unable to effectively cope with problems facing it. Please see the enclosed organizational chart reflecting the present confusing flow of power and authority within the executive branch of government.

(The chart can be found in the pocket part attached to the back page of this report.)

Of the 7 elected offices no longer referred to in the Constitution, 2 would remain elective by statute. These 2 offices are the secretary of state and the state auditor.

The secretary of state would be left an elective office in order that he might continue to serve in the line of succession to the office of governor following the lieutenant governor, and be available to serve in other capacities where an internal check and balance within the executive branch may be desired.

Reference to the office of state auditor was removed from the Constitution with the thought that the Legislative Assembly may wish to follow a trend found in 23 States, and also reflected in the general accounting office of the Federal Government which is responsible to Congress. This is the establishment of the Legislative Assembly as the branch of government responsible for the post audit of all state spending. It is the duty of the Legislative Assembly to raise the funds through the passage of tax laws, pass the laws to authorize the programs which expend money, and appropriate the money to be expended. It is considered very desirable that the Legislative Assembly also independently review the expenditure of these funds to be certain that they are expended in accordance with these laws and in accordance with the intent of the Legislative Assembly. The state auditor should definitely not be appointed by the governor, since most departments would be responsible to the governor and it would result in the governor in effect auditing his own activities. It is not desirable for the state auditor to be elected, for he then owes

a political responsibility to the party of his affiliation and would be subject in a greater or lesser degree to the very human tendency of more strictly auditing any functions over which the opposite political party has control, but being more tolerant in his findings in regard to functions of government over which his own party maintains control. A professional auditor, employing private certified public accountants for the greater share of state auditing functions, selected through a bipartisan committee on a non-political basis for a long term of office, and confirmed by the Legislative Assembly would be much less likely to be subject to outside pressures or personal political bias, and should result in the best and most impartial audits that are possible to obtain. However, the Committee did not have time in the course of its biennium's work to prepare the necessary legislation for the establishment of a legislative post-audit office as a companion bill to the constitutional amendment, or provide for the reassignment of the other duties of the state auditor's office.

In the companion bill to this section (found following the executive branch sections) all of the offices which would be changed from elective to appointive are to be appointed by the governor with the consent of the senate. All will serve at the pleasure of the governor. There would be one exception and that is the office of superintendent of public instruction, who would be appointed by the governor with the approval of the senate and for a term of 4 years. (See also the scheduling section preserving the terms of all constitutional officers elected at the 1964 general election.) Also, the companion bill changes the membership of the Emergency Commission, replacing the commissioner of agriculture and labor with the attorney general. This change was made to restrict the commission membership to elected officials and replaces the commissioner of agriculture and labor with the chairman of the public service commission on the state board of equalization for similar reasons. The chairman of the public service commission was selected because of his relationship to all the various public utilities.

**Section 83.** The powers and duties of the ((secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance,))) public service commissioners ((of railroads)), and attorney general ((and com-

missioner of agriculture and labor))) shall be prescribed by law. ((In the event that the legislative assembly shall establish a separate and distinct department of labor, the powers and duties of the officer administering such department of labor shall be prescribed by law.))

**COMMENT:** This section was amended to conform with the changes made in section 82 of the Constitution and to delete obsolete language.

**ARTICLE 51 OF THE AMENDMENTS.  
REPEAL.)**

**COMMENT:** This article of the Amendments prevents any person who is an officer or employee of the state from appointing any member of the legislative assembly to a civil office during the term for which such legislator was elected. The provisions of this section have been partially incorporated into section 37. The Committee believes that any restriction should be defined by law as there are many instances when a legislator is highly qualified to fill a position with the state and that the blanket restriction required by Article 51 of the Amendments is far too restrictive. The President of the United States is not restricted from appointing members of Congress to his Cabinet or other posts in the executive branch and this practice has proved to be highly advantageous as there are many legislators who because of their knowledge in many areas are highly qualified for such positions. These persons should not be prevented from performing valuable services to and for our state.

**New Section.** The governor may make such changes in the organization or in the assignment of functions among and within offices, departments, and agencies responsible to him as he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislative assembly shall have forty-five days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

**COMMENT:** This new section was added to provide the power to the governor's office to effect changes in the executive branch towards a more efficient administrative gov-

ernment. The basic idea presented in this new section is patterned after the Hoover Commission approach for the Federal Government, wherein the President can issue executive orders affecting reorganizing executive department functions which become law unless disapproved by Congress. A number of states also follow this practice. This power should be given to the governor, for he would become responsible for efficient administration under the proposed amendments and must have the tools at hand to carry out his responsibilities. Of course, again we have preserved our check and balance between the two branches by giving the Legislature a chance to concur or reject the governor's proposals.

Statutes suggested for implementing the changes made in section 82 of the Constitution.

#### Senate Bill No. 37

#### A BILL

For an Act to provide for the appointment, term of office, and removal of a state treasurer, commissioner of insurance, commissioner of agriculture and labor, tax commissioner, and superintendent of public instruction, and to amend and reenact subsection 1 of section 54-06-01, and sections 54-16-01 and 57-13-01 of the North Dakota Century Code, relating to elected state officers, members of the emergency commission, and members of the state board of equalization, and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPOINTMENT - TERM - REMOVAL.) A state treasurer, commissioner of insurance, commissioner of agriculture and labor, tax commissioner, and a superintendent of public instruction shall be appointed by the governor

by and with the consent of the senate. Such appointees shall be directly appointed by and serve at the pleasure of the governor except the superintendent of public instruction, who shall be appointed by the governor and approved by the senate for a term of four years.

SECTION 2. HOW APPOINTMENTS APPROVED.) All appointments under this Act shall be submitted to the senate for its consent immediately upon appointment if the legislative assembly is in session or at the next following session of the legislative assembly should an appointment be made during the interim between legislative sessions. The appointee shall hold office in an acting capacity until his appointment is confirmed or rejected by the senate. If the senate does not affirm the appointment during the legislative session at which the name of the appointee is submitted, the appointee shall immediately cease to hold the office. The governor shall as soon as possible make a second appointment to such office in the same manner as the original appointment was made and submit the name of the appointee for confirmation by the senate.

SECTION 3. AMENDMENT.) Subsection 1 of section 54-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Elected and elective state officers" shall include the governor, the lieutenant governor, the attorney general, the secretary of state, the state auditor, ((the state treasurer, the superintendent of public instruction, the commissioner of agriculture and labor, the commissioner of insurance, the tax commissioner,))) and three public service commissioners;

SECTION 4. AMENDMENT.) Section 54-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-16-01. EMERGENCY COMMISSION - MEMBERS - ORGANIZATION - MEETINGS - DUTIES.) The emergency commission shall consist of the governor, the ((commissioner of agriculture and labor, and the)) secretary of state, and the attorney general. Whenever an allocation or allocations out of the state contingency fund in excess of ten thousand dollars, during the biennium, is to be made to any institution or department of government, the chairman of the senate appropriations committee and the chairman of the house of representatives appropriations

committee shall be members of the emergency commission. The governor shall be chairman of the commission, and the secretary of state, the secretary. The emergency commission shall meet upon the call of the chairman. The commission shall exercise the powers and perform the duties imposed upon it by law.

**SECTION 5. AMENDMENT.)** Section 57-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-13-01. MEMBERSHIP OF BOARD.)** The governor, state treasurer, state auditor, (((commissioner of agriculture and labor))) chairman of

the public service commission, and state tax commissioner shall constitute the state board of equalization. The governor shall be chairman of the board and the tax commissioner the secretary.

**SECTION 6. EFFECTIVE DATE.)** This Act shall not become effective unless and until the electors approve the amendment of section 82 of the Constitution submitted for approval to the electorate of this state at the general election in 1966 as designated in Senate Concurrent Resolution "A" of the Thirty-ninth Legislative Assembly.



## JUDICIAL SECTIONS

**Section 85.** The judicial power of the state ((of North Dakota)) shall be vested in a supreme court of not less than five judges one of whom shall be chief justice, district courts, county courts, (((justices of the peace,))) and (((in))) such other courts as may be (((created))) provided by law (((for cities, incorporated towns and villages))).

**COMMENT:** The new section 85 retains in substance all of the provisions of old section 85 and specifically eliminates the office of justice of the peace which office has already been abolished by 33-01-00.1 and is incorporated into the office of county justice court, the jurisdiction and powers of which are enumerated in 33-01 and 27-18. The remaining courts named in the old and new sections are named in 27-01-01.

**GENERAL COMMENT:** On first impression it might seem that some of the following sections are necessary provisions, but the Committee in its deliberations came to the conclusion that most of these provisions are inherent in the power and scope of the judicial branch of government and that the court has the inherent power to act in these areas without it being specifically enumerated in the Constitution. One has only to study the judicial sections of the state Constitution of Connecticut to realize that many of our judicial sections are unnecessary.

### **Section 88. Repeal.)**

**COMMENT:** This section relates to the terms of the supreme court. The terms are set forth in section 90 and in 27-02-06.

### **Section 89. Repeal.)**

**COMMENT:** This section relates to the number and quorum of the supreme court. The number of judges is given in section 85 above. The number of judges required to pronounce a decision is set forth in 27-02-22. Adjournment of the court is covered in 27-02-21. The last part of section 89 is set forth next in a new section.

**New Section.)** No law or legislative enactment of the state of North Dakota shall be declared unconstitutional by the supreme court un-

less at least two-thirds of the judges so decide.

**Section 90.** (((The judges of the supreme court shall be elected by the qualified electors of the state at general elections. The term of office shall be ten years and the judges shall hold their offices until their successors are duly qualified and shall receive such compensation for their services as may be prescribed by law. Provided that this section shall not be applicable to the terms of office of judges of the supreme court elected prior to the general election of the year 1934, at which election three supreme court judges shall be chosen; and the candidate at said election receiving the highest number of votes shall be elected for a term of ten years, the candidate receiving the next highest number of votes shall be elected for a term of eight years and the candidate receiving the next highest number of votes shall be elected for a term of six years.))) A vacancy as defined by law occurring in the office of judge of the supreme court or district court shall be filled by the governor from a list of three nominees presented to him by the judicial nominating commission. If the governor should fail to make an appointment from the list within thirty days from the day it is presented to him, the appointment shall be made by the chief justice of the supreme court from the same list within fifteen days. At the next general election after the expiration of three years from the date of appointment and every ten years thereafter, judges of the supreme court shall be subject to approval by a majority vote of the electorate voting upon the question. At the next general election after the expiration of three years from the date of appointment and every six years thereafter, judges of the district courts shall be subject to approval by a majority vote of the electorate voting upon the question. In the case of a judge of the supreme court, the electorate of the state shall vote on the question of approval. In the case of a judge of the district court, only the electorate of that judicial district shall vote on the question of approval. The chief justice shall be selected as provided by law. All judges shall hold their offices until their successors are duly qualified and shall receive such compensation for their services as may be prescribed by law.

There shall be a judicial nominating commission which shall select the nominees for appointment to the office of judge of the supreme court and district courts. The membership of such commission shall consist of the chief jus-

tice of the supreme court, who shall act as chairman; one member of the North Dakota state bar association from each judicial district who shall be appointed by such association; and one citizen, not a member of the bar, appointed by the governor for staggered terms of six years from each judicial district. No member of the judicial nominating commission appointed by the governor shall hold an elective office in the state, federal, or county governments.

**COMMENT:** The above proposed amendment to section 90 is probably the furthest-reaching change that the Committee made in the judicial article. Because of this it requires a detailed comment as to the reasons why the change is proposed.

The elective judiciary of this country really dates from only about a hundred years ago. In colonial times most judges were appointed by the governors, a few by the legislatures. After the Revolution the preponderance turned the other way. New states came into the Union rapidly during the first half-century and all of them adopted one or the other of those two methods. As early as 1812, to be sure, Georgia had tried election of judges, and in 1832 Mississippi went over to a completely elected state judiciary, but these early precedents were largely ignored elsewhere, and right up until the middle of the century about half of the judges of America were appointed by governors and the other half by state legislatures.

In 1846 the Union contained twenty-nine states. Appointment by the governor was the method used for selecting some or all of the judges in fourteen states. The legislatures selected all of the state judges in twelve states. Legislatures in four other states selected some of their state judges. Only one state (Mississippi) elected its entire judiciary and only four other states elected some of their state judges.

It may be a surprise to some people to learn that election of judges was never suggested nor thought of by the founding fathers who planned so well for the preservation of our liberty and security, and that it did not really make its appearance until three-quarters of a century after our nation was founded and twenty-nine of the fifty had already made a start with an appointive judiciary.

The New York constitutional convention of 1846, which substituted popular election for appointment for all New York's judges, really

ushered in the era of elected judges in this country. Just the year before, Texas had come into the Union with an appointive judiciary, but none of the nineteen states admitted thereafter had anything but elected judges, and a majority of the older states scrambled to join the parade.

From the late 1840's through the 1860's twenty-five states swung over to election. More new states, all elective, were added from time to time until 1912 when Arizona and New Mexico were admitted.

Not all of the older states were satisfied with the innovation. Seven of them — Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, and South Carolina — never got into it at all, and Maine only with respect to probate judges. Virginia went back to legislative appointment after fourteen years of the elective system. Vermont began electing judges of inferior courts in 1850, but gave it up for legislative appointment of all judges in 1870. Florida first tried electing circuit judges and appointing supreme court justices and finally reversed itself, electing supreme court justices and appointing circuit judges. Even Mississippi went back to appointment in 1868, and stayed with it until 1910.

The American Judicature Society opened the way for a more substantial return to the appointive system when it devised its nonpartisan appointive-elective plan in 1913. Missouri became the first state to adopt the essential provisions of the plan in 1940. California had already accepted it in modified form in 1934 as did Alabama in 1950.

Since 1951, the pace at which states have returned to appointive-elective selection of judges has quickened. The framers of Alaska's constitution provided for the appointive-elective plan for all of the state's judges. Kansas adopted the plan for its Supreme Court in 1958. Iowa and Nebraska joined the growing trend in 1962 by providing appointive-elective selection of judges of their supreme and major state trial courts. In the same year, Illinois voters approved a plan which provided for non-competitive, merit elections for all but initial terms, which continue to be filled by partisan election. In 1963, voters of Dade County (Miami), Florida, adopted the plan for the judges of the Metropolitan Court.

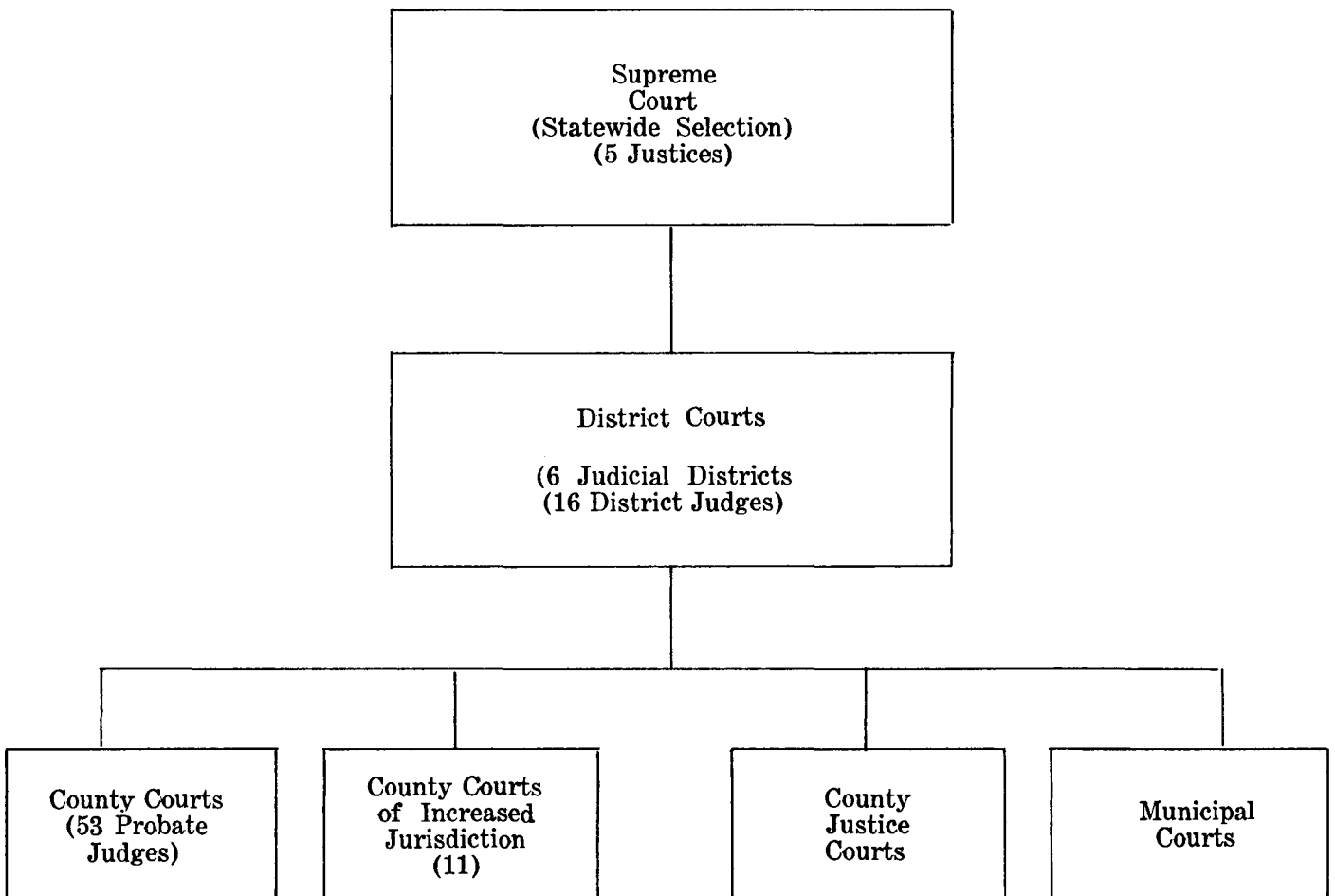
During the territorial days when this area was a part of the Dakota Territory, there were no elected judges or justices of any courts of record. They were all appointed by the Presi-

dent of the United States for the Dakota Territory and they traveled in the district that was assigned to each judge. During the past 75 years we have had election of judges in North Dakota with appointment only in the instance of a vacancy. The use of the elective process with provision for appointment has continued to the present time.

The percentage initially appointed to office in this state has varied considerably from time to time. At the present time two of the justices of the Supreme Court took office by appointment and three took office by election. On the

district court level eight judges took office by appointment and eight took office by election. Complete information is not available on the lower court judges, but the information that we do have indicates that the majority of the judges in the county courts of increased jurisdiction initially took office by appointment and, in spite of a lack of figures, we know that the overwhelming majority of the county justices went into office by appointment after the office was created in the respective individual counties. We have no information as to the number of county judges and police magistrates who have taken office by appointment.

### NORTH DAKOTA COURT STRUCTURE



The appointive-elective selection of judges as proposed in section 90 had its birth from the Missouri plan but from that point on it has been moulded to the needs of our state. The specific plan as proposed is a product of ideas from the Committee and the Judicial Improvement Committee of the State Bar Association. Originally it was suggested that the whole procedure of the new plan be placed in the Constitution but the Committee again followed its basic philosophy of only placing the principal and basic framework into the Constitution and leaving the details to statutory law.

Procedurally, the plan creates a judicial nominating commission which would select superior lawyers for nomination for appointment to a vacancy on the supreme court and district courts. It is the intention of the Committee that the commission be kept as nonpartisan as possible and for this reason governors can make only one appointment to the nominating committee each year and elected state officials can not be appointed. Judges under this plan are initially appointed for a period of three years and until the next general election when the electorate confirms or rejects the appointed judge. The vote of the electorate is predicated, of course, upon the record of the judge during his appointed term. If a judge should not be approved, then another appointment would be made in the same manner as the original appointment.

A bill implementing this section is included following the judicial section in this report. Due to its length and subject matter it cannot be adequately discussed here and will be better understood if the bill itself is studied.

Also in the recommended section it provides that the Chief Justice shall be selected as provided by law. The law implementing this procedure is included in the companion bill just mentioned. This bill provides that the chief justice shall be selected by the Judicial Council. The Judicial Council was selected because of its membership which consists of all of the active and retired supreme and district court judges; one county judge; the attorney general; the dean of the School of Law; and five members of the State Bar Association. The Committee believed that these individuals would have better knowledge of the qualifications of the judges for this position. This procedure was concurred in by the State Bar Association.

#### Section 92. Repeal.)

COMMENT: This section has become obsolete as to setting forth the staggered terms of the first election in 1889. That part of the section relating to the designation of a chief justice is to be taken care of by statute wherein the judicial council shall select the chief justice. Please see the companion bill initiating this selection.

#### Section 93. Repeal.)

COMMENT: This section relates to supreme court employees. The office of clerk and reporter are covered in sections 27-03-01 and 27-04-01, respectively, and publication of the court's reports in 27-04-05.

Section 94. (((No person shall be eligible to the office of judge of the supreme court unless he be learned in the law, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this state or the territory of Dakota three years next preceding his election.))) Supreme court judges, district court judges, and judges of county courts of increased jurisdiction shall be citizens of the United States and of this state, licensed to practice law in the state, and possess any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

COMMENT: This section was rewritten so as to combine all of the judges and their qualifications into one section in the Constitution.

#### Section 95. Repeal.)

COMMENT: This section is obsolete as it pertains to increasing the number of judges from 3 to 5 upon the state's population reaching 600,000. Also, provision for increasing the present court, if the need should ever arise, is now covered in section 85 as amended.

#### Section 96. Repeal.)

COMMENT: This section states that only judicial powers may be imposed on the court by law and this section is superfluous in view of the provisions for the separation of powers and the vesting of judicial power in the judicial branch.

**Section 97. Repeal.)**

**COMMENT:** This section relates to style of process and was considered to be superfluous.

**Section 98. Repeal.)**

**COMMENT:** This section provided that the governor would appoint members of the supreme court if any judge should resign or die in office. This provision is now obsolete because of the proposed method of selecting judges as given in section 90 above.

**Section 100.** (((In case a))) If any judge of the supreme court shall ((be in any way interested in a cause brought before said court))) have an interest in a case brought before such court or be unable to hear a case because of being physically or mentally incapacitated, the ((remaining judges)) chief justice of said court shall call one of the district judges to sit with them on the hearing of ((said cause)) such case.

**COMMENT:** This section was expanded to make it possible for the supreme court to have at all times five judges to hear cases.

**Section 102. Repeal.)**

**COMMENT:** This section requires the court to make a syllabus of each case and that a majority of the court must concur in any of its judgments. This section is superfluous and is presently covered in 27-02-22 and 27-02-23.

**Section 104. Repeal.)**

**COMMENT:** This section relates to the judicial districts, terms and election of district judges. The election and term of district judges is included in section 90 above, and the judicial districts are covered by 27-05-01 and again the term is given by 27-05-02.

**Section 105. Repeal.)**

**COMMENT:** This section names the judicial districts, is superfluous, and is covered by 27-05-01.

**Section 106. Repeal.)**

**COMMENT:** This section directs the legislature in its designation of the judicial districts and is replaced by a new section which follows next.

**New Section.) The state shall be divided into judicial districts as provided by law.**

**Section 107. Repeal.)**

**COMMENT:** This section relates to the qualifications of district court judges and is already included in section 94 above, as amended.

**Section 108. Repeal.)**

**COMMENT:** This section provides for the office of clerk of the district court. The office is also provided for in section 173 of the Constitution. This office is also provided for in 11-10-02 and the powers and duties of this office are enumerated in chapter 11-17.

**Section 109. Repeal.)**

**COMMENT:** This section relates to appeals which may be allowed by law from the district court to the supreme court and are covered in chapter 28-27.

**Section 110. Repeal.)**

**COMMENT:** This section established the county court. This court is now established by section 85 above, as amended, and the term is covered by section 173. The powers and duties of the court are set forth in chapter 27-07.

**Section 111. Repeal.)**

**COMMENT:** This section relates to the jurisdiction of county courts and their duties and powers. All of the requirements set forth in this section are covered in chapters 27-07 and 27-08. Also, the court is created by section 85 above and qualifications are set forth in section 173 of the Constitution.

**Section 112. Repeal.)**

**COMMENT:** This section relates to office of justice of the peace which has been abolished by 33-01-00.1.

**Section 113. Repeal.)**

**COMMENT:** This section creates the office of municipal judge. This office is created and the duties are set forth in the several chapters of title 40 and would now be covered by section 85 above, as amended.

**Section 114. Repeal.)**

**COMMENT:** This section relates to appeals for justices of the peace and municipal judges which appeals are covered by chapters 30-26, 33-11, and sections 33-12-34 and 40-18-19.

**Section 115. Repeal.)**

**COMMENT:** This section relates to the terms of the district court and are set forth in section 90 and in 27-05-08.1 and 27-05-17.

**Section 116. Repeal.)**

**COMMENT:** This section relates to district court judges sitting in other districts and is covered by 27-05-22.

**Section 117. Repeal.)**

**COMMENT:** This section restricts the supreme court and district court judges from acting as attorneys. This section has been included in the companion bill.

**Section 118. Repeal.)**

**COMMENT:** This section allows the setting of the terms of the district court and is presently covered by 27-02-06 and 27-05-08.1.

**Section 120. Repeal.)**

**COMMENT:** This section relates to tribunals of conciliation. It was noted by the Committee that conciliation courts as provided

by this section had been tried in North Dakota at one time and had proved unsatisfactory. Courts of this nature or others could still be allowed to be created under section 85 above, as amended.

**New Section. There shall be maintained a judicial council whose membership, powers, and duties shall be those prescribed as by this Constitution and by law.**

**New Section.) Whenever the judicial council certifies to the governor that a supreme court judge appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the governor shall appoint a board of three persons to inquire into the circumstances, and may on the board's recommendation retire the judge. Whenever a judge of a district court appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the judicial council shall certify such fact to the supreme court and recommend to the supreme court that the judge be placed under early retirement. After notice and hearing, the supreme court by majority vote of its members may retire the judge.**

**COMMENT:** This section will allow the removal of supreme court and district court judges who have become mentally or physically incapacitated to such a degree that they cannot perform their normal duties. This section will meet the situation where a person is beyond the point of making a voluntary decision or incapable of recognizing his incapacitation. Due to the long term given judges this situation becomes very important if a judge should become incapacitated early in his term. There has not been any legal method to remove judges for these reasons in the present Constitution. The only way these judges can be removed is by impeachment as provided in section 196 of the Constitution. This section is very restrictive in nature as it only allows impeachment for habitual drunkenness, crimes, corrupt conduct, malfeasance, or misdemeanor in office, and case law has held that only the Legislature by impeachment has the power to remove persons holding constitutional state offices. This new section was taken from the Alaska Constitution.

Statutes suggested for implementing section 90 of the Constitution.

Senate Bill No. 38

A BILL

For an Act to restrict judges of the supreme court or district courts from practicing law and requiring such judges not to hear cases in which they have an interest and to define vacancies in the supreme court and district courts and the method of filling such vacancies and to create sections 16-06-06.1 and 27-15-03.1 of the North Dakota Century Code, relating to placing the names of judges on the election ballot and judicial council meetings; to amend and reenact sections 16-04-01, 16-04-02, 16-05-01, 27-02-01, 27-15-03, 27-15-05, 44-02-02, and 44-02-03 of the North Dakota Century Code, relating to election ballots, petitions, certificates of nomination for elected officials, the duties of the judicial council, the selection of the chief justice of the supreme court, vacancies in state or district offices, and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. WHEN AN OFFICE OF JUDGE OF THE SUPREME COURT OR DISTRICT COURT DEEMED VACANT.) An office of the supreme court or district court shall become vacant if the incumbent shall:

1. Die in office;
2. Resign from office;
3. Be adjudged incapacitated in accordance with the provisions of the Constitution;
4. Be convicted under impeachment proceedings;
5. Cease to be a resident of the state;
6. Fail to qualify as provided by law;
7. Cease to possess any one of the qualifications of office prescribed by law;
8. Have his election or appointment declared void by a competent tribunal; or by

9. Non-reelection as provided by law; or by the

10. Filing of a declaration of non-candidacy as provided by law.

SECTION 2. RESIGNATIONS OF SUPREME COURT AND DISTRICT COURT JUDGES - TO WHOM MADE.) If a judge of the supreme court or district court resigns from office before the expiration of his term he shall submit such resignation in writing to the governor and the chairman of the judicial nominating commission.

SECTION 3. NON-REELECTION OR FILING OF A DECLARATION OF NON-CANDIDACY.) In the event of the rejection by the electorate of a judge of the supreme court or district court, the office of the judge shall be deemed vacant at the expiration of forty-five days from the date of the general election. If a judge of the supreme court or district court desires to retire upon the expiration of his term, he shall file a declaration of his non-candidacy with the secretary of state, governor, and chairman of the judicial nominating commission, not less than ninety days prior to the date of the general election, and the term of office for which he was selected or elected shall expire forty-five days from the date of the general election.

SECTION 4. VACANCY IN THE OFFICE OF SUPREME COURT AND DISTRICT COURT JUDGES - HOW FILLED.) A vacancy in the office of judge of the supreme court or district court as defined by law shall be filled pursuant to section 90 of the Constitution.

SECTION 5. TERMS OF JUDICIAL NOMINATING COMMISSION MEMBERS.) Each member except the chief justice shall serve for a term of six years except that upon the effective date of this Act the governor and the North Dakota state bar association shall appoint two members for two years, two members for four years, and two members for six years.

SECTION 6. MEETINGS - QUORUM - DUTIES - COMPENSATION AND EXPENSES.) The judicial nominating commission shall meet within thirty days after a vacancy or the filing of a declaration of non-candidacy in the office of judge of the supreme court or district court as defined by law. The chairman shall notify each member of the commission of the place and time of all meetings. A majority of the commission shall constitute a quorum and a majority of such quorum may act upon all matters properly

before the commission. The commission shall nominate at least three qualified persons for each vacant office and shall submit a list of such nominees for each vacant office to the governor. Each member of the commission shall receive his actual and necessary expenses incurred by him in attending scheduled meetings and in performance of his official duties in the same manner and amounts as other state officials but shall receive no salary or compensation for services performed.

**SECTION 7. AMENDMENT.)** Section 16-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**16-04-01. PRIMARY ELECTION - WHEN HELD - NOMINATION OF CANDIDATES - NOMINATION FOR SPECIAL ELECTIONS.)** On the last Tuesday in June of every year in which a general election occurs, there shall be held in the various voting precincts of this state, in lieu of party caucuses and conventions, a primary election for the nomination of candidates for the following offices to be voted for at the ensuing general election: representatives in Congress, state officers, county officers, district assessors, and the following officers on the years of their regular election: (((judges of the supreme court and district court,))) members of the legislative assembly, county commissioners, and United States senators. In special elections the nominations for the officers enumerated in this section shall be made as provided in this title.

**SECTION 8. AMENDMENT.)** Section 16-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**16-04-02. STATE CANDIDATE'S PETITION REQUIRED TO GET NAME ON BALLOT - CONTENTS OF PETITION.)** Every candidate for the United States senator, United States representative, state officers (((judges of the supreme and district courts,))) shall not more than sixty days nor less than forty days prior to a primary election, present to the secretary of state a petition giving his name, post office address, the title of the office to which he aspires, and the party which he represents(((, except that in the petition for the office of judge of the supreme court, judge of the district court, state superintendent of public instruction, and tax commissioner no reference shall be made to party affiliation))). Such petition shall contain the names of three percent of the total vote cast for the candidates of the party with which he affiliates, for the same position at the last gen-

eral election, except that in no case shall more than three hundred names be required. In a case where there is a candidate for the no-party ballot or where there was no candidate of a party for a position at the preceding general election, the nominating petition shall contain at least three hundred names. Each name on the petition shall be that of a legal voter and shall be subscribed under a certified party heading.

**SECTION 9. AMENDMENT.)** Section 16-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**16-05-01. CERTIFICATES OF NOMINATION - PLACE OF FILING.)** Certificates of nomination for candidates for offices to be filled by the electors of the entire state, or of any division or district greater than a county, and for legislative offices, except the offices of judges of the supreme court and the district courts, shall be filed with the secretary of state. Certificates of nomination for county officers shall be filed with the county auditor of the respective counties wherein the officers are to be elected.

**SECTION 10.)** Section 16-06-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

**16-06-06.1. SUPREME COURT AND DISTRICT COURT JUDGES' NAMES PLACED ON OFFICIAL GENERAL ELECTION BALLOT.)** The secretary of state shall place the names of all judges of the supreme court and district courts, who have not filed a declaration of non-candidacy as provided by law or who have not otherwise been removed from office in accordance with section 1 of this Act, on the respective official ballots to be voted for at the general election in the year the terms of said judges shall expire.

**SECTION 11. AMENDMENT.)** Section 27-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**27-02-01. (((DESIGNATION))) APPOINTMENT AND DUTIES OF CHIEF JUSTICE OF THE SUPREME COURT.)** (((The judge of the supreme court having the shortest term to serve and not holding office by election or appointment to fill a vacancy shall be chief justice and shall preside at all terms of the supreme court, but if no member of said court is so qualified for the office of chief justice, then the judges of said court shall select the chief justice from



among themselves.)) The judicial council shall appoint from the members of the supreme court a chief justice who shall serve for a term of five years or until his term shall expire, whichever shall first occur. The chief justice may resign the office of chief justice without resigning from the office of judge of the supreme court. The chief justice shall preside at all terms of the supreme court. In the absence of the chief justice, the judge having the ((next)) shortest term to serve, ((or a judge selected by the court, as the case may be,)) shall preside in his stead.

**SECTION 12. EFFECTIVE DATE OF APPOINTMENT.)** The judicial council shall make its first appointment of a chief justice at its next regular scheduled judicial council meeting following the effective date of this Act. The judge having the shortest term to serve shall temporarily act as chief justice until the first meeting of the judicial council following the effective date of this Act.

**SECTION 13. AMENDMENT.)** Section 27-15-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**27-15-03. ORGANIZATION OF COUNCIL - RULES OF PROCEDURE.)** The chief justice, during his term as chief justice, shall be chairman of the judicial council except when the council is meeting to select a chief justice. An executive secretary shall be chosen by the council either from within or without the council. The council shall make rules for its procedure and the conduct of its business.

**SECTION 14.** Section 27-15-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

**27-15-03.1. WHEN SUPREME COURT JUDGES SHALL NOT ATTEND MEETINGS.)** Judges of the supreme court shall not attend the meeting of the judicial council when it is selecting a chief justice. The members of the council shall select from its own members a chairman to act during said meeting.

**SECTION 15. AMENDMENT.)** Section 27-15-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**27-15-05. DUTIES.)** The judicial council shall make a continuous study of the operation of the judicial system of the state to the end that procedure may be simplified, business expedited,

((and)) justice better administered, and shall perform any other duties which may be prescribed by law.

**SECTION 16. AMENDMENT.)** Section 44-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**44-02-02. RESIGNATIONS OF OFFICERS - TO WHOM MADE.)** The resignation of an officer must be in writing and must be made as follows:

1. The governor and lieutenant governor, to the legislative assembly, if it is in session, and if not, to the secretary of state;
2. Any other state or district officer, except judges of the supreme court and district courts who shall submit their resignation as provided by section 2 of this Act, to the governor;
3. A member of the legislative assembly, to the presiding officer of the branch of which he is a member, when in session, and when not in session, to the governor. When made to the presiding officer, he at once shall notify the governor thereof;
4. An officer of the legislative assembly, to the branch of which he is an officer;
5. An elective county officer, by filing or depositing such resignation in the office of the county auditor, except that the resignation of the county auditor shall be filed or deposited with the board of county commissioners. Any such resignation, unless a different time is fixed therein, shall take effect upon such filing or deposit;
6. An officer of a civil township, to the board of supervisors of the township, except that a member of such board shall submit his resignation to the township clerk, and the township clerk forthwith shall give to the county auditor notice of the resignation of all officers whose bonds are filed with such officer; and
7. Any officer holding his office by appointment, to the body, board, court, or officer which appointed him.

**SECTION 17. AMENDMENT.)** Section 44-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**44-02-03. VACANCY IN STATE OR DISTRICT OFFICE - HOW FILLED.)** Any vacancy

## SCHEDULE AND TEMPORARY CONSTITUTIONAL PROVISIONS

in a state or district office, except in the office of a member of the legislative assembly, shall be filled by appointment by the governor. A vacancy in the office of judge of the supreme court or district court shall be filled by appointment by the governor as provided by section 90 of the Constitution. If during a vacancy in the office of governor, the lieutenant governor ((and the secretary of state)) shall be impeached, displaced, resign, or die, or from mental or physical disease or otherwise become incapable of performing the duties of the office of governor as provided by ((sections)) section 72 ((and 77)) of the Constitution of the state of North Dakota, then the succession to the office of governor shall be the secretary of state, speaker of the house, president pro tem of the senate, attorney general, in the order named. Each succeeding person named shall hold the office of governor until the vacancy is filled by election or until any disability of the preceding person in the line of succession is removed.

SECTION 18. RESTRICTION ON PRACTICING LAW BY JUDGES.) No judge of the supreme court or district court shall act as attorney or counselor at law during the period of his incumbency. Any such judge who willfully shall violate the provisions of this section shall be subject to removal from office.

SECTION 19. JUDGE CANNOT BE AN INTERESTED PARTY.) No judge of the supreme court, district court, or county court of increased jurisdiction shall hear or try any case in which he is or may be an interested party.

SECTION 20. EFFECTIVE DATE.) This Act shall not become effective unless and until the electors approve the amendment of section 90 of the Constitution submitted for approval of the electorate of this state at the general election in 1966 as designated in Senate Concurrent Resolution "A" of the Thirty-ninth Legislative Assembly.

NEW SECTION.) Notwithstanding any other provisions of this Constitution, any person who was elected to the office of secretary of state, state auditor, state treasurer, commissioner of insurance, commissioner of agriculture and labor, tax commissioner, or superintendent of public instruction at the general election in 1964 shall continue to hold such office until January 1, 1969. If such a person shall die, resign, or be removed from office prior to January 1, 1969, such office shall be deemed vacant and the governor shall fill such office as prescribed by law.

Any person elected or appointed to an office of judge of the supreme court or district court of this state prior to the effective date of section 90 of the North Dakota Constitution as amended at the general election held in November 1966, shall serve the term for which he was elected or appointed and shall be eligible to succeed himself for reelection by submitting his name to the electorate for approval or rejection as provided by law and this Constitution unless he shall die, resign, or be removed from office prior to the expiration of his term whereupon the office shall be filled as prescribed by law and this Constitution.

COMMENT: The above section preserves to those persons elected to a constitutional office in the executive branch at the 1964 general election their full term of four years. Further the offices of the secretary of state and state auditor will remain elected offices by statutory law. See comment to section 82 of the Constitution. Also this section allows all supreme court and district court judges to continue in office for the remainder of their terms and further gives these judges the right to succeed themselves for reelection as provided under the proposed amendments to section 90 of the Constitution.

# Higher Education

House Bill No. 719 of the 38th Legislative Assembly directed the Legislative Research Committee, with the aid and cooperation of the State Board of Higher Education, to carry on a study in the field of higher education in the state of North Dakota for the purpose of developing a ten-year plan to guide the Legislative Assembly, the Board of Higher Education, and the institutions of higher learning in adequately and efficiently providing necessary and essential educational opportunities in the most economical manner possible.

The bill specifically directed that in the course of the study special emphasis be given to:

1. The future role and scope of responsibility of each state institution of higher learning, including programs and areas of instruction which it shall participate in or be responsible for;
2. A determination of the classrooms, laboratories, libraries, dormitories or other housing, dining facilities, heating plants, service buildings, student centers, or other facilities that will be essential to the operations of such institutions during the period from 1965 to 1975;
3. An evaluation of the impact and benefits from participation in reciprocal agreements and interstate or regional compacts developed for the promotion of a common market in education in the midwestern region of this country.

Recognizing that such type of study would probably call for specialized professional assistance, the bill provided an appropriation. The study was referred to a Subcommittee on Higher Education, consisting of Representatives Chester Fossum, Chairman, Ed N. Davis, Don Halcrow, S. F. Hoffner, Robert F. Reimers, Bryce Streibel, and Raymond G. Vendsel; and Senators R. E. Meidinger, Dave M. Robinson, Leland Roen, George Saumur, and Bronald Thompson. The Board of Higher Education served as advisory members of this subcommittee.

## Instructional Programs

In this field, the Committee and the Board

of Higher Education were extremely fortunate in securing the services of Dr. John Dale Russell of Bloomington, Indiana, who is widely recognized as perhaps the outstanding national authority on the administration of institutions of higher learning.

Under the direction of Dr. Russell, a vast amount of statistical data was gathered relating to institutions of higher learning in North Dakota. In general this information related to such subjects as the number of student-credit-hours produced per full-time instructor, the instructional salary cost per student-credit-hour, and the average instructional salary in various subjects. In addition, Dr. Russell visited each of North Dakota's nine state-controlled institutions of higher learning for the purpose of checking statistical data and becoming acquainted with the instructional program and facilities at each institution.

A considerable amount of the data collected appears in an Appendix to the report of Dr. Russell. Due to the relatively large amount of data required to be collected, the fact that personnel assigned to the task of collecting and assembling data were inexperienced in this type of work, and the untimely passing of North Dakota's late Commissioner of Higher Education, Dr. A. E. Mead, there was insufficient time available to complete tabulation of all statistical data. Ample data was processed, however, to enable the drawing of a number of conclusions. These conclusions are quite clear, and are also supported by first-hand observations in the institutions. The principal findings and conclusions of the report by Dr. Russell are briefly summarized as follows:

1. The instructional programs of the state-controlled institutions of higher education in North Dakota are, in general, economically organized and efficiently operated. There is no opportunity for saving any substantial amount of the funds now used to support the instructional programs of the institutions without sacrificing either their scope or quality. The report at this point in the study concludes by stating "The people of North Dakota may be assured that money is not being spent unnecessarily in the instructional programs of their state institutions of higher education".

2. Faculty salaries are very low in North Dakota institutions of higher education. Failure to pay adequate salaries at the upper levels of faculty competence is probably the greatest source of waste in the instructional programs in North Dakota. Inadequate financial support is clearly the reason for the relatively low average faculty salary. This difficulty of low salaries is characterized as not just a matter of institution-wide averages, but a characteristic of all subjects and all levels of instruction. The report states that while the lowest level of faculty salary is reasonably adequate, salary scales do not provide a sufficient range to give adequate recognition of the worth of superior faculty members who have longer experience, higher academic attainment, and wider recognition as scholars than those at the beginning level. At a later point the report reemphasizes:

"The number one priority item to which attention is needed in the state-controlled system of higher education in North Dakota is a marked improvement in faculty salaries."

3. Attention is called to a few minor situations in which specific specialized instruction seems to serve relatively limited numbers of students. These are:

- a. The "special education" department at Minot State College.
- b. Courses in "horticulture" at the State College of Forestry.
- c. The graduate courses in home economics at the University of North Dakota, particularly in view of the fact that North Dakota State University also maintains a graduate program in home economics.
- d. The duplication of graduate programs in civil engineering and in mechanical engineering at the University of North Dakota and North Dakota State University.
- e. The curriculum in "paint technology" at North Dakota State University, inasmuch as no outlet for the employment of the graduates of this program exists in the state.

It should be noted that in none of these five instances would substantial amounts of money be saved by eliminating the program.

The report makes note of the fact that cer-

tain subjects are always likely to be expensive, both in terms of the use of faculty manpower and in terms of salary dollars per student-credit-hour produced. Examples of expensive subjects to teach include foreign languages, art, music, home economics, and industrial arts. Here again the report notes "These subjects seem essential to any well-rounded program of higher education, and they are widely taught in almost all institutions, even though more expensive than some other subjects".

4. The proposed introduction of a graduate program leading to the master's degree in certain of the state colleges should be considered as a goal to be reached, but the institutions are hardly ready for such a program now. Some of the state colleges may achieve the needed strength sooner than others.

In regard to the proposed expansion of programs, the report in effect states that any expansions should be undertaken only when clearly determined to be urgent. The strengthening of present programs (here again faculty salaries is mentioned) should, according to the report, be given priority over expansion into new programs.

The report states arguments used both pro and con on the question of graduate study at state colleges. The recommendation is made against the setting up of graduate programs in any additional institutions in the state at this time for the following reasons:

- a. Present faculties are considerably lacking in instructors holding doctor's degrees.
- b. Faculty salaries are much too low to attract needed talent.
- c. Present faculty teaching loads are much too heavy.
- d. Any funds available could be better utilized in the strengthening of the undergraduate programs.
- e. Library resources are presently inadequate.
- f. There appears to be small demand for teachers with master's degrees in the public schools of the state.

5. The proposed introduction of a curriculum for the preparation of elementary-school teachers at North Dakota State University is looked upon

favorably, but this is not an item of high priority in the development of the state's service in higher education. The report cites the existence of an elementary teacher preparation program at Moorhead State College in Minnesota but states that it is reported that most North Dakota students attending Moorhead accept positions out of the state upon graduation.

Reasons given in support of the introduction of such program at North Dakota State University include the traditional mission of land-grant universities, need for additional elementary teachers, relatively large population in the area out of which potential students could be drawn, and the conclusion that students in elementary education programs usually prefer to study close to home. In addition, the report cites the fact that elementary teacher preparation programs at other state institutions are operating at capacity and the contemplated introduction of such program at NDSU would cost no more than expansion of presently existing programs. Once again the need for improving present instructors' salaries is cited as an item which should take precedence.

6. Note is taken of the fact that the recommendation has been made several times in the past for the discontinuance of Ellendale as a state-controlled institution of higher education. Dr. Russell's report does not make this recommendation, but rather suggests that the State College at Ellendale be strengthened in an effort to determine whether, with adequate facilities, it may be able to attract an enrollment that will permit economical operation and warrant unquestioned continuance.

After citing arguments used by those in favor of closing the institution, the report enumerates the reasons behind the recommendation that it remain in operation and be strengthened, which are briefly:

- a. The needs of a substantial number of young people in the local area.
- b. Closing would be contrary to a national trend in higher education.
- c. Enrollment has recently shown some upward trend.
- d. An improved program would lead to an increased enrollment and this in turn would permit economical operation.
- e. Ellendale currently possesses an important

requisite - a capable and dynamic leadership.

7. Changes in name are suggested for the State School of Forestry at Bottineau and the State School of Science at Wahpeton. The report points out that neither institution provides the type of educational program which its name would lead one to expect. It is suggested that Bottineau is more properly regarded as a state-operated junior college, while Wahpeton more nearly resembles an unusually good technical institute. Hence the name changes are recommended.

8. It is strongly recommended by Dr. Russell that all institutions in the state discontinue immediately the offering of the two-year curriculum for the preparation of elementary-school teachers. The report states that this should be done as a means of improving the quality level of the educational programs of the state's educational institutions, and that such action should be taken by the Board of Higher Education even though the Legislative Assembly has not as yet amended the law providing for the granting of a teaching certificate based on two years of college study. It is pointed out that the continuance of the two-year program now jeopardizes the accreditation of the teacher-training institutions that offer it, for the national accrediting agency does not look with favor on the offering of such a substandard curriculum by any of its accredited colleges.

9. It is recommended that the Williston Center be transferred from the control of the University of North Dakota and established as a local public junior college under existing legislation. The report points to the development of the Williston Center as "one of the bright pictures in the total program of higher education in North Dakota". As a public junior college, the report states that the Williston Center could enjoy the advantages of a broader curriculum in that it would not be limited to only courses offered at the University, and a higher potential enrollment, in that enrollment standards would not need be as high as at a state university.

10. Interstate cooperation in higher education, while desirable, will not save the state any money in its present operations. As specific cases arise in which an interstate agreement for exchange of students might be wise, state authorities should negotiate with other states for a suit-

able cooperative arrangement. It is pointed out that interstate compacts in the field of higher education are generally most beneficial in the most highly specialized instructional and research areas, and that the tendency today is for each

state to become more and more self sufficient in higher education. For the findings of the subcommittee in the field of interstate cooperation, see the portion of this report entitled "Reciprocal Agreements".

## Space Utilization

In this field, the State Board of Higher Education contracted with the firm of Harland Bartholomew and Associates, a nationwide firm of planning consultants. Results of the work of this firm were presented to the board in the form of individual long-range plans for each of the state-supported institutions of higher education. Each report is quite detailed and contains estimates of enrollment, future building space needs for future enrollment, and an analysis of

teaching loads. Also contained are estimates of space needs for administrative, service functions, and student housing. Land requirements for building, sports, amenity areas, and other uses are provided in each report.

The report reveals that classrooms and laboratories at the various institutions are utilized for varying percentages of the total time considered as available. The percentages of utilization plus recommendations contained in the report are as follows:

	<u>Classrooms</u>	<u>Laboratories</u>	<u>Hrs./Week</u>	<u>Recommendation</u>
U.N.D.	47.91%	38.39%	44	Increase to 80%
N.D.S.U.	46.20	31.20	44	Increase to 80%
Dickinson	40.13	42.50	40	Increase to 75%
Minot	40.60	34.48	40	Increase to 75%
Mayville	47.35	31.60	40	Increase to 75%
Valley City	42.98	28.90	40	Increase to 75%
Ellendale	32.00	21.83	35	Increase to 75%
Wahpeton*	75.15	96.38	40	This is ample
Bottineau	31.10	27.23	40	Increase to 75%

\*The high utilization at Wahpeton is due to rigid scheduling and a higher teaching load than is found in a typical liberal arts college.

In regard to increased utilization of facilities, each report states "This increased utilization of rooms will in general require an increase in the size of faculty since faculty teaching loads are near optimum". Wahpeton is the exception to this statement since it has a much greater percentage of utilization. In the case of Ellendale, the report calls for a "redistribution of faculty specialties within the academic frame-

work of the college" as an alternative to increasing the size of the faculty. Faculty teaching loads are not described as "near the optimum".

The report for each institution contains enrollment projections covering the period from 1962 through 1972, inclusive. Projections are as follows:

	<u>1964</u> <u>(actual)</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
U.N.D.	5528	5852	6373	6967	7406	7670	7969	8226	8489
N.D.S.U.	4474	4997	5482	6037	6464	6744	7058	7340	7629
Minot	1848	2041	2251	2492	2682	2812	2959	3091	3229
Wahpeton*	1828	1626	1853	2222	2483	2530	2717	2764	2850
Valley City	1147	1302	1452	1625	1769	1874	1992	2102	2217
Dickinson	1123	1198	1357	1540	1699	1823	1961	2094	2233
Mayville	749	956	1073	1207	1320	1406	1501	1591	1686
Ellendale*	250	176	186	200	200	200	200	200	200
Bottineau	232	263	281	302	315	320	326	330	333

\*It should be noted that Ellendale in 1964 was ahead of all projections, and that Wahpeton has exceeded its 1965 projection.

In regard to space requirements, each report contains detailed breakdowns of space requirements for classrooms and laboratories. The reports state that while additional classrooms and laboratories, which are the core of the institutions, physical plant, will be required for the projected enrollment, other types of space such as offices, dormitories, and service buildings, which together account for a large percentage of the total physical plant space, will also be required. The one exception is Ellendale, about which it is stated "Increased utilization of existing space will adequately meet the needs of increased teaching loads due to enrollment fluctuations".

Also contained in each report are enumerations of buildings to be razed, buildings to be remodeled, new buildings or additions to be constructed, and land to be acquired. For more specific details on these topics, the report for each institution should be consulted. In general it may be stated that some 22 structures are listed as requiring demolition and 25 requiring remodeling, and some 78 new buildings or additions to existing buildings are required to accommodate anticipated increased enrollments.

### Reciprocal Agreements

Included within the study directive were instructions to evaluate the impact and benefits from participation in reciprocal agreements and interstate or regional compacts for the purpose of promoting a common market in education in the midwestern region of the country.

Through the Midwestern Regional Conference of the Council of State Governments, North Dakota and several other states were successful in having an interstate committee of legislators from the 12 Midwestern States appointed to consider the benefits of interstate cooperation in higher education. An Advisory Committee consisting of representatives of Higher Education in these twelve states was also created. Thereafter, at the urging of North Dakota's Governor, a similar committee from the Midwestern Governors' Conference was appointed. Each of these committees has met several times.

Unfortunately, the possibilities of a working compact in this region appear almost nil. Those states containing the "Big Ten" schools, and especially their representatives upon the Advisory Committee, have almost no interest in

such arrangements. Each of these large schools feels it can largely be sufficient unto itself in all fields. Each believes there is little to gain through the use of higher education facilities that might exist in another state while developing strength in alternative fields. It is generally the opinion of representatives of these large schools that each has sufficient students, public support, and financial resources to permit it to be strong in all major fields. Only in a few exotic courses and fields of research was any interest in cooperation evident.

Following the apparent failure of this effort toward interstate cooperation, contacts were made through the State Commissioner of Higher Education with the respective Commissioners of Higher Education of the States of South Dakota, Nebraska, Kansas, and Missouri. Here the possibilities of some formal cooperation seem a little more favorable, especially in developing graduate institutes in selected fields to serve the region through the use of federal funds available for such purposes under the Higher Education Facilities Act. This would, however, take much further study and negotiation to determine its feasibility and organizational structure.

The most immediate possibilities of interstate cooperation would seem to be by simple agreements between North Dakota and other states on a state-by-state basis in specific fields as the need arises. As enrollment continues to climb in all states, each will in all probability become more selective and restrictive in the acceptance of nonresident students. As qualified students from North Dakota find increasing difficulty in enrolling in specific fields in other states, more special agreements between North Dakota and other states will become desirable. Authority for the execution of such agreements by the Board of Higher Education already exists, but in all probability appropriations will be necessary in future years to pay the costs of education to such states.

There still remains, however, the possibility of cooperation on a broader basis with the state of South Dakota. Both states already have some programs that are not found in the other. It might be possible for each state to strengthen other fields to complement weakness found in the other state. This possibility should be seriously explored. In addition, the possibility of grants from the Federal Government exists for regional study institutes even though the area served may pri-



marily be only two states. This could stimulate such cooperation between both Dakotas.

### Conclusions and Recommendations

It was brought to the attention of the Committee that the State Board of Higher Education has requested in their budget for the next biennium, funds for the employment of a person in the field of educational research. It appears to the Committee that it is highly desirable for a research position to be created upon the staff of the State Board of Higher Education for the purpose of carrying on curriculum, space utilization, and similar studies. The Committee believes that such a person could be of real assistance to the board and to institution presidents, and has thus sent a letter to the State Budget Board in support of the request for the necessary funds. Funds expended for such a position would be returned many times over in improved operations, efficiency, and increased returns for the state's higher education dollar.

Closely allied to the employment of such research director, the Committee recognizes the value of the reports prepared by Dr. John Dale Russell and by Harland Bartholomew and Associates. In view of the vast amount of research already carried on in the preparation of these studies, the Committee is of the opinion that the reports should continue to serve as a guide to the Board of Higher Education and institution heads over the next several years in the field of institutional planning and has thus prepared, for submission to the board, a resolution asking that the material contained in both reports be kept up to date in the future in order to continue to be of maximum value.

In the field of legislation, the Committee has prepared and recommends approval of a bill which would grant authority to the State Emergency Commission to approve the acquisition of real property for future expansion of institutions of higher education upon application by the Board of Higher Education. It was brought to the Committee's attention that upon occasion, real estate which is highly desirable for future expansion purposes is at times offered for sale upon very favorable terms, but due to the time element it is not possible to secure legislative approval before the property may be sold to another purchaser. The proposed bill would grant approval authority to the Emergency Commission, along with authority to grant funds from the State Contingency

Fund, if requested and necessary. Safeguards have been inserted in the bill which require that the Emergency Commission find that the property is reasonably needed, probably will not again be upon the market in the foreseeable future, and that the request has not previously been made and denied by the Legislative Assembly.

Another bill recommended for approval by the Committee relates to the definition of the term "nonresident" for the purpose of setting tuition at state institutions of higher education. Present law states that the residence of a student under twenty-one years of age shall be that of his family. Difficulty has arisen over whether the family of a married student was his parents or his spouse. The recommended bill clarifies this point by specifying that the residence of any student under twenty-one years of age shall be that of his parents or guardian. Another provision of the bill clarifies the law to require that a nonresident reside in the state for one year after attaining the age of twenty-one in order to be treated as a resident, rather than merely a total of one year.

Also in the field of nonresident tuition, it was found by the Committee that present law requires tuition to be charged a nonresident in an amount equivalent to what the nonresident's home state would charge a North Dakota resident attending a similar school in such state. This has proved to be unworkable in practice because the large number of states and institutions within states, plus rapidly changing tuition rates, have made it nearly impossible to determine the proper amount of tuition to charge. The bill recommended by the Committee would amend the law in order to require, in effect, that such charges be made applicable only to residents of the three bordering states, and that the amount charged all other nonresidents be subject to determination by the Board of Higher Education.

It was brought to the attention of the Committee that under the provisions of the federal Higher Education Facilities Act, federal funds are available to the states for the various institutions of higher education, both public and private. One of the requirements of the Federal Government is that each state have a commission established for the purpose of planning and accepting grants. The State Board of Higher Education could not act as the planning agency as it did not represent private colleges or locally-operated junior colleges within the state. A commission, consisting of the members of the State Board of

Higher Education, one representative of locally-operated junior colleges, and two representatives of private colleges, was appointed by the governor with the consent of the governing boards of all institutions involved in order to commence planning activities.

Although this voluntary plan was acceptable to the Federal Government, the Committee agrees with the Governor, Attorney General, and members of the commission that authority for the operation of the commission should be formalized by statute. Accordingly, the Committee has prepared and recommends approval of a bill which would provide for the appointment by the governor with the consent of the senate of a Higher Education Facilities Commission with the same membership as currently on the voluntary commission. The powers and duties of the commission are set out in the bill, and involve principally the function of planning for higher education facilities and acceptance of federal funds. Fiscal procedure and compensation of members is also provided for in the bill.

In summary, the Committee is of the opinion that there should be absolutely no major expansions in the field of higher education programs within the state of North Dakota at either the graduate or undergraduate level. Until the state is able to adequately finance the fields for which it has already assumed responsibility, expansion would only weaken present programs. Rather than expansion, the Committee feels that each institution should attempt to develop peaks of excellence in non-duplicating areas of assigned responsibility,

and through such concentration strengthen the colleges and the educational program offered by the state.

A point emphasized several times in the report of Dr. John Dale Russell, and one on which the Committee is entirely in agreement, is the matter of faculty salaries at institutions of higher education. The Committee feels that priority should be given in the use of any additional funds to the matter of improvement in salaries, of those faculty members who have proved themselves outstanding as scholars and teachers in their fields. These are the people upon which a good system of higher education depends and who spark the educational level of the entire institution. The provision for more adequate salaries is a major factor in retaining and obtaining these people at our institutions of higher education. Without them, the entire institution will fall into mediocrity.

Due to the fact that the reports of both Dr. John Dale Russell and Harland Bartholomew and Associates were not presented to the Committee until very late in the course of the biennium, there has been insufficient time available to formulate any comprehensive program of legislation in the field of higher education. The Committee believes that a really comprehensive program is, however, a matter which should be worked out primarily by the State Board of Higher Education for presentation to future legislative assemblies. In the formulation of such program, it is believed that both of the reports will be of considerable value.

## Secondary Education

House Concurrent Resolution "I" of the 38th Legislative Assembly directed the Legislative Research Committee to study the need for improving and enlarging courses or schools in the field of industrial arts and to determine whether it is feasible and practical to make industrial arts available to more students. House Concurrent Resolution "A-1" of the 38th Legislative Assembly directed the Legislative Research Committee to study the most efficient method of carrying on high school correspondence and extension courses. These studies were referred to a Subcommittee on Secondary Education, consisting of Senators Rolland Redlin, Chairman, H. O. Beck, Philip Berube, C. F. Harris, Alex Miller, and Theron L. Strinden; and Representatives Howard F. Bier, Arthur G. Bilden, Sam Bloom, Walter Christensen, Treadwell Haugen, E. N. Johnson, Ted G. Maragos, Mike Olienyk, and Harold G. Skaar.

### VOCATIONAL EDUCATION

Nationally at this moment, thousands of young Americans have made the tragic decision to drop out of high school without being fully aware of what they will face; they are looking for work in a nation where about 700,000 persons between the ages of 16 and 21 are already unemployed. The word "dropout" has worked its way to the top of our contemporary vocabulary. But the school dropout is no new phenomenon. Years ago, in fact, many more students left high school to go to work. However, it was then possible to find jobs without a high school diploma. Those of parental age can cite instances of office boys who became presidents of companies. What is new today is that requirements for employment have changed. Today it is seldom possible to start at the bottom and work one's way up in the old pattern without a minimum of full high school education. Due to the present crisis in youth employment, and the probability that another thirty million young people will enter the labor market during the next ten years, leaders everywhere are stressing the importance of identifying and salvaging the dropout.

Because it comes at a time when the problem of school dropouts is being widely discussed, a recent report issued by the United States Department of Agriculture is extremely timely. The report analyzes dropout rates among farm and non-

farm youth from 1950 to 1960. Highlights of this analysis include:

1. Between 1950 and 1960 both the number and proportion of actual school dropouts among 14 to 24-year-olds declined from 7.8 million (32 percent) in 1950 to 6.1 million (21 percent) in 1960.
2. In 1950, 40 percent of farm youth and 28 percent of urban youth 14 to 24-year-olds had dropped out of school. By 1960, dropout rates were about the same for urban youth (21 percent) as for farm youth (23 percent).
3. In both years, non-whites had substantially higher dropout rates than did whites (30 percent).
4. A state-by-state comparison of the number of school dropouts 19 years of age showed the West North Central States had the lowest rates (23 percent) and the East South Central States had the highest (45 percent).

The Committee in reviewing the national statistics questioned whether the dropout problem in North Dakota was as acute as the national average. In seeking the statistics for North Dakota the Committee decided to conduct its own survey. The Committee prepared a questionnaire which listed many of the more typical reasons why youths were dropping out of school. This questionnaire was mailed to 330 public high school superintendents and non-public high school administrators and the Committee received a reply from 298. The questions, responses and calculated data are presented in Appendix A of this report.

A brief synopsis of this tabulation shows that the dropout rate for North Dakota is considerably below the national average and for our own region. It indicates that on a statewide basis about 89 percent of a freshman high school class will graduate after four years and that the dropout rate for each class per year is about 2.75 percent. It further appears from the study that the main reasons given or at least the immediate causes for dropouts were failures and lack of interest. These two reasons accounted for approximately 50 percent of the dropouts. From this it can be concluded that many or maybe even most

of those students who left school because of failure and lack of interest might have continued schooling if high schools had an expanded vocational education curriculum and guidance services.

From these basic facts given in the paragraph above the Committee began a review of how to meet the problem and the cost of expanding vocational education in our high schools. Before presenting the findings peculiar to North Dakota a review of what the Federal Government is doing in this field is presented.

## THE FEDERAL GOVERNMENT IN VOCATIONAL EDUCATION

### A History of the Federal Legislation

As early as the administration of President Woodrow Wilson, there was a great need for vocational education in the United States. Legislators and administrators realized then, as they do now, that it made little sense to try to give every young person in the nation a college education. Because of interest and ability factors, not every person is designed for academic study in a college or university.

Due in large measure to the prodding of President Wilson, Congress recognized the importance of vocational education in 1917 when it passed the Smith-Hughes Act. This federal statute provided for an annual grant of \$7.2 million to the several States for the purposes of vocational education. A matching program, it was distributed as follows:

- \$3 million for agricultural education;
- \$3 million for trade and industrial and home economics training;
- \$1 million for teacher training; and  
the balance for administration at the federal level.

There were a number of federal appropriations for vocational education passed subsequent to the Smith-Hughes Act and prior to the George-Barden Act of 1946. The George-Reed Act, adopted in 1929, provided for more funds for education in the fields of agriculture and home economics. When this Act expired, the George-Ellzey Act of 1934 was passed. This merely extended the provisions of the George-Reed Act until 1936. Finally,

the George-Deen Act was adopted in 1937, providing for additional funds for vocational education extending federal funds to distributive education.

By the end of World War II it was clear to a majority of Congressmen that broader programs were needed in the field of vocational education in order to serve new groups of people, including demobilized defense and armed services personnel. The result was the George-Barden Act which replaced the George - Deen Act and provided additional funds for the same educational endeavors. This Act, passed in 1946, appropriated \$29 million annually for agricultural, trade and industrial, home economics, teacher training, and distributive education. The George-Barden Act was extended in 1956 to include federal aid to practical nurses' training and training in the fishery trades and industries. Appropriations for these activities were set at \$5 million and \$375,000, respectively.

The National Defense Education Act, adopted by Congress in 1958, authorized an additional appropriation of \$15 million for the next four years. This appropriation was intended for the training of highly skilled technicians in occupations necessary for the national defense. The program was subsequently extended to 1964 and in December 1963 was extended even further as a result of the passage of the Perkins Act, Public Law 88-210.

One of the most recent federal acts designed to alleviate the shortage of skilled workers in the nation was the Area Redevelopment Act (ARA) of 1961. Essentially the purpose of this Act is to help solve the unemployment and underemployment problem in chronic labor surplus areas. This Act set forth a training program for unemployed workers and those who receive training are given a subsistence compensation. Congress authorized an annual appropriation of \$4.5 million for the training program itself and \$10 million for the subsistence benefits. The Act is administered by the Department of Commerce and the Department of Health, Education, and Welfare was assigned the responsibility of training the unemployed men. This Act is purely a federal program and does not require matching funds from the participating States. In 1962, 9,000 men were trained by this program in 154 different training areas.

In 1962 the Manpower Development and Training Act (MDTA) was passed in order to supplement the ARA. This Act had a broader purpose than the ARA, since its intentions were to retrain men across the country rather than

to restrict training to those in depressed areas. This Act provided for a three-year appropriation of \$435 million. The first two years the program would exist solely on federal funds; however, the third year the States were required to match the Federal Government with their own funds.

In 1961 the Federal Government contributed a total of about \$48 million for the various

vocational education programs. At the same time the States and local governments contributed totals of about \$89 and \$117 million, respectively. Federal contributions for this purpose have risen 150 percent since 1940 and State and local expenditures have increased six times over since the same year. The following table is a breakdown of expenditures in 1962 for the various programs and showing State contributions:

#### EXPENDITURES (1962)

PROGRAM	FEDERAL	STATE	LOCAL
Agriculture	\$13,644,907	28,589,744	\$31,057,246
Distributive	2,564,754	4,302,611	4,538,472
Home Economics	8,874,426	32,522,053	38,501,830
Practical Nursing	3,834,245	2,544,996	3,280,299
National Defense Trg.	11,042,875	5,456,967	8,106,010
Trade & Industrial	11,476,867	30,847,949	42,762,194

In fiscal year 1963 the Federal Government increased its expenditures for vocational education to \$79.7 million. The Perkins Act, adopted in December 1963, would raise federal contributions for this educational field to \$237 million by 1967. This Act will be discussed in greater detail in a later section.

In consideration of the number of persons employed in the various vocational fields, it seems apparent that enrollment in federally supported vocational education programs indicates an imbalance toward agricultural and home economics courses. The total enrollment in all federal programs in 1961 was 3,856,000. Of this total 806,000 were enrolled in agricultural courses; 1,610,000 in home economics; 963,000 in trade and industrial courses; 306,000 in distributive; 47,000 in practical nursing; and 123,000 in technical courses. These enrollment figures include both high school students and adults. It has been estimated that less than two-thirds of the nation's secondary schools offer federally reimbursable vocational education programs. Agricultural training is offered in almost half of the nation's schools, while only one-tenth of the schools offered courses in trade and industrial training. One out of every 15 and 25 high schools offered subjects in distributive and technical fields, respectively. The following tables show the number of persons leaving farms for the periods given

and the change in major occupational groups:

<u>Period</u>	<u>Number of Persons Leaving Farms</u>
1920-1930 .....	6,300,000
1930-1940 .....	3,800,000
1940-1950 .....	9,500,000
1950-1958 .....	7,200,000

Source: U. S. Department of Agriculture, "Farm Population", AMS-80 (1958)

#### PERCENTAGE CHANGE IN MAJOR OCCUPATIONAL GROUPS IN THE UNITED STATES, 1955-1965

<u>Occupational Groups</u>	<u>Percentage Change</u>
Professional and technical .....	+37
Proprietors and managers .....	+22
Clerical and sales .....	+27
Skilled craftsmen .....	+24
Operatives (semi-skilled) .....	+22
Service workers .....	+13
Laborers .....	- 3
Farmers and farm workers .....	-15

Source: U. S. Department of Labor, "Our Manpower Future".

In a South Dakota report on vocational education the following statement was made:

"It would seem that there is a distinct need for a re-evaluation of our vocational education needs and purposes. At the present time the number of farms and, hence, the number of men needed to operate the farms, is diminishing rapidly. At the same time the principal emphasis in the vocational programs of the State's high schools is on agricultural education." Report on Vocational Education, State Legislative Research Council, April 1964, p. 3.

### Federal Vocational Education Act of 1963

The purposes of H.R. 4955 - Public Law 88-210, commonly referred to as the Vocational Education Act of 1963 or the Perkins Act - are: to authorize federal grants to the States to assist them in maintaining, extending, and improving existing vocational education programs; to develop new programs for vocational education; and to provide part-time employment for young people who need financial assistance in order to continue their vocational training on a full-time basis.

This Act authorized \$60 million to be appropriated for the fiscal year ending June 30, 1964; \$118.5 million for fiscal year 1965; \$177.5 million for fiscal year 1966; and for fiscal year 1967 and each fiscal year thereafter, \$225 million. These funds are to be allotted among the States on the bases of population and per capita income.

State boards for vocational education will be the sole agency for administering federal funds allotted to States. The new funds are not earmarked for specific occupational fields. They may be expended for vocational education programs that will prepare people for employment in any occupational field that does not require a baccalaureate degree. Vocational programs may be conducted in comprehensive and technical high schools, area vocational schools, junior and community colleges, or universities that offer terminal vocational programs.

The Act provides that vocational programs

be available for persons in high schools, for those out of high school and available for full-time study, for persons who are unemployed or underemployed, and for persons who have academic or socio-economic handicaps that prevent them from succeeding in the regular vocational education programs.

Federal funds may also be used for ancillary services to assure quality in all vocational education programs; for example, teacher training, supervision and administration, research and evaluation of programs. Ten percent of each year's appropriation will be reserved for grants by the Commissioner of Education for research and demonstration projects in vocational education. In addition, the Act provides for an experimental four-year program for residential vocational education schools and payments for student work programs. The Commissioner of Education will determine the amount of the appropriation to be used for each of these purposes.

The Act requires that State and local expenditures continue at the current level of support for vocational education but does not require a State to match the new federal funds for program operation in fiscal 1964, except where federal funds are used for construction of vocational education facilities. For subsequent fiscal years, matching on a 50-50 basis is required. In addition, States must assure that federal funds complement but do not replace local and State funds.

To assure more flexibility in vocational education programs, the Perkins Act amends the Smith-Hughes and George-Barden Acts to permit the federal funds to be expended in agricultural training programs for occupations related to agriculture and for which knowledge and skill of agricultural subjects are involved. In addition to preparation for homemaking, home economics funds will also be directed toward homemaking skills for which there are employment opportunities. Not less than ten percent of home economics funds under provisions of the Smith-Hughes and George-Barden Acts must be used for job-oriented training. Preparatory training is made possible under funds authorized for distributive education and occupational training for single skilled or semi-skilled jobs is permitted on a part-time basis for less than the traditional 9 months per year and less than 30 hours per week.

The area technical education program, authorized under the National Defense Education Act of 1958, is made permanent by the Perkins Act

with an annual authorization of \$15 million. In addition to extending this authority, the States will be allowed to expend new funds on a 50-50 basis for the construction of area vocational school facilities.

Finally, the Perkins Act makes permanent the practical nurse training programs authorized by Title II of the George-Barden Act. The annual appropriation is \$5 million.

### Administration of Federal Vocational Education Acts

Briefly stated, federal provisions in the Smith-Hughes and George-Barden Acts require States which participate in the federal programs to submit a State plan to the Office of Education. This plan must describe the proposed operation of a vocational education program and it must also establish assurance of reasonable efficiency of the program before federal moneys can be received. The State plan must also describe the structure of the State board for vocational education. Once the State board is created it has sole authority to administer vocational education by cooperating with the Office of Education. There are many other federal requirements which must be met by the States before federal funds can be received. Some of them are as follows: The state treasurer must receive federal funds and provide for their proper custody and disbursement; all vocational education must take place under public supervision and control; all education must be of less than college grade; there must be minimum qualifications for instructors, supervisors, and administrators engaged in the various programs; the State plan must describe the kinds of schools and types of equipment to be used; and federal funds can only be used for programs described in the State plans.

In turn, the Office of Education has a number of responsibilities with respect to vocational education programs in the several States and territories. They are as follows: Cooperating with the State boards in the administration of the federal Acts; examining plans submitted by State boards and approving them if they are in accord with the provisions and purposes of the federal Acts; making studies, investigations, and reports for the purpose of assisting the States in the establishment of vocational schools and classes; informing the Secretary of the Treasury of the amount each State is entitled to receive from the Federal Government for vocational activities; and

determining whether the States are using money received from the Federal Government in accord with the provisions of the Acts.

The division of Vocational Education in the U. S. Office of Education has a number of specific duties regarding State vocational activities, including: administering the national program of vocational education under the provisions of the federal Acts; working on the national and interstate levels with public and private agencies and groups in activities relating to vocational education; cooperating with the States in identifying the instructional needs of individuals and communities on the basis of occupational opportunities and needs; cooperating with the States in planning, organizing, supervising, and administering vocational education programs; cooperating with the States in developing instructional materials and standards for facilities for vocational education; cooperating with the States in selecting instructors, supervisors, administrators, and other personnel engaged in vocational education; cooperating with the States in improving instructional and guidance procedures in vocational education; and cooperating with the States in evaluating these programs.

### Purpose of Federally-Aided Programs

The purpose of agricultural education is to prepare young people for the occupation of farming and to increase the knowledge of those adults already engaged in agricultural life. In recent years the following subjects have been emphasized in vocational agricultural classes: farm management, including instruction in the keeping of accurate records; analysis of such records; proper use of credit; and efficient use of labor, machinery, and equipment. In addition, several States have offered courses of instruction which relate to both agricultural and distributive education, such as food processing, food distribution, chemical pest control service, farm machinery sales, and irrigation.

Distributive education includes training in merchandising, marketing, and management. High school and post-high school programs combine instruction with actual job experience and are carried out in cooperation with the business community. The purpose of this form of vocational education is to provide a basis for further study or occupational advancement. Extension programs account for roughly 85 percent of the enrollment in distributive education. Special high-level semi-

nar-type courses for small businessmen and managers in areas such as finance, taxation, personnel relations, labor-management relations, and foreign trade were initiated in 1962.

The purposes of home economics education are to prepare young people to learn homemaking skills; to supplement the homemaking knowledge of adults; and to train both young people and adults in order that they may earn money in home related occupations. In high schools throughout the nation more than half a million young people are receiving home economics education. A recent development in home economics education is the extension of this training to adults living in housing centers as well as those conducted by cities and States.

Programs in practical nursing and other health occupations are designed for high school students, post-high school people and adults wishing to take refresher courses. In 1962 there were 548 such programs being operated by boards of education in the 50 States.

Programs to train highly skilled technicians in occupations necessary for the national defense receive federal support through the National Defense Education Act of 1958. This form of education is offered in high schools, area vocational schools, junior colleges, technical institutions, and four-year colleges having non-baccalaureate technical programs. Training is geared to preparatory courses in recognized technical occupations and extension courses enabling those already employed to keep pace with rapidly increasing technical improvements. Some of the fields covered by technical education include: data processing and computer programming; electronics, instrumentation, aeronautical, chemical, civil, electrical, and mechanical design and production technologies.

Trade and industrial education is geared for persons over 14 years of age who are either in school or out of school. Training programs are in countless fields and skilled and semi-skilled. Generally, persons are trained for work relating to design, production, processing, assembly, maintenance, and repair of machinery, appliances, and craft products.

### Committee Findings In North Dakota

In studying the problem in North Dakota the Committee called upon various educators in

the State who are concerned with the State's vocational education programs to present their views and comments. It appeared to be the general consensus that providing adequate vocational education facilities at the high school level in North Dakota would be difficult because this type of technical education is more expensive than regular courses and in many instances high schools are not large enough to justify adequate facilities. The problem is further complicated by the lack of qualified instructors in this field. Also, there appears to be a growing conclusion that this type of education can most effectively be provided at a post-high-school level. This view is strengthened by the fact that employers are looking for persons who are actually qualified in a field and of a more mature age. It is not possible to give intensified training in most technical fields at a high school because of the amount of time spent on academic subjects which are not related to the vocation. To make a program available in the hundreds of high schools in North Dakota which would train a person to a high degree of proficiency in a trade vocation would be absolutely prohibitive in cost.

North Dakota provides vocational training principally at the Wahpeton School of Science. The enrollment at this school has increased from 592 in 1945 to 1828 in 1964. Physically the school consists of a 135-acre site and the State has \$6 million invested in the plant and \$2 million in equipment. The school has students from every county in the state and 22 percent of the total enrollment is from out-of-state.

Another area which affects the dropout problem is the lack of guidance counseling during high school and even pre-high school. Here again there is a lack of qualified counselors available. There seems to be a general agreement amongst the educators that sufficient guidance would encourage some students to complete high school. They also noted that teachers in a two-year college do not have time to take subjects on counseling and that most teachers do not receive sufficient training in this field to satisfactorily perform this function in schools which cannot obtain a professional counselor.

The Committee also reviewed various reports made by other states in the field of vocational education and found that the trend seems to be toward the establishment of vocational technical schools which will serve a particular area of the state. These so called "area" vocational technical schools are for the most part intended to



provide training for out-of-high-school students, including employed workers. Qualified applicants to such schools may learn a trade in one-, two-, or three-year courses with emphasis being on the placement of the student in gainful employment as quickly as possible.

The State Director of Trade and Industrial Education reported that there were presently about 3,000 people under training at 42 centers throughout the state. Because of the widespread nature of this program and the need for state-wide coordination in vocational education at this level it appears that a position of a State Director of Vocational Education should be established, and the Committee recommends that the bill providing an appropriation for such a position be favorably considered. The Superintendent of Public Instruction has just recently created the position upon his staff, but an adequate appropriation will be needed for its continuance during the next biennium.

### Conclusions

From the overall facts as presented, it is the opinion of the Committee that the dropout problem in North Dakota, while serious, is not as acute as national figures indicate. Although

the Committee is concerned with the present dropout rate, it cannot recommend that a vast amount of money be concentrated in this area to provide facilities in high schools to overcome the problem. To do so would certainly jeopardize other areas of education affecting substantially more students. To further curtail our efforts in the field of general education may cause different problems of a greater magnitude than those present in the area of high school dropouts.

The Committee recommends wholeheartedly the establishment of a position of Director of Vocational Education. With this office a State Plan can be developed so as to qualify for federal funds under the Federal Vocational Education Act of 1963. Further, such a Director can coordinate the activities in this area on a state-wide basis, which should produce some upgrading in programs existing in high schools.

Further, the Committee recommends that teachers be given more courses in the field of guidance counseling so as to fill the gap which exists in this area, as most educators seem to agree that, through sufficient and proper guidance, many students who drop out because of failing grades and lack of interest would be saved. These students then could go on to complete post-high-school vocational education.

## HIGH SCHOOL CORRESPONDENCE

The North Dakota high school correspondence program was established by the 1935 Legislative Session for the purposes of:

1. Assuring a high school education for those who, although unable to attend a high school, could do this work by correspondence while attending rural schools.
2. Providing an enlarged curriculum for organized high schools and eliminating small and expensive classes.
3. Permitting those who are physically unable to attend school to enroll in high school correspondence courses.
4. Providing high school courses for adults.

Information which the Division of High School Correspondence Study furnished the Committee indicates that enrollment in correspondence courses has grown to the point where today some 4,986 students are enrolled in 8,173 individual courses covering some 120 subjects. Courses offered range all the way from such basic subjects as history, geography, and literature to specialized courses such as farm tractors, home beautification, and cartooning. Included among the offerings are a quite complete line of foreign languages as well as a number of laboratory sciences.

A spot check of division records by members of the Committee revealed that approximately 70 percent of student enrollments were in the basic or constant subjects—those that every high school must offer. An additional 15 percent are enrolled in basic elective subjects such as psychology, world geography, advanced algebra, or plane or solid geometry. The remaining 15 percent appear to be enrolled in unusual electives such as creative writing, cartooning, home beautification, or wildlife management. This spot check also indicated that not more than 10 percent could be classed as adults, and that very few rural students not enrolled in a high school were taking courses by correspondence.

A discussion of activities of the High School Correspondence Study Division was carried on at several meetings of the Committee, including one meeting on the campus of North Dakota State University where members of the Committee had the opportunity to visit the facilities of the divi-

sion. In addition, two members of the Committee made a separate, more extensive visit to the division, reporting their findings and conclusions to the Committee. The Committee also heard testimony from a representative of the extension division of the University of North Dakota, which is also engaged in conducting correspondence courses although on a much smaller scale than does the High School Correspondence Study Division.

### School and County Superintendents' Opinions

In order to obtain the opinion of those most directly concerned with the operation of the high school correspondence program, a questionnaire was sent out to the 53 county superintendents and to 330 high school superintendents. Returns were received from 39 county superintendents and 234 high school superintendents. A summary of returns from the questionnaire is as follows:

1. A substantial majority of both county and high school superintendents felt that the need for an extensive correspondence-type program has decreased in the years since the program was founded.

2. A substantial majority agreed, however, that the availability of a wide range of correspondence courses probably had not had a particularly adverse effect on school district reorganization.

3. The classroom method of instruction was deemed superior to the correspondence method by nearly all those answering the questionnaire. A slight majority of the high school superintendents felt that correspondence students were usually "inferior students" when compared with those taking regular high school courses in the classroom. County superintendents tended, however, to rate the two classes of students as substantially equal.

4. As to the students' reasons for enrolling in correspondence courses, the leading reasons cited by high school superintendents were to make up courses failed, to obtain courses not available in their high schools, and easier or so-called "snap" courses, in that order. County superintendents were in substantial agreement and also cited the high school "dropout" as a reason

for enrollment. Other reasons given included personal preferences of the students, schedule conflicts, and the desire to supplement their education.

5. Replies to the questionnaire revealed that a majority of North Dakota high schools provide no regular study period for students enrolled in correspondence work, although of those that do, superintendents were nearly unanimous in feeling that the provision of such periods improved correspondence work. The quality of local supervision for non-high school correspondence was rated generally as adequate or poor by high school superintendents and as adequate by county superintendents, although both groups also stated in substantial numbers that such quality varied widely.

6. Feeling was nearly equally divided on the question of whether it was common for a student to fail a regular high school course and then take such course by correspondence and receive a superior grade. A majority of high school superintendents felt that this was quite common, while a majority of county superintendents felt that it was not.

7. A majority of high school superintendents and slightly less than a majority of county superintendents felt that the state should spend less of its education dollar on high school correspondence activities in the future.

8. A substantial majority of high school superintendents and a slight majority of county superintendents expressed the belief that activities of the high school correspondence division should be consolidated with correspondence study programs presently carried on by other institutions of higher education, while a fair majority of high school superintendents felt that the state could do without any correspondence study program. This latter opinion was not shared by a large majority of the county superintendents.

9. In regard to the miscellaneous activities of the high school correspondence division, namely those of lyceum programs, film rentals, and the book lending library, opinions expressed varied widely, with no opinion being expressed on a great many of the questionnaires. Generally speaking, the county superintendents were more inclined to favor the programs than were the high school superintendents, although both groups re-

garded the continuance of the lyceum service as unnecessary by substantial margins. The lyceum program was the only one which high school superintendents indicated was widely used in their districts. The services offered by the correspondence study division were generally regarded as cheaper than, but not superior to, similar services offered by other sources.

10. In addition, a number of general comments and opinions were expressed by superintendents responding. In these there was wide variety, with perhaps more comments being unfavorable than favorable to the high school correspondence study division operations.

### Conclusions and Recommendations

It is the Committee's conclusion that high school superintendents have a legitimate complaint in regard to the enrollment of students of their districts in high school correspondence courses without their approval since it is conceivable that this could unnecessarily encourage students to drop out of regular high schools upon the premise they could finish their education by correspondence (it appears they seldom ever obtain a diploma under these circumstances). Students should not be permitted to avoid more difficult courses in the regular high school by taking unusual courses by correspondence without the approval of the local superintendent. There should be no "snap courses" in the curriculum. In addition, the State should not attempt to duplicate educational offerings to a student if the courses are available to him in his high school, or compete for students in other ways, since this is wasteful of our educational tax dollar.

It appeared to the Committee that some of the more unusual courses offered by the division were of such questionable value as high school credits, that their elimination from the curriculum should be recommended. Other courses, especially those involving certain laboratory work, or in some musical fields, must be seriously reviewed to determine whether they are suitable for teaching by correspondence methods and whether credits in these areas should be accepted by other schools. Some of these offerings in fringe-area courses may be a luxury the State cannot afford. The State must in all areas be certain that its operations through the High School Correspondence Study Division do not cheapen the high school credit or the high school diploma.

From personal observations of Committee members, testimony received by the Committee, and the replies to questionnaires, the Committee has come up with the following conclusions and recommendations.

One of the principal recommendations is in the field of supervision over the activities of the High School Correspondence Study Division. This responsibility is delegated by law to the State Board of Public School Education. The law, however, supplies little in the way of guidelines toward the exercise of these supervisory powers, and as a result members of the Board of Public School Education were free to admit that little had been done in the field of supervision. This problem is made somewhat more complex by the fact that the membership of the board was changed by the 1963 Legislative Assembly and thus all of the members are quite new.

Closely allied to the general supervisory problem is the lack of supervision over course content and curriculum. Although there is no evidence that those employees of the division who prepared the courses were not competent to do so, it was admitted by a representative of the division that new courses were added as the demand arose and not in accordance with any general plan for the most efficient utilization of the program.

Committee members were firmly of the opinion that the State should not attempt through operation of the correspondence division to aid students in making up courses which they had previously failed in the classroom if the course was again available to them at the high school, as this should be a local responsibility. Yet it appears from the answers to the questionnaires given by high school superintendents, as well as from personal knowledge of Committee members, that the making up of failures was perhaps the principal reason that students utilized the correspondence study division.

Approval of student enrollment is another problem area. Under present law and division policy, either the local superintendent of schools or the county superintendent of schools may approve a student enrollment in a course. Thus a student whose enrollment approval is denied by the local superintendent can in many instances obtain approval from the county superintendent.

In connection with the accreditation of the

High School Correspondence Study Division, the Committee learned that the North Central Association had in 1955 granted provisional approval to credits of the division, but had further provided that such credits were only to be accepted by member schools until January 1, 1958. There is no evidence that this date was ever extended, though the division has consistently claimed accreditation by the North Central Association.

The Committee has prepared and recommends approval of a bill which places more stringent controls over the curriculum of the High School Correspondence Study Division by requiring that the Board of Public School Education determine the curriculum of the division to be proper and suitable for correspondence-type instruction, and that such determination be made at least once in each school year. The name of the division is also changed to that of the "Division of Supervised Correspondence Study" as it is believed that this name more clearly expresses the function of the division.

The bill clearly places the division under the State Board of Public School Education and the Superintendent of Public Instruction and makes the director of the division an appointee of the board, upon recommendation of the superintendent. The responsibility for approving course content and credits, assuring that teachers are validly certified, guarding against the duplication of public school facilities, and assuring that the operation of the division does not encourage high school dropouts, is clearly placed in the Superintendent of Public Instruction and the Board of Public School Education.

In regard to the matter of enrollments, the bill requires all unmarried students under the age of 19 to continue to be enrolled in their local high school unless specifically excused by the local superintendent. All applications for enrollment by unmarried students under the age of 19 are required to be approved by the superintendent of the local high school district, or the county superintendent if the applicant does not live in a high school district, rather than merely requiring that the county superintendent certify the application as is now the law.

Supervision is exercised over the financing of the division by requiring that the Superintendent of Public Instruction prepare the division budget for approval by the Board of Public

School Education before submission to the Budget Board.

Miscellaneous

Although not specifically directed by any study, it was brought to the attention of the Committee that the Supreme Court of North Dakota has recently held (122 N.W. 2d 816) that under state law a pupil could not attend school at a public school outside of his or her district of residence, even though the parents of the pupil were willing to pay the tuition costs involved. The Court stated that the only circumstances under which such attendance would be legal were when such attendance was based on reasons of convenience and was approved by the county committee, or when such attendance was consented to by the pupil's district of residence, which district would then be required to pay

to the admitting district the tuition payments provided for in the law.

The Committee is of the opinion that a pupil should be permitted to attend school in a district other than his district of residence in instances where such attendance would not result in injury to or overcrowding of the admitting school, and where the parent or guardian actually pays the tuition for such pupil. Accordingly, a bill is recommended which will make this possible, as well as provide a method of computing the amount of tuition to be paid by the parents of the nonresident student in such cases. Another provision of the bill will include the adequacy of the curriculum as applied to the educational needs of the particular pupil among the reasons of convenience which the county committee may take into consideration in approving payment of tuition charges to an admitting district by the district of residence.

**Appendix A**

The following is a summation of total figures computed from questionnaires submitted to all high school superintendents of public high schools and administrators of non-public high schools in North Dakota.

Total number of questionnaires sent to superintendents and administrators .....330  
 Total number of questionnaires returned .....298  
 Definition of a "Dropout." For the purpose

of this questionnaire, a high school "dropout" is defined as a pupil in the 9th, 10th, 11th, or 12th grade who left school during the 1962-1963 school year for any reason except death, before graduation or completion of a program of studies, and further included those pupils who were enrolled in school during the previous school year and failed to re-enroll for the 1962-1963 school year in either the 9th, 10th, 11th, or 12th grade for any reason except death. The term "dropout" did not include students transferring to another school.

1. The returned questionnaires listed the average number of pupils in each high school class for the 1962 - 1963 school year as follows: <u>1/</u>			
9th grade .....	11,909	11th grade .....	10,263
10th grade .....	11,612	12th grade .....	8,756
Total average enrollment for grades 9 through 12 .....		42,540	
2. Total number of high school dropouts by class and sex for the 1962-1963 school year: <u>2/</u>			
9th grade: Males .....	145	Females .....	72
10th grade: Males .....	226	Females .....	147
11th grade: Males .....	181	Females .....	178
12th grade: Males .....	101	Females .....	120
Total male dropouts.....	653	Total female dropouts .....	517
Grand total of all dropouts .....			<u>1170</u>

1/ Some of the returns failed to separate the number of students in each class. In order to determine the approximate number in each class, all those listed were totaled and a percentage of the total in each class was arrived at. This percentage was applied against the total number of students listed in all grades not separately totaled and the resulting figures were added to those which were listed. The resulting figures are thus not one hundred percent accurate but should be quite close.

2/ Again, not all of the returns separated the number of males and females who dropped out of each class but simply listed totals. We applied the same type of process in this question as we did in Question No. 1, by using all those which separated the dropouts and arriving at percentages for each sex and class, which percentages were applied against the remaining un-itemized figures.

3. Number of students who became dropouts for the following principal reasons: 3/

	<u>9th</u>	<u>10th</u>	<u>11th</u>	<u>12th</u>	<u>Total</u>
a. Lack of personal finances or to supplement family income .....	5	8	9	5	27
b. Pupil older than classmates .....	10	3	4	0	17
c. Physical illness .....	6	5	6	3	20
d. Emotional illness or disturbance .....	9	6	6	2	23
e. Desired to complete work through correspondence .....	0	3	2	7	12
f. Record of delinquency or committed to correctional institution .....	9	13	4	4	30
g. Irregular attendance and frequent tardiness .....	20	28	23	5	76
h. Disciplinary reasons .....	1	19	6	5	31
i. Armed forces .....	3	5	22	12	42
j. Marriage or pregnancy					
Males .....	2	0	0	10	12
Females (not pregnant before marriage) .....	1	12	22	14	49
Pregnancy .....	4	14	32	42	92
Total marriage and pregnancy .....	10	29	64	69	172
k. Failures .....	59	60	57	30	206
l. Lack of interest .....	57	92	42	23	214
m. Nonparticipation in school activities .....	1	1	1	0	3
n. Unknown .....	2	6	4	4	16
o. Other .....	<u>3</u>	<u>5</u>	<u>6</u>	<u>2</u>	<u>16</u>
	195	283	256	171	905

3/ Quite a few returns listed more reasons for dropping out than dropouts which were listed. Only one principal reason for each dropout was requested. Section 3 of this total computation is a compilation of those returns which listed one principal reason for each dropout and reflects by far the greatest number of returns.

3. (a) Number of students who became dropouts because the following factors were present: 4/

	9th	10th	11th	12th	Total
a. Lack of personal finances or to supplement family income .....	4	6	1	0	11
b. Pupil older than classmates .....	12	5	2	0	19
c. Physical illness .....	0	9	7	2	18
d. Emotional illness or disturbance .....	6	3	3	1	13
e. Desired to complete work through correspondence .....	0	1	0	0	1
f. Record of delinquency or committed to correctional institution.....	1	6	2	0	9
g. Irregular attendance and frequent tardiness.....	9	17	8	3	37
h. Disciplinary reasons .....	1	2	3	0	6
i. Armed forces .....	0	0	3	1	4
j. Marriage or pregnancy					
Males.....	0	0	0	1	1
Females (not pregnant before marriage).....	0	1	3	1	5
Pregnancy .....	0	1	9	7	17
Total marriage and pregnancy .....	0	2	12	9	23
k. Failures .....	24	15	16	5	60
l. Lack of interest .....	25	30	43	20	118
m. Nonparticipation in school activities .....	16	8	6	1	31
n. Unknown .....	0	2	0	0	2
o. Other .....	6	1	5	0	12

4. Number of high school superintendents and administrators who felt that students who leave school because of failing grades failed the: 5/

a. Majority of courses .....	167
b. Required courses .....	43
c. Specific courses .....	15

5. Number of high school superintendents and administrators who felt that the following efforts might be taken to prevent high school students from becoming dropouts: 6/

a. More use of industrial arts or vocational education facilities .....	197
b. Greater use of guidance and counseling .....	148
c. Personal contact by fieldworkers with dropouts and potential dropouts .....	80
d. Specialized curriculum .....	32
e. Encourage parental control, discipline, and cooperation with school officials.....	51
f. Emphasis on problems which dropouts incur .....	2
g. Greater preparation in elementary grades .....	12
h. Raise compulsory school age .....	2
i. Strict enforcement of attendance.....	2

4/ This section (3a) is a compilation of the returns which listed more than one principal reason for each dropout. Thus each reason became a factor which was prevalent in forcing or encouraging the student to become a dropout.

5/ This section was not completed in many returns and on others more than one answer was checked. Thus, the number of returns and the figures found here will not be the same.

6/ Many returns had more than one effort listed here, while others were not filled in at all.

TABULATION OF QUESTIONNAIRES  
RE HIGH SCHOOL DROPOUTS

GRADE	NUMBER STUDENTS ENROLLED	NUMBER MALE DROPOUTS	PERCENT DROPOUTS FROM GRADE	NUMBER FEMALE DROPOUTS	PERCENT DROPOUTS FROM GRADE	TOTAL PERCENT DROPOUTS FROM GRADE
9th	11,909	145	1.22	72	.60	1.82
10th	11,612	226	1.95	147	1.27	3.22
11th	10,263	181	1.76	178	1.73	3.49
12th	8,756	101	1.15	120	1.37	2.52
Totals	42,540	653	1.54	517	1.21	2.75

Grand Total All Dropouts                      1,170

Total Number Students                      42,540

% of Dropouts of Total Enrollees              2.75%



# Legislative Procedure, Organization, and Administration

Senate Concurrent Resolution "X-X" of the 38th Legislative Assembly directed the Legislative Research Committee to study and prepare necessary Rules changes for the purpose of placing every member of the Legislative Assembly on an Appropriations Subcommittee during the early days of the session. This study was carried on by the full Legislative Research Committee rather than a subcommittee. As expressed in Senate Concurrent Resolution "X-X", the major reasons for conducting this study were to provide more time to study appropriation measures, to better inform all legislators of such appropriations measures, and to improve the efficiency of the legislative process. In conducting this study the Committee's attention was directed towards additional administrative and organizational procedures which were suggested by administrative and legislative officials in the interest of improving the efficiency of the Legislative Assembly. The Committee agreed that it would be in the best interests of the Legislative Assembly to also expand its study to include some items pertaining to legislative costs. Therefore, proposals in these areas have been developed by the Committee in addition to recommendations which will place every member of the Legislative Assembly on an Appropriations Subcommittee.

## Appropriations Subcommittees

Pursuant to Senate Concurrent Resolution "X-X" the Legislative Research Committee has prepared changes in the Rules of the Senate and the House of Representatives which would place every member of the Senate and the House upon a Subcommittee of the Appropriations Committee of his respective House. In preparing these proposed Rules changes the Legislative Research Committee reviewed the conditions that have pointed out the need for the proposed Rules changes. It was noted that limitations upon the time of the Appropriations Committees have prevented them from thoroughly investigating many appropriation requests, and insufficient hearing time for discussion of such requests with departmental or institutional heads generally result in the Committees not being sufficiently informed in detail on the budget and appropriation requests. Control of the expenditure of public funds through appropriations is the most important single tool of the Legislature in deter-

mining public policy in regard to the executive branch of government, and without it the Legislative Assembly cannot properly perform its constitutional role as an equal and coordinate branch of government. The Committee further noted that it is exceedingly difficult to intelligently cut appropriations, even though legislators might at times feel such cuts are necessary, for legislators do not always have a sufficiently detailed knowledge of an appropriation item to know if specific items are the ones which should be reduced. Under such conditions the alternative is to make across-the-board cuts which often injure programs in which there is no margin for reduction. The result is that there is a general reluctance to cut appropriations for fear of injuring programs which the Legislature does not intend to restrict.

The purpose of the proposal to establish Subcommittees on Appropriations Committees upon which each legislator will serve is to permit more legislators to have access to fiscal information in order that they may have a better understanding of the expenditure of public funds and the operations of governmental programs and of the executive branch of government, and thus do a better job of making appropriations and controlling expenditures of the state.

Specifically, the Legislative Research Committee recommends that Senate Rules Nos. 40 and 41 and House Rules Nos. 40, 41, and 42 be amended to provide for the creation of four Subcommittees in the Senate, and five Subcommittees in the House, of the Committees on Appropriations. In the Senate the Committee on Committees would appoint each member of the Senate, except the Majority Floor Leader, to serve on one of the Subcommittees on Appropriations and would also appoint a Chairman for each Subcommittee. In the House the Speaker of the House would appoint the members that will serve on the Subcommittees, four of which would consist of twenty-one members and one of twenty-three members. The Subcommittees of the respective Committees on Appropriations would meet from 9:00 a. m. to 12:00 o'clock noon during the first fifteen legislative days and thereafter would meet following the daily recess at the call of the chair. The regular standing Committees would meet following the daily recess for the first fifteen legislative days and thereafter

would meet in the morning. For a more detailed explanation of the scheduling of Committees, reference should be made to the schedules listed at the end of this section of the report.

Although the specific procedure under which the Subcommittees of the Committees on Appropriations would operate is not spelled out in the proposed Rules changes, it is contemplated that the full Appropriations Committees will assign appropriation requests to the Subcommittees for hearing purposes. After holding their hearings the Subcommittees will then present their findings and recommendations to the full Appropriations Committees for final action. The full Appropriations Committees will hold subsequent hearings only on special points if they feel a specific need for additional information. The full Committee on Appropriations would make all final decisions in regard to recommendations and Committee reports to their respective Houses. Recommendations of the Subcommittees will be received by the full Committees during their afternoon sessions for the first fifteen legislative days and thereafter during their regular morning sessions. Some members of the full Appropriations Committees will serve on each Subcommittee and thus ensure a definite degree of firsthand knowledge of the hearing held by the Subcommittees.

It should be noted that Subcommittee meetings will be held in the mornings only for the first fifteen days of the legislative session. The Committee members, in preparing this procedure, recognize that in the past the first fifteen days of the Legislative Assembly have generally been devoted to organizational activities. During this period the work of the standing Committees has been very limited because few bills have been introduced and much time is taken up in organizational activities. For this reason it is felt that the appointment of Subcommittees on Appropriations, which will meet during the mornings for the first fifteen legislative days and will have available for their consideration appropriation bills introduced by the Budget Board, will not hinder the regular work of the standing Committees. Such standing Committees will meet during the afternoons for the first fifteen legislative days and should be able to accomplish the same

amount of work that they normally did during the first fifteen legislative days when they met in the morning.

The following is a detailed explanation of the specific proposed amendments made to the House and Senate Rules in regard to the establishment of Subcommittees of the Committees on Appropriations:

**Senate Rule 40:** The amendment of this Rule is for the purpose of allowing any member of the Senate, except as limited by Senate Rule 41, to serve on a Subcommittee of the Committee on Appropriations.

**Senate Rule 41:** The amendment to this Rule provides for the establishment of Subcommittees of the Committee on Appropriations in the Senate, and specifies they shall meet five mornings each week. There has not been any change in the provisions of this section in regard to standing Committees except to provide that they shall meet as stated commencing with the sixteenth legislative day.

**House Rule 40:** This is the basic rule providing for the establishment of all House standing and procedural Committees as well as for their membership, meeting days, and organization. This section has been amended to provide that the Subcommittees of the Committee on Appropriations shall be standing Committees and classified as Group A Committees. Further amendments provide for the number of members on such Subcommittees, the meeting days, and the hours of meeting.

**House Rule 41:** The amendment of this Rule is for the purpose of allowing any House member to serve on a Subcommittee of the Committee on Appropriations.

**House Rule 42:** The purpose of the amendment to this Rule is to allow Subcommittees of the Committee on Appropriations to meet five mornings a week for the first fifteen days of the Legislative Assembly instead of four days a week as is provided for other standing Committees in Group A.

Proposed Organization and Meeting Times and Places for all Standing Committees, including Subcommittees of the Committees on Appropriations of the Senate, and the House of Representatives.

**Senate Committees**

Committee	No. of Members	Days Commencing with 16th Leg. Day *	Hours	Room
Appropriations	15	M-T-W-Th	9-12	G-4
Education	11	M & T	9-12	G-1
State & Federal Govt.	10	M & T	9-12	Sen. Conf. Rm.
Finance & Taxation	12	M & T	9-12	G-2
Industry, Bus. & Labor	11	W & Th	9-12	G-2
Judiciary	11	W & Th	9-12	G-1
Agriculture	10	W & Th	9-12	Room 204
Political Subdivisions	10	F	9-12	Room 204
Natural Resources	14	F	9-12	G-2
Social Welfare & Vets. Aff.	12	F	9-12	Sen. Conf. Rm.
Transportation	12	F	9-12	G-1

\*During the first fifteen legislative days these Committees shall meet following the daily recess on the days and in the rooms designated.

**During First Fifteen Legislative Days**

Approp. Subcommittee No. 1	12	M-F	9-12	G-1
Approp. Subcommittee No. 2	12	M-F	9-12	G-2
Approp. Subcommittee No. 3	12	M-F	9-12	Sen. Conf. Rm.
Approp. Subcommittee No. 4	12	M-F	9-12	Room 204

## House Committees

<u>Committees</u>	<u>No. of Members</u>	<u>Days Commencing with 16th Leg. Day *</u>	<u>Hours</u>	<u>Room</u>
Appropriations	22	M-T-W-Th	9-12	G-5 & 6
Finance & Taxation	21	M & T	9-12	G-3
Education	21	M & T	9-12	Blue Room
State & Federal Govt.	21	M & T	9-12	West Balcony
Political Subdivisions	21	M & T	9-12	East Balcony
Natural Resources	21	W & Th	9-12	West Balcony
Judiciary	21	W & Th	9-12	East Balcony
Industry & Bus.	21	W & Th	9-12	Blue Room
Transportation	21	W & Th	9-12	G-3
Labor	21	F	9-12	West Balcony
General Affairs	21	F	9-12	East Balcony
Agriculture	21	F	9-12	Blue Room
Social Welfare	22	F	9-12	G-3
Veterans Affairs	21	F	9-12	Room 205

\*During the first fifteen legislative days these Committees shall meet following the daily recess on the days and in the rooms designated.

### During First Twenty Legislative Days

Approp. Subcommittee No. 1	22	M-F	9-12	G-3
Approp. Subcommittee No. 2	21	M-F	9-12	West Balcony
Approp. Subcommittee No. 3	21	M-F	9-12	East Balcony
Approp. Subcommittee No. 4	21	M-F	9-12	Blue Room
Approp. Subcommittee No. 5	21	M-F	9-12	Room 205

## Need for Legislative Improvements

It is true that in 1889 when the Constitution was adopted, a limited 60-day session with formalized and leisurely procedure may have been adequate to perform legislative duties with the relatively simple agricultural society and economy that existed. It is not true today. This is documented by the hectic pace during the latter part of the session and the increasing length of overtime sessions through the device of covering the clock. Today, at each session, over 900 bills and resolutions are introduced touching on almost every level and phase of government, business, and social contact. The amount of money involved in appropriations is many times greater and the field of legislation infinitely more complex. It is becoming increasingly difficult to complete legislative work in 60 days under existing rules and procedure, and in fact may well be approaching an impossibility.

Other reasons exist for concern. In West Virginia, their Supreme Court broke precedent and took cognizance of an overtime legislative session and invalidated many measures. This could happen in North Dakota. Every member of the 1963 Session recalls the lack of public understanding of the problems faced by the Legislature which resulted in the overtime session, and the widespread criticism by citizens that followed. The \$4,000 to \$5,000 per day cost of additional days of the session was also a matter of concern. Respect is not engendered for the Legislature or the laws made by it when the law-making body itself is forced to disregard constitutional limitations governing its own actions.

For these and other reasons it is imperative that the Legislative Assembly make every effort to employ its limited time in the most productive manner possible. The Committee firmly believes that its organizational and procedural recommendations can be a major step toward this objective, and their adoption may well postpone the day when it must consider substantially lengthened legislative sessions. The pre-session orientation conference and new deadlines for introducing and processing bills discussed later in this report should in themselves result in a gain of 10 to 12 additional working days.

### Pre-Session Orientation and Organization Conference

In 1959 the Committee recommended to the Legislative Assembly that it consider establishing

a three-day pre-session orientation and organization conference. It was, and still is, the opinion of the Committee that the beginning days of the Legislative Assembly could be more usefully utilized if arrangements were made in advance of the session for the organization of the House and the Senate.

The Committee has prepared a bill which would establish such a conference. This bill deserves further consideration because the pre-session orientation conference presently held at the University of North Dakota and co-sponsored by the University of North Dakota and the Campbell Foundation, will probably not be sponsored beyond this year. The Campbell Foundation, like other foundations, is willing to expend funds for initiating a program but usually withdraws such funds after a program has proved its worth. It has been noted that legislators who have attended these conferences have found them very worth while. Most states now hold a conference of this type.

It is with this background that the Committee recommends Senate Bill No. 44. The bill would establish a three-day, pre-session conference for all holdover senators and legislators-elect to be held at Bismarck during the early part of December for the purpose of organizing the Legislative Assembly and providing orientation classes upon legislative rules and procedure for new legislators. At this conference it would be required that each party hold a caucus to determine which party had the majority in each House and, thereafter, proceed to informally select the officers of each body. The Secretary of the Senate, Chief Clerk of the House, Sergeants-at-Arms, and Desk Reporters would also be selected at this time. A pre-session employment committee would be appointed to process applications for additional positions of employment with the Legislative Assembly and to make recommendations for hiring the selected employees when the Legislature convened. At the pre-session conference, all legislators would be required to turn in their Committee preferences to the Speaker-elect of the House and to an interim Senate Committee on Committees so that Committee appointments could be announced the first day of the legislative session. The bill further requires that any other matters pertaining to the preparations for the Legislative Assembly be covered in order that the Legislative Assembly will be fully organized and ready to begin its business by the second day of the legislative session. In addition to organizational and procedural matters, reports could

be given upon interim Committee work and on the Budget in a manner similar to the program followed at the University pre-session orientation conferences. The bill further requires that all legislators attend and provides compensation at the same rate as for the regular session for a period not to exceed five days, including travel time.

During the course of such pre-session conference, it would be convenient for individual legislators to contact the staff of the Legislative Research Committee to request the bills they wish to have drawn, thereby ensuring that some individual bills, in addition to bills introduced on behalf of the Legislative Research Committee, the Appropriations Committees, and the Legislative Audit and Fiscal Review Committee, would be available for introduction on the first day of the Legislative Assembly. It is believed by the Committee that the Legislative Assembly can gain from three to seven additional working days through the implementation of this conference. In 1959 this recommendation was approved by a vote of almost 4-to-1 in a questionnaire sent to legislators.

### Fiscal Notes

The most important problem facing every state Legislative Assembly is probably that of providing adequate finances to carry out all state and local programs. The cost of governmental services appears to be continually increasing and the financial problems which arise are not limited to any one legislative assembly. Since the financial resources of most states are inadequate, it is very difficult for the legislative assemblies to determine the amounts of money which should be allocated to each state or local program. In addition it frequently happens that the fiscal impact of a particular legislative bill or resolution is all but impossible for the standing Committees or the average legislator to determine, because there is no specific dollar amount embodied in the bill. Nevertheless, it is imperative that the costs resulting from a measure be known and weighed before voting upon it. In order to overcome this handicap and to improve the efficiency of the legislative assembly many states have provided for the use of a "fiscal note". The use of fiscal notes originated in the state of Wisconsin in 1955 and since that time many states have adopted procedures providing for their use. In essence, a fiscal note is a notation which must be attached to each bill or resolution affecting the

revenues of the state, spelling out the impact such measure will have on the expenditures or income of the state.

The Committee believes that the legislative process would be improved if a procedure calling for the use of fiscal notes were adopted in the North Dakota Legislative Assembly. It is recommended that such procedure be implemented through the amendment of the Joint Rules of the Legislative Assembly. In making this recommendation the Committee submits a proposed Joint Rule for consideration of the Legislative Assembly.

Briefly, this proposed Joint Rule provides that all bills and resolutions having an effect of \$5,000 or more on the expenditures or revenues of the state, except measures carrying specific dollar amounts, shall have a fiscal note attached to them. The Legislative Research Committee would be required to determine whether a fiscal note is required for bills prepared by the staff of the Committee and the Chairman of the standing Committee to which a bill is referred would make such determination for all other bills. Fiscal notes would be prepared by the state agency or department responsible for collecting or expending the revenues upon request of the Legislative Research Committee or the Chairman of a standing Committee. Five days would be allowed for such preparation and each bill or resolution carrying a fiscal note would have such fact noted on its cover. The fiscal note would be attached to the original bill and copies would be filed with the Legislative Research Committee and the bill clerk of the House wherein such measure was introduced. The Secretary of the Senate or the Chief Clerk of the House, whichever is the case, would be required to read the fiscal note at the time of second reading and final passage of the bill or resolution.

### Procedural Rules Changes

Considerable time was spent in reviewing the Rules of the Legislative Assembly in order to further improve the utilization of its time by the Legislative Assembly.

Specifically, it was noted that Senate Rules 29 and 44, House Rules 30 and 45, and Joint Rule 8, in relation to final introduction dates for bills and resolutions, dates when bills and resolutions must be reported out of Committees, and dates when bills and resolutions must be passed from

one House to the other, should be considered.

These Rules presently provide that no bill shall be introduced in either House after the twenty-fifth day of the Legislative assembly, nor shall any resolution be introduced after the forty-fifth day in the House and the thirtieth day in the Senate, except upon approval of two-thirds of the membership of the House of introduction or approval of the Committee on Delayed Bills. All bills and resolutions, except appropriation measures, must be reported out of Committees of the Houses wherein they originated by the forty-third day at the latest, and bills introduced in the opposite House must be reported out of Committees by the fifty-eighth day at the latest.

In practice it frequently happens that most bills are not introduced until almost the twenty-fifth day, even though they may have been prepared for introduction long before such date. Committees are often forced to give such bills a cursory examination in order to have their reports ready by the forty-third day, and some bills are passed to the opposite House without a thorough hearing, with the hope that more time might be spent on such bills in the other House. Since the opposite House receives so many bills about the 45th day it, too, is limited in its deliberations, with the result that many of the bills are not reported back to the floor until nearly the fifty-eighth day. Thus many bills are finally reported out of Committee just two days before the Legislative Assembly is scheduled to adjourn. If these bills had been introduced early in the session, when the work of the Committees was less, a greater amount of time could have been devoted to their consideration, resulting in earlier and more deliberative action and, in the end, the usual "logjam" of bills would be lessened.

In order to avoid this biennial "logjam", and gain more working days at the end of the session, the Committee recommends that the final introduction date for bills be changed from the twenty-fifth day to the twentieth day, and the final introduction date for resolutions be changed from the forty-fifth day in the Senate, and the thirtieth day in the House, to the thirty-fifth day for both Houses. The Committee further recommends that the Rules of the House and Senate be amended to provide that all bills must be reported out of Committees by the thirty-eighth day, instead of the forty-third day, and that such bills must pass from one House to the other by the fortieth day, instead of the forty-fifth day. Bills introduced by the opposite House will have

to be reported out of Committees by the fifty-sixth day, instead of the fifty-eighth day.

The Committee has drafted proposed Rules changes to carry out these recommendations for the consideration of the Legislative Assembly.

The Committee also considered several other procedural Rules changes suggested by legislative leaders. The Speaker of the House for the Thirty-eighth Legislative Assembly suggested several Rules changes which the Committee studied and now recommends for the consideration of the Legislative Assembly. Specifically recommended are changes to House Rules 18, 21, 47, 48, and 57 and, in addition, a change is proposed for Senate Rule 47. Drafts of amendments for these Rules changes have been prepared for consideration of the respective Houses of the Legislative Assembly.

The proposed amendment to House Rule 18 would permit consideration of a motion to place a question in general orders when a question is under debate. As the Rules of the House are now constituted, there is no specified way a bill can be amended on the floor once debate commences. In order to resolve this dilemma Speakers of the House in the past have ruled that a motion to place in general orders and form a Committee of the Whole is in order. Such a procedure appears quite practical and the purpose of amending House Rule 18 is to recognize this procedure in House Rules.

The proposed amendment to House Rule 21 is to list a motion to "fix the time of adjournment" among the nondebatable motions, since this is presently its status according to House Rule 18. It should be noted that House Rule 18 was amended to delete references to nondebatable motions, since all such motions would now be covered in House Rule 21.

The proposed amendment to House Rule 47 would allow members of the House to propose amendments to a bill from the floor, if such amendments are offered in writing and at least one-sixth of the members present do not object. Presently it is not possible to propose such amendments. If such amendments were accepted they would be voted upon the following legislative day under the Sixth Order of Business in their entirety, or if requested by any member, separately. This amendment would facilitate a determination of the will of the majority of the members of the House.

The amendment of House Rule 48 would allow a minority member, or minority members of a Conference Committee to make a minority report. At present it is not clear whether a minority report of members to a Conference Committee is allowable. Such a report can be of assistance in clarifying the issues and the position of the members of Conference Committees. A similar amendment to Senate Rule 47 is submitted for consideration of the Senate, which would also allow for members of that body serving on a Conference Committee to make a minority report.

The proposed amendment to House Rule 57 would allow a member of the House to change his vote before the Speaker announces the total ayes and nays, rather than before he announces that the vote is closed. This proposed amendment more nearly reflects the current practice in the House.

### Legislative Costs

During the course of studying legislative procedures it was brought to the attention of the Legislative Research Committee that although some areas of legislative costs have been reduced in the past there still appear to be areas needing improvement.

It was agreed that the printing of bills and journals, equipment rentals, and other similar matters seem to be areas in which legislative expense could be reduced. It was noted that the total printing costs of bills and journals in the past session were almost \$80,000. Evidence was presented to the Committee that through the use of more abbreviations, greater use of multiple columns and smaller margins, and less repetition, the cost of preparing House and Senate Journals could be reduced to a degree. It was also suggested that if the format for the printing of bills and resolutions was changed to allow for narrower margins and similar changes, a further savings in printing expenses could also result.

The Committee obtained samples of suggested printing changes for bills, resolutions, and the House and Senate Journals, and after making a comparison of such samples arrived at the conclusion that such changes would result in a savings in printing costs to the state of North Dakota. Therefore the Legislative Research Committee, under the authorization granted to it by Senate Rule 31 and House Rule 32 to prescribe

the form and style of legislative bills and resolutions, has made arrangements to have all bills and resolutions introduced in the Thirty-ninth Legislative Assembly printed in a new, more compact format. It is estimated that this new printing format will save 15 percent of the cost of printing, which, based on the 1963 Session, would amount to approximately \$7,000. The Committee also recommends that a new printing format for Senate and House Journals be adopted that would include narrower margins, the use of four columns when listing names of legislators, listing numbers of bills and resolutions in messages of transmittal and otherwise in a linear form, as distinguished from a columnar form, and the use of abbreviations for Senate and House bills.

Information was presented to the Committee in regard to the amount and type of equipment that has been rented by the Legislative Assembly during legislative sessions, and the cost of such rentals as compared to purchase costs. The feasibility of having the Department of Accounts and Purchases furnish the Legislative Assembly with necessary office and administrative equipment at a nominal cost and re-selling such equipment to other state departments following the Legislative Assembly was thoroughly explored. It is the conclusion of the Committee that a procedure should be adopted providing for the furnishing of necessary office and administrative equipment to the Legislative Assembly by the Department of Accounts and Purchases. New equipment can thus be provided at a rental fee of 10 percent of the cost of the items and such equipment can then be re-sold to other state departments at a 10 percent discount. On this basis there will be no out-of-pocket cost to the Department of Accounts and Purchases, and the Legislative Assembly will have all new equipment each session without the nuisance of storage and inventory requirements. A savings to the state of \$2,605.84 will result as compared to rental costs during the last legislative session. It should be noted that in the case of typewriters it might be desirable in a few instances to permit a rental of specific types of machines from regular rental agencies since a few key secretaries and stenographers might have strong preferences for certain makes of typewriters.

Pursuant to this conclusion, the Legislative Research Committee has written to the Secretary of the Senate and the Chief Clerk of the House of Representatives in regard to such arrangements and, in addition, has prepared Senate and House resolutions calling for the implementation of this program.



# Natural Resources

Senate Concurrent Resolution "B" of the Thirty-eighth Legislative Assembly authorized and directed the Legislative Research Committee to continue its study and revision of the water laws of the state to remove conflicts and ambiguities and ensure their adequacy for the purposes of conservation and maximum utilization of water resources of the state. Senate Concurrent Resolution "F-F" of the Thirty-eighth Legislative Assembly directed the Legislative Research Committee to conduct a study of the outdoor recreational program in North Dakota, with particular emphasis upon: (1) the proper role of each department and agency and municipalities in general; (2) the formulation of long-term objectives of such program and the most desirable means of achieving such objectives; (3) methods of obtaining maximum cooperation between various governmental agencies in joint development and utilization of facilities; and (4) the development of policies in such areas as leasing of property and payments in lieu of taxes for land taken.

These studies were assigned to the Subcommittee on Natural Resources, consisting of Representatives Oscar Solberg, Chairman, Lawrence G. Bowman, Ole Breum, L. D. Christensen, M. E. Glaspey, Donald W. Loder, Kenneth C. Lowe, L. C. Mueller, and Ralph M. Winge; Senators J. H. Mahoney, Oscar J. Sorlie, Grant Trenbeath, and Harry W. Wadson.

## Water Law Revision

### In General

During the 1961-1963 biennium the Legislative Research Committee carried on a very extensive water laws study, resulting in many basic and important changes in North Dakota's water laws. However, the work being so extensive, some matters remained uncompleted in the study. Pursuant to Senate Concurrent Resolution "B", the Committee continued its study and revision of the North Dakota water laws to remove conflicts and ambiguities and to ensure their adequacy for the purposes of water conservation. To accomplish this goal the Committee also requested the assistance of the State Water Commission. Following the review of the water laws, the following changes and amendments are recommended:

1. Legislation be enacted for the correction of errors on applications for water permits and for the correction of errors on water permits;
2. An amendment of existing statutes relating to applications, transfers, and forfeitures of water permits;
3. An amendment of existing statutes relating to the terms of office of the commissioners of water management districts in order to make uniform their expiration date;
4. An amendment of an existing statute relating to the construction and repair of dams in order to provide for a time limit within which the State Water Commission is obliged to return plans and specifications to it for approval;
5. An amendment of existing statutes relating to the construction and repair of dams in order to avoid any future confusion relative to the need for or issuance of water rights and to give the state the authority to protest when the state's political subdivisions refuse to maintain federally-constructed dams; and
6. The repeal of existing statutes relating to applications for water permits and certificates of construction which are felt to be unnecessary or already provided for in other sections.

The State Water Commission submitted to the Committee for their consideration a proposed bill draft to amend existing sections relating to moneys paid out by and reimbursed to the State Water Commission. It was pointed out to the Committee that, presently, the commission is paying its contractual obligations out of a "multiple-purpose operating fund" which was created by legislative Act in 1963. This fund is a standing and continuing appropriation until expended and does not revert to the general fund at the end of the biennium. The amendments proposed to the Committee by the State Water Commission would give the commission more latitude in the participation of construction of dams and recreation facilities and would also help clarify

and expedite accounting procedures. The Committee, therefore, recommends that legislation be enacted to provide for a contract fund from which all contractual obligations of the commission be paid. Any moneys paid back to the commission by any department, agency, or political subdivision of this or another state or of the United States, or by any person or corporation, to meet a portion of the cost of any water project would be deposited with the contract fund. Such legislation will allow the commission to have a continuing contract fund similar to a revolving fund for the construction of water projects in the future.

The Committee also found that under the present water laws water management districts are not authorized to make application for the joint use of drains located within drainage districts. The Committee concluded that it would be advantageous for the water management districts to do so and therefore recommends that legislation be enacted to allow water management districts, upon application to and approval by the county board of drainage commissioners, jointly to use drains located within the drainage districts.

**Statute of Limitations**  
**Pertaining to Claims Against Irrigation Districts**

It has been brought to the attention of the Committee that North Dakota's water laws do not provide for an adequate limitation of time in which claims may be brought against irrigation districts for damages or injuries caused to any person or property as a result of any dangerous or defective condition of any property owned, operated, or under the control of an irrigation district. There are several statutes which limit times in which objections and claims may be brought by affected property owners but these statutes do not seem to cover situations where unforeseen damages or injuries may result in valid claims against an irrigation district from such causes as seepage and flooding. This is a continuing type of injury and might be caused by the construction of a dam or irrigation works constructed many years before. Unless such claims are brought within a reasonable time when construction plans and specifications are available and witnesses still alive, the irrigation district may find it impossible to defend itself from these stale claims.

In checking the present statutes of limitations it was concluded that the time period would

be limited to six years unless it is a continuing injury. Thus it was suggested that it would be beneficial to irrigation districts if a limitation statute similar in nature to one found in the California water laws was enacted. In looking at this California statute, it was found that:

1. A property owner would have to file a claim within ninety days of the time the injury was inflicted or the damage completed;
2. In the case of a continuing occurrence of damage, a property owner could probably extend the time of filing his claim, which brings up the question as to the extent of damages the irrigation district would be liable for; and
3. In the case of wrongful occupation of property, the damages would conceivably be the value of the use of the realty for the time of the occupation not exceeding six years.

The Committee felt ninety days to be rather a short period of time for a property owner to file an action in North Dakota because of the large farms and ranches found in the state. It was conceivable that a rancher might not even see all of his land for several months and thus would have no knowledge of any damage to it. But it was also felt that such a statute would certainly aid an irrigation district in settling claims against it or at least determining their validity, and that the time limit could be lengthened to correspond with North Dakota's situation.

The Committee therefore recommends that legislation be enacted to provide a statute of limitations for cases wherein it is claimed that an irrigation district is liable for negligence and carelessness and that the limitation requires actions for damages to be brought within six months after the claimant has knowledge, or reasonably should have had knowledge, of the injury or damages claimed.

**Control of Artesian and Flowing Wells**  
**Placed Under the State Water Commission**

Under North Dakota's present statutes, authority to control and regulate artesian and flowing wells is under the State Geologist. The

State Geologist does not have adequate staff, facilities, or appropriations to administer the provisions of law regulating such wells. The State Water Commission is already responsible for the regulation and control of all other sources and supplies of water in the state and thus it seemed inconsistent for the State Geologist to be required to regulate and control artesian and flowing wells.

The Committee, therefore, recommends that the authority to control and regulate artesian and flowing wells be transferred from the State Geologist and be placed under the State Water Commission.

## Outdoor Recreation

### Background

“Leisure is the blessing and could be the curse of a progressive, successful civilization. The amount of leisure already at hand is enough to have made many Americans uneasy. Ours is a culture that has always been inclined to look upon idle time with some misgivings for reasons that trace to the Puritan tradition of industry, but which spring also from the historic and very practical need for hard work in the building of a nation. Certainly a substantial adjustment in perspective will be required as we move into a period in which the leisure available to all citizens may be greatly increased.

“In any event, most Americans face the prospect of more leisure time in the future, and thus the challenge of using it for their own enrichment and development as individuals and as citizens. This is precisely the contribution that outdoor recreation can make. For at its best, outdoor activity, whether undertaken lightly or with the serious intent of the perfectionist, is essentially a ‘renewing’ experience — a refreshing change from the workaday world.

“Outdoor recreation also has cultural values that are essential to the health of the Nation. It is a part of the educational process that strengthens men’s minds as well as their bodies; that broadens their understanding of the laws of nature, man’s most precious possession — the spirit which gives life its meaning. These are the qualities which in the long run make a nation and its

people truly great and which find strong nourishment in outdoor recreation.” Excerpt from Outdoor Recreation For America (Rockefeller Report) submitted to President John F. Kennedy by the Outdoor Recreation Resources Review commission (1962).

In 1958 Congress enacted and the President approved legislation establishing a bipartisan Outdoor Recreation Resources Review Commission to study the outdoor recreation resources available on public lands and on other land and water areas in the United States. After more than three years of intensive study and review, the commission completed a comprehensive report and submitted it to Congress. One of the recommendations in this report called for the creation of an agency in the Federal Government to coordinate outdoor recreational activities among the 20-odd federal agencies engaged in that field. The report also recommended that this bureau serve as a focal point of relationship between the Federal Government and the approximately 500 state agencies having responsibilities in such activities.

In 1962, pursuant to the report’s recommendations, the Bureau of Outdoor Recreation was established in the Department of the Interior.

The bureau was made responsible for the:

1. Coordination of related federal agencies;
2. Stimulation of and provision for assistance to states;
3. Sponsorship and conduct of research;
4. Encouragement of interstate and regional cooperation;
5. Conduct of recreation surveys; and
6. Formulation of a nationwide plan on the basis of federal, state, and regional plans.

Also in 1962, a cabinet-level Recreational Advisory Council was established.

To enable North Dakota to cooperate with the Bureau of Outdoor Recreation, Senate Bill No. 184 was introduced during the 1963 Legislative Session. This bill provided for the creation of a state outdoor recreation agency for the purpose of planning and coordinating recreational

projects. The bill was unanimously passed by the Senate but lost in the House, although it had been favorably reported by the Committee on Natural Resources. Senate Concurrent Resolution "F-F" was passed directing the Legislative Research Committee to study the outdoor recreation program.

After the Legislative Assembly adjourned, Governor William L. Guy, by executive order, created the Governor's Committee on Outdoor Recreation. This committee was established to enable North Dakota to deal and cooperate with the Federal Government in the outdoor recreation program and to conduct research, planning, coordination, and publicity within the state.

### Land and Water Conservation Fund Act of 1965

The most important event in the field of outdoor recreation occurring since the 1963 Legislative Session was the passage of the Federal Land and Water Conservation Fund Act. The Act was passed by Congress and was signed by the President on September 3, 1964. The purposes of this Act are to:

" . . . assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing federal assistance to the states in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the federal acquisition and development of certain lands and other areas."

In order to accomplish these purposes, the Act creates a fund from which appropriations will be made by Congress to provide outdoor recreation areas and facilities at federal, state, and local levels. The effective date of the Act is January 1, 1965, and it will continue for 25 years. The fund will acquire revenue from:

1. Admissions and user fees at federal recreation areas meeting certain qualifications;

2. Net proceeds from the sale of federal surplus real property;
3. The existing tax on certain motor fuels; and
4. Advance appropriations by Congress.

The anticipated amount of revenue from these sources may average \$185 million annually, of which approximately \$111 million will be made available to the states. The moneys must be appropriated from the fund by Congress and there is no fiscal-year limitation. Any moneys remaining in the fund for over two years which are not authorized for expenditure, revert to the treasury and will no longer be available for the purposes of the Act.

Moneys appropriated from the fund will be allocated in the ratio of 60 percent for state purposes and 40 percent for federal purposes. This ratio, however, may be varied 15 percent either way by the President during the first five years if it appears that state and federal needs warrant such change. The Secretary of the Interior may make the payments to the states upon such terms and conditions as he considers appropriate for outdoor recreation planning, development, and acquisition of land, waters, or interests in land or waters. The Secretary will apportion the funds available for state purposes for each fiscal year among the several states as follows:

1. Two-fifths shall be apportioned equally among the several states; and
2. Three-fifths shall be apportioned on the basis of need to individual states in such amounts as in the judgment of the Secretary will best accomplish the purposes of this Act. The determination of need shall include among other things a consideration of the proportion which the population of each state bears to the total population of the United States and of the use of outdoor recreation of individual states by persons from outside the state as well as a consideration of the federal resources and programs in the particular state.

Total allocation to an individual state under both (1) and (2) is limited to 7 percent (approximately \$7.78 million) of the total amount allocated to the several states in any one year. It has been estimated that North Dakota's annual apportionment when the program gets into full operation

will be about \$1 million. For fiscal year 1966 North Dakota's share may be from \$500,000 to \$600,000. These funds are not to cover more than 50 percent of the cost of planning, acquisition, or development projects undertaken by the state, and the state's share of the cost must be borne in a manner and with such funds or services as will be satisfactory to the Secretary. These funds, however, cannot be used to pay for any obligation incurred or service rendered prior to the date of approval of the Act.

Before financial assistance will be considered by the Secretary, a comprehensive statewide outdoor recreation plan must be made which, in the Secretary's opinion, encompasses and will promote the purposes of the Act. The plan must contain the name of the state agency that will have authority to represent and act for the state in dealing with the Secretary. Of secondary importance for inclusion in the plan is an evaluation of the demands for and supply of outdoor recreation resources and facilities in the state and a program for implementation of the plan. Other information may be required if the Secretary deems it necessary.

Payments made to the states are restricted to only those planning, acquisition, and development projects approved by the Secretary. Before such approval the Secretary must receive appropriate written assurance by the state that the state has the ability and intention:

1. To finance its share of the cost of the particular project; and
2. To operate and maintain by acceptable standards, at state expense, the particular properties or facilities acquired or developed for public outdoor recreation use.

It should be noted that the Governor's Committee on Outdoor Recreation agreed that the Bureau of Outdoor Recreation should be advised, in reply to its inquiry, that North Dakota estimates and expects to have funds available for matching purposes in fiscal year 1966 in the amount of \$600,000. Anticipated use for such matching funds would be for:

1. Development of a statewide plan, \$25,000;
2. Land acquisition, \$200,000; and
3. Development of recreation areas, \$375,000.

The Governor or the authorized agency of the state can receive payment of these funds and, if consistent with an approved project, the funds may be transferred to a political subdivision or other appropriate public agency. One other condition to be met before such funds will be transferred to the state is that the state must agree to provide reports as the Secretary may prescribe, and adopt prescribed fiscal control and fund accounting procedures.

### State Outdoor Recreation Agency

At present, outdoor recreation in North Dakota is not administered or coordinated by a single agency. Various phases of outdoor recreation are administered, supervised, maintained, controlled, and developed by the State Water Commission, the State Historical Society, the State Game and Fish Department, and the State Highway Department. Under all four, outdoor recreation is more of a sideline and is, in reality, only incidental to the primary purpose of each department or agency. There is some degree of informal coordination and sometimes joint effort in particular phases of outdoor recreation with each other. There is, however, no statutory authority for any overall plan or coordinated movement in the area of outdoor recreation. Now that the Land and Water Conservation Fund Act of 1965 has been enacted by Congress, the need for a coordinating agency to plan and coordinate outdoor recreation projects is even more evident. Under this Act, a comprehensive statewide outdoor recreation plan is required before the Secretary of the Interior will even consider financial assistance. There is also the need for a state agency which will have the authority to represent and act for the state in dealing with the Secretary. There must also be an evaluation of the demand for and supply of outdoor recreation resources and facilities in the state. Other statewide information will probably be required by the Secretary when the time for final consideration of the state's qualifications and needs draws near.

The Committee, therefore, recommends legislation which would create a State Outdoor Recreation Agency composed of the State Engineer, the State Game and Fish Commissioner, the Superintendent of the State Historical Society, the Chairman of the State Board of Soil Conservation Supervisors, the State Parks Director, the Chairman of the State Water Commission, the State Highway Commissioner, and repre-

sentatives of any other department or agency appointed thereto by the Governor. The Committee also recommends that the State Water Commission be designated as the administrative department to carry out the policies and directives of the agency.

It was felt the primary function of the Outdoor Recreation Agency should be that of planning and coordinating related programs on all governmental levels and, incidental thereto, to become the focal point within the state for the many activities related to outdoor recreation. To do this, it is recommended that the agency be given the power, authority, duty, and general jurisdiction to plan, implement, appraise, coordinate, and encourage outdoor recreation; and to apply for and to receive federal grants-in-aid for recreation purposes. Such funds, except for certain planning purposes, would be expended only through existing state departments that presently have authority to operate outdoor recreation facilities. The agency should also be required to determine and make certain that sufficient funds, including those funds needed for maintenance, will be available from the state or its political subdivisions and that the agency keep financial and other related records of the project.

### Management of State Parks

The need for a complete reorganization of statutory provisions relating to the management and supervision of state parks in North Dakota became evident to the subcommittee early in the course of their study. Under present laws the state park system is under the direction and supervision of a State Parks Committee of five men; is also by custom and policy at least somewhat under the supervision of the Superintendent of the State Historical Society; and, finally, is under the direction and supervision of the State Historical Society Board consisting of fourteen people.

It may seem odd that the state parks system is relegated to the equivalent of a fourth-level position of importance in the structure of government in the state, but the history of the development of the state parks system explains how this came about. The State Historical Society, a private corporation which had the official blessing of law, acquired historical sites as trustee for the state of North Dakota throughout, and in some instances developed picnic and other recreational facilities at these sites for use of the

visiting public. As time passed and no agency was officially designated for the responsibility for managing or supervising parks, more and more of these sites were developed for some type of recreational purpose. When the Federal Works Programs and the CCC Programs of the 1930's came into existence, the State Historical Society was the only agency having any responsibility of state parks development, and so it was logical that it continue its activity in this field. However, at no time did the Legislature by statute develop a definite organizational pattern for the operation of parks. Perhaps in the past this has not seemed a matter of great urgency since North Dakota parks were operated upon such a modest scale and with such a modest budget that it did not seem unreasonable to operate the system as an incidental appendage to the State Historical Society. However, today in North Dakota, as across the Nation, the rapid upsurge of interest in and use of outdoor recreational facilities has resulted in increased interest in improving state parks and outdoor recreation facilities to meet public demand. The new Federal Land and Water Conservation Fund Act will result in a substantial acceleration of acquisition and improvement of parks which, if accepted by North Dakota, will require improvement in the organizational structure for the management of parks.

It simply is impossible for the Director of State Parks to consult with all those in positions of authority above him and expect policies to be formulated and executed during the time in which such decisions must be made. If the State Parks Director must consult the five people on the State Parks Committee, the Superintendent of the State Historical Society, and the fourteen-man State Historical Society Board, and obtain their approval, he must in effect obtain the approval of twenty different people before he can move on any matter involving a major decision. Failure to properly consult them and obtain general policy approval for his activities will result in dissatisfaction with him and probably his eventual discharge. Consequently, the present organizational structure encourages him to do the safe thing—take no action until he has been able to consult with and obtain the approval of all those in authority above him. When twenty people are involved in making decisions who by the nature of the organizational structure will not all meet together at the same time, this will be a lengthy process and will not be conducive to a vigorous and adequately managed park program during a period of expansion. It is not even desirable with the present scale of operations.

There is another factor, although less tangible, that was considered by the Committee. The State Historical Society Board is made up of nine citizens appointed by the Governor from the membership of the State Historical Society, with a requirement that they have been members of the society for at least three years prior to appointment. The other five members are state officials, some of whom have no direct official relation to any outdoor recreation activity. It is only natural that members of the State Historical Society who have been members for at least three years will be interested in the historical aspects of the board's work to a much greater degree than in state parks. In addition, there is a natural trend of historical interest into the field of natural sciences, which differs from the upsurge of interest in and demand for outdoor recreation facilities. Consequently, the present membership of the State Historical Society Board does not guarantee a board consisting of at least a fair number of members who have a strong and prime interest in park development and operation or general outdoor recreation activities. For these reasons, the Committee believes there was a definite need to reorganize the structure of the state parks system and to alter the management responsibility for the operation of the state parks system.

The Committee reviewed the laws of other states in regard to the management of outdoor recreation activities and found a national trend toward the unification of outdoor recreation and natural resources development in a single department. The Committee seriously considered recommending the consolidation of several agencies into a single Department of Natural Resources and Outdoor Recreation. Considered under such a proposal was the transfer to this new department of the State Parks Division, the State Game and Fish Department, and the State Water Commission or State Engineer's office. These departments have much in common in the development of natural resources and outdoor recreation projects, and have at times jointly participated in their construction. In addition, all have field maintenance forces that could be jointly employed in carrying out the responsibilities of all three divisions in an economical fashion. The greater coordination that would also result from their unification as three separate divisions within a single department would ensure maximum cooperation in multi-purpose outdoor recreation and natural resource development projects and maximum utilization of the special skills and experience found in each department. It is pos-

sible that the structure of the State Water Commission could be altered somewhat by the addition of several members whose primary interest would be in the field of parks and game and fish, to serve as a management board for the unified department, or to serve as an advisory committee to the head of the department with the department head appointed by the Governor with the consent of the Senate. It was the consensus of the Committee that this was the most desirable way in which to organize the development of natural resources and outdoor recreation and should be the long-term goal of the state.

However, the Committee did not feel prepared to make such a sweeping recommendation at this time for several reasons: First, it is necessary to reorganize the State Parks Division as a definite and distinguishable division with definite properties for which it is responsible. Further, there is a need to develop an internal organization suitable to carry on these responsibilities. The division of historical and park properties upon the basis of primary historical importance and those to go to the State Parks Division which have primarily recreational interest, is a matter of some concern to many longtime members of the State Historical Society. It should, if possible, be accomplished with great care and with a minimum of friction between the State Historical Society and the state outdoor recreation interests. This might be difficult unless the State Historical Society Board and representatives of the State Historical Society have a direct means of participation in the division of properties. Second, there are those who feel that such a reorganization of the three state departments at the very moment the state is on the verge of an accelerated outdoor recreation program could handicap the state in beginning this program through the disruption of established patterns and authority. It might be preferable to permit the new outdoor recreation program to come into existence before considering consolidation. Attempting to reorganize the departments at the same time they are implementing an accelerated program may be difficult. Finally, there are many specific responsibilities and duties of each of the departments that would have to be weighed carefully in order to determine a sound operational pattern and this type of study would consume more time than the Committee has available.

The Committee therefore decided to recommend a more limited type reorganization of the State Parks Division with the thought that after



the internal structure and management of the division is more definitely set forth and the properties divided, an operational pattern developed, and the new outdoor recreation program implemented, it would be possible for the Legislative Assembly at a future date to consider the consolidation of the State Parks Division, the State Game and Fish Department, and the State Water Commission into a single Department of Natural Resources and Outdoor Recreation.

It is recommended by the Committee that the State Historical Society Board be renamed the "State Historical and Parks Board" and consist of the nine members appointed by the Governor and three ex officio members consisting of the State Engineer, the State Game and Fish Commissioner, the State Forester, and the State Highway Commissioner. These three state officials have a direct interest in and responsibility for some fields of the state outdoor recreation program, and this will provide a means for cooperation and coordination of the activities of the three departments with those of the State Parks Division. Two members of the State Parks Committee are concurrently serving as members of the State Historical Society Board. Since the Governor has the responsibility of making new appointments to this board on July 1 because of the expiration of the terms of three members, it will be possible for the Governor to ensure that a fair proportion of the board is made up of people having a strong and vigorous interest in the state parks system as distinguished from a primary interest in the historical aspects of the board's activity. The Committee further recommends that the statutory requirement that members of the board be members of the State Historical Society for at least three years prior to their appointment to the board be deleted in order to give the Governor reasonable freedom in selecting people who have an interest in parks and outdoor recreation, as well as those who have a strong interest in the historical aspects of the board's responsibility.

This board would then be given the responsibility of administering, planning, and coordinating two separate and independent divisions to be known as the State Historical Society Division and the State Parks Division. The bill recommended by the Committee would further define the responsibilities of each division and, in general, set forth their structure and their respective responsibilities. The State Historical Society and Parks Board would appoint a Superintendent for the State Historical Society Division and a Director for the State Parks Division. Each

would act as the chief administrative or executive officer for his respective division and carry out all the policies and directives of the board, supervise all employees and activities of their respective divisions, and perform such duties and have such other responsibilities as might be delegated to them by the board. The bill recommended by the Committee would separate the functions of the two divisions and make each a recognizable division in terms of responsibility, but would provide a means for the board to ensure adequate cooperation and joint use of personnel or equipment where desirable. Numerous other amendments to present law are included in the bill, which would facilitate the operation of both divisions, but which are not set forth in this report for the sake of brevity.

It is believed by the Committee that the recommendations and the legislation presented would provide a structure that can result in a vigorous outdoor recreation program, and maintain a strong Historical Society Division program. The interests of the State Historical Society and the properties it has acquired would be protected through members of the board who are primarily interested in the Historical Society program, and the interest of the state in promoting its parks program would also be represented by members of the board whose primary interests lie in this field. It should provide an organizational structure that would permit a vigorous state parks program capable of taking advantage of opportunities brought forth by the new federal Act providing funds to the state for such purposes. In short, it should pave the way for the provision of better facilities and parks for outdoor recreation.

The need for funds to match those funds available under the Land and Water Conservation Fund Act was also discussed by the Committee. It is anticipated that some \$600,000 in matching funds will be needed annually in order to take complete advantage of the funds made available under this Act. The State Water Commission, the State Game and Fish Department, and the State Parks Division along with some political subdivisions engaged in projects which can qualify, will be able to contribute some of the funds needed in the course of their regular operations. It is, however, generally concluded that more funds for matching will be needed if the state is to make maximum use of the available federal funds. Unfortunately, the late passage of the federal Act did not allow enough time for the Committee to consider possible revenue sources for these funds.



## Pardon and Parole

During the latter part of 1963 the Governor, in a letter to the Chairman of the Legislative Research Committee, expressed some concern that the new Parole Board established by the 1963 Legislature might not be attaining the objectives intended by the Legislature. The Governor urged that the Legislative Research Committee assign a subcommittee to consider problems that had arisen. The Chairman decided that the subject matter could not readily be handled by any of the established subcommittees, but wishing to honor the Governor's request, appointed a committee to review the problems of the new Parole Board.

This Committee consisted of Senator George Longmire, Chairman of the Legislative Research Committee; Senator Wm. R. Riechert, Chairman of the Legislative Research Committee's Subcommittee on Constitutional Revision; Representative Walter Burk and Judge Adam Gefreh who served on the Legislative Research Committee's Subcommittee on General Affairs which made the original study; Mr. Wallace E. Warner, Chairman of the Parole Board; Mr. Linn Sherman, and Mr. William S. Murray, representing the State Bar Association of North Dakota; Mr. J. Arthur Vandal, the state's Chief Parole Officer; and Mr. Irvin Riedman, Warden of the State Penitentiary.

Unfortunately, illness prevented the attendance at the meeting of Mr. Wallace E. Warner, and the press of business prevented the attendance of Mr. William S. Murray.

The Committee reviewed a letter written by the state's Chief Parole Officer to the Governor at the Governor's request, outlining the problems which developed during the course of the first three meetings of the Parole Board. Some of the problems set forth in the letter were that the Parole Board did not have the power to pardon, commute sentences, fix indeterminate sentences to expire prior to serving the maximum term in confinement or on parole, transfer inmates to the State Hospital for observation and treatment, grant immediate leaves when death or serious illnesses occur in the inmates' families, transfer inmates who qualify as veterans to the Veterans Hospitals, parole inmates who have detainers against them, or release inmates who are wanted in sister states for crimes committed outside the state of North Dakota.

The Committee made a study of the jurisdiction and powers of the Board of Pardons and the Parole Board and found that under present law the Board of Pardons has jurisdiction and powers over fines, forfeitures, reprieves, commutations, pardons, conditional or absolute pardons, emergency paroles, transfer of mentally ill inmates to the State Hospital, and transfer of inmates to federal institutions; and to provide for the examination of condemned criminally insane convicts. The Committee found that the Parole Board had the powers and jurisdiction over all persons sentenced under the suspended sentence law (probationers), to parole inmates who have detainers lodged against them by any other authorities, to transfer parolees to the State Hospital, and jurisdiction over those persons sentenced under indeterminate sentences with certain qualifications.

Another problem discussed concerned the treatment facilities at the State Hospital for the criminally insane. In reviewing and discussing the matter with the members of the State Board of Administration, it was found that the population at the State Hospital was at its lowest point in thirty years and that there was one ward which could be renovated and made usable for maximum security purposes for the patients who are criminally insane. The Committee recommended that the Board of Administration request from the Legislature the necessary funds to accomplish this project.

The Committee reached the conclusion that the Parole Board, as organized by the 1963 Legislature, should be continued; that those powers which can be transferred from the Board of Pardons by legislative action be transferred; and that the Subcommittee on Constitutional Revision review section 76 of the state Constitution with the view of leaving only the powers of pardon, reprieve, and the remission of fines and forfeitures, except in cases of treason and impeachment, with the Board of Pardons.

Senate Bill No. 52 incorporates the suggestions by the Committee by allowing the Parole Board to parole an inmate prior to the expiration of a minimum term under an indeterminate sentence and also gives the Parole Board the power to set and determine the maximum sentence to be served under an indeterminate sen-

tence. The bill also eliminates certain statutory requirements for parole and leaves the decision largely to the discretion of the Parole Board. Further, the bill allows the Warden to directly transfer an inmate to the State Hospital for analysis and treatment if needed without securing the approval of the Board of Pardons but the Warden must file a report of such transfer with the Parole Board. The bill also allows the Warden to transfer for psychiatric treatment those inmates convicted for rape. Finally, the bill

sets forth a statutory definition of commutation because it was found that the Board of Pardons presently interprets the word as requiring a full reduction in a sentence to the sentence already served. This appears to be a stricter interpretation of the power of commutation than is normally used and the Committee believes the Parole Board should have authority to reduce sentences to less than the maximum term, but still greater than the time already served.

# State, Federal, and Local Government

Senate Concurrent Resolution "Q-Q" of the 38th Legislative Assembly directed the Legislative Research Committee to study the present laws governing the division, consolidation, and disorganization of the counties in order to ascertain their adequacy.

House Concurrent Resolution "S" of the 38th Legislative Assembly directed the Legislative Research Committee to study the North Dakota welfare laws, policies, programs, and their administration and enforcement, with a special emphasis as to the need of medical advisory committees, sources of income, expenses, eligibility requirements, and policy and budget standards.

Both of these studies were assigned to the Subcommittee on State, Federal, and Local Government, consisting of Senators George Longmire, Chairman, Richard E. Forkner, Emil E. Kautzmann, Kenneth L. Morgan, Elton W. Ringsak, Iver Solberg; and Representatives Gordon S. Aamoth, Emil Anderson, J. L. Connolly, Richard Elkin, William N. Gietzen, Brynhild Haugland, Harold R. Hofstrand, Sybil Baker Kelly, Anna Powers, M. C. Tescher, and Vernon E. Wagner.

Because of the diversity of these two subjects this report is submitted in two parts. Part I presents the Committee's study on county government reorganization, and Part II concerns itself with the welfare study.

## PART I

### COUNTY GOVERNMENT REORGANIZATION STUDY

#### Introduction

County reorganization, both in administration and consolidation, has received little attention in most States of the Union since the early 1930's. Presently, however, some States are again reviewing their county governments. Some are studying only improvements in administration or home rule or consolidation that could be made.

South Dakota (1962), Minnesota (1961), and Iowa (1959) have all made studies in varying degrees of county government. Some of their findings and conclusions have been presented in this report, as well as a survey of the legal status of our counties as political subdivisions and the legal status of elected officials of the county.

Although the Committee was primarily concerned with county consolidation the report also presents information relating to county office consolidation, since most of the other States seem to find that to study one, one must study the other. This report does not attempt to present all of the various problems concerning county government nor their solutions.

#### Constitutional Status of North Dakota Counties

Sections 166 through 173 of our Constitution relate to county and township organization. Sections 166, 167, 168, and 169 pertain to the organization and elements of the physical plan of the counties. Sections 170, 172, and 173 relate to the administrative features of the counties. In

some States county organization in all aspects is controlled absolutely by the legislature. In these States the legislature can consolidate or divide any county and create and take away county offices. This is not so in North Dakota.

Our Supreme Court has repeatedly said that counties in North Dakota are political subdivisions of the State. They are public corporations through which the State itself functions. They are creatures of the Constitution and people and not creatures of the legislature. In their Constitution the people have reserved to themselves the right to have certain local officers perform certain governmental functions. The legislature has no power to deprive the people of the right, thus reserved, but the right exists and extends only so far as it is reserved by express or implied constitutional restrictions. The legislature then does have the authority to define by law the rights and powers of a county except when those rights or powers are expressly given or denied by the Constitution.

Our Supreme Court has also spoken about the administrative features of our counties as outlined in the Constitution. Basically, the cases state that the Constitution allows the counties through their electorate to choose their type of county government from various plans directly set forth in the Constitution or optional plans created by the legislature. Prior to the adoption of any one of the plans, section 170 of the Constitution requires that the county be organized

as set forth in sections 172 and 173. Section 172 requires that the fiscal affairs of the county shall be transacted by a board of county commissioners consisting of not less than three nor more than five commissioners. Section 173 names the other officers of the county, which consist of a register of deeds, county auditor, treasurer, sheriff, state's attorney, county judge, and a clerk of the district court.

At this point in the governmental organization of a county, if the electors do not select an optional plan as set forth by the legislature, the county government remains constitutionally organized under sections 170, 172, and 173. The county government as organized directly from the Constitution appears to be more removed from the control of the legislature. It would be unconstitutional for the legislature to do away with any of the offices named, and it would also be restricted in taking away duties which are inherent in the named offices and similarly would be restricted in adding duties which are not legally compatible through custom and usage to the office.

### North Dakota County Government

Our counties are agents of the state government. County officials enforce state criminal laws locally; they serve the district court; they administer certain state welfare programs; they collect state and local taxes; and they administer other state programs, which, if there were no counties, the state would have to administer through some other unit of government.

One reason the county has been given these jobs is that this decentralized administration is convenient. The courthouse of each county has been a ready-made, handy place to get work done. Just as important a reason, probably - for surely it is a result of this practice - is to permit some local control over these state functions and programs. County government is more than an administrative area for the State. It provides services which are local in nature. In fact, it is for these services that most county money is spent, and not on the many ministerial tasks taken care of for the State. This is not to say that counties have much choice about which services they will provide. They definitely do not. Counties cannot provide any service not authorized by State law, and every county must provide certain local services. In some cases the legislature has left it to the people of each county to decide whether they want a service such as a highway engineer or planning commission or

county agents. Although counties have little discretion about which services they will give, the county officials are given leeway in choosing how to perform these various services and how much to spend on them. How much leeway is dependent upon how restrictive the State law is and the amount of State supervision the legislature has provided for each particular service. County governments also serve other local units of government. Major examples are property tax collection for municipalities and schools and the services of the county school superintendent's office to school districts.

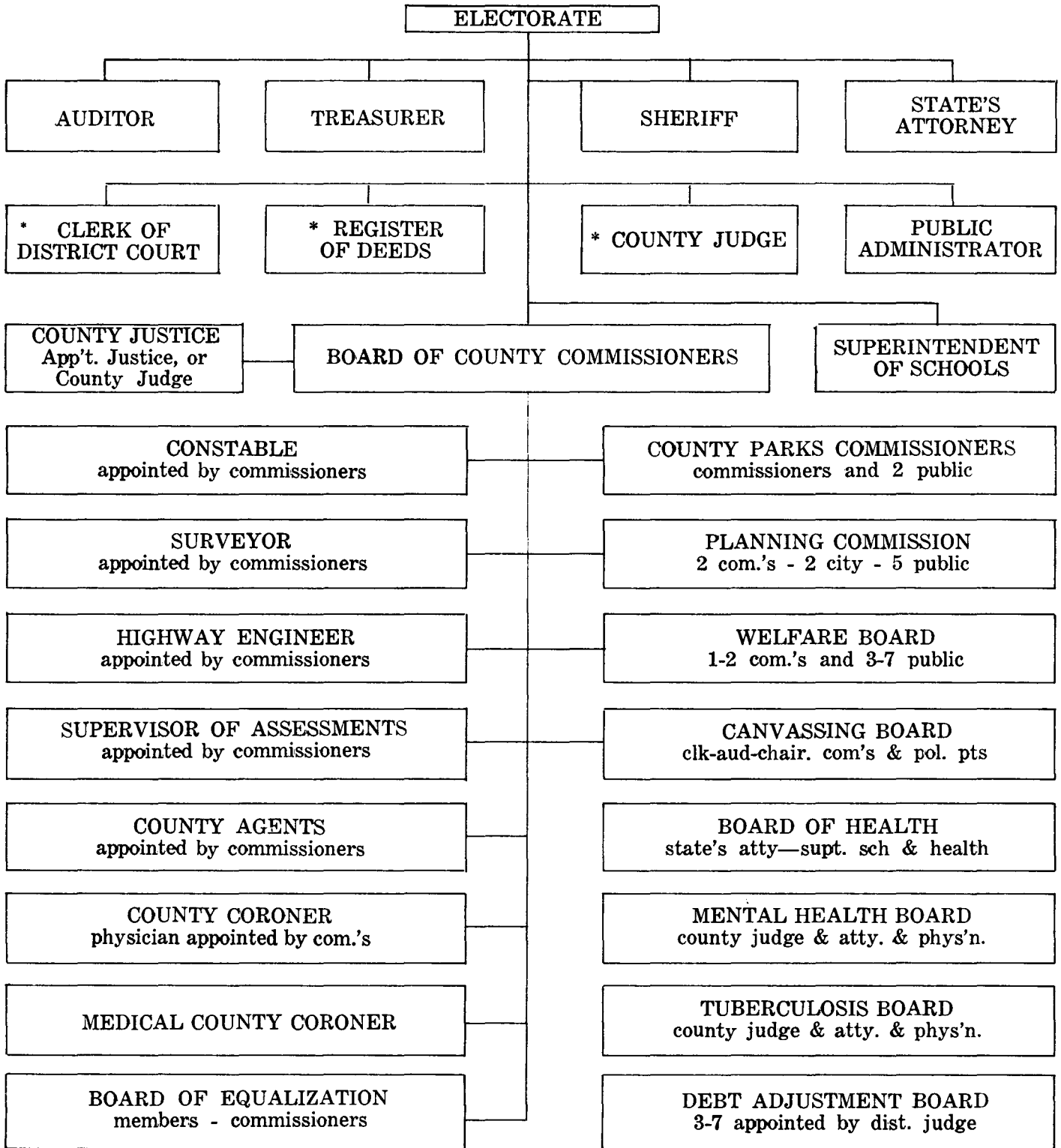
In summary, in many respects, counties are pretty much told what to do by the State. The legislature in many instances could have even more control, or it could permit more local control. On the other side of the coin, there is significant local self-government in these respects: 1. each county elects its own officers; 2. each county, within limits, makes its own tax levies and decides how it will spend its money; 3. each county can decide whether to provide certain services the legislature has authorized, but not required; and 4. in the absence of detailed statutes which prescribe how a service or function must be performed, county officers determine the policies necessary to get the job done.

### How Is County Government Organized To Get Its Work Done?

By the Constitution and State law, all counties are organized in the same way or have the same organizational alternative. Many of the persons in charge of county offices and departments are directly responsible to the people rather than any other county officer. The accompanying charts show the various organizational plans a county may use and which county officials are elected and which are appointed.

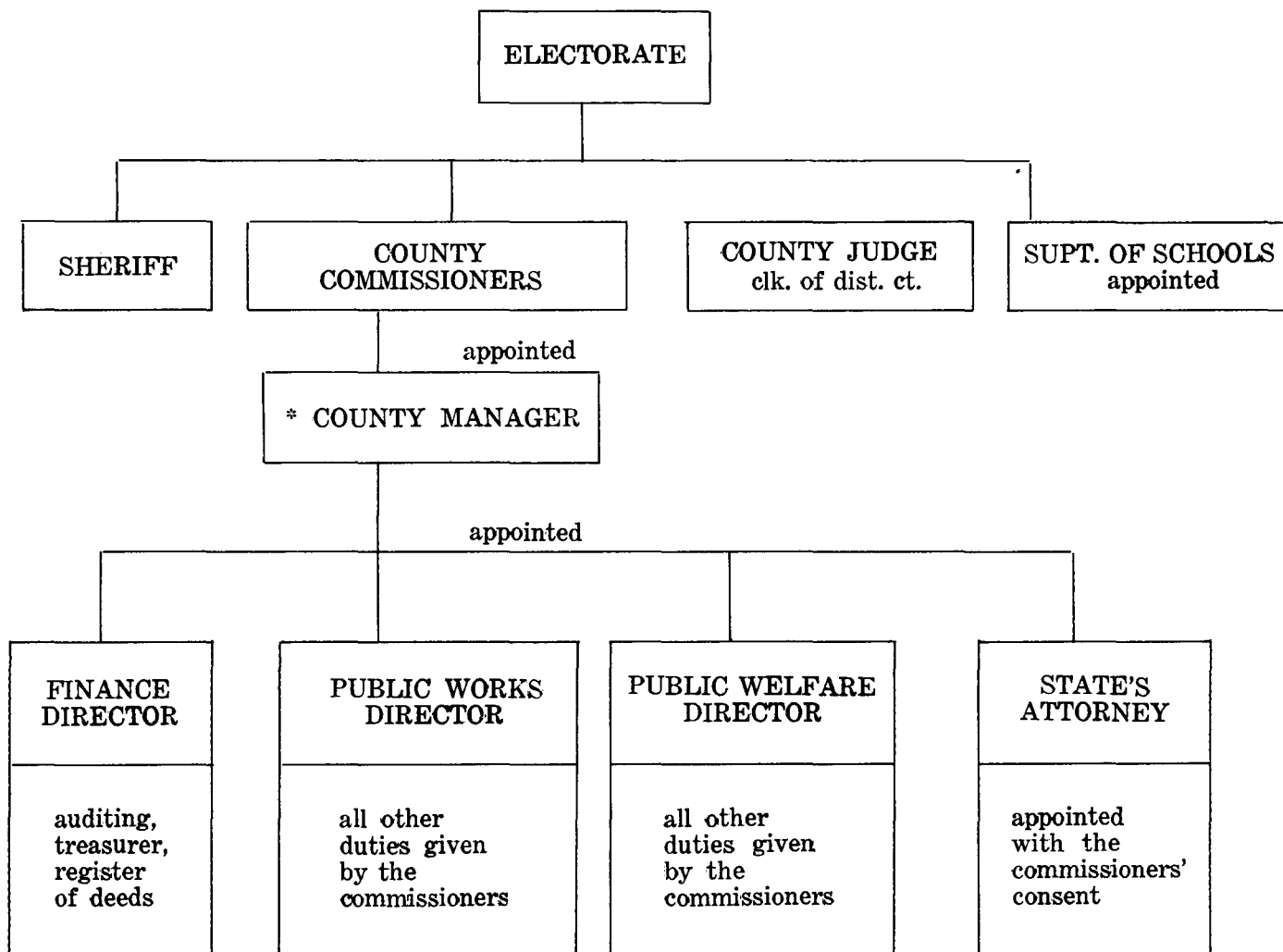
Each elective officer is required by State law to perform certain tasks. He is told by law what to do and, sometimes, how to do it. But the work is not all cut and dried in the law, and he is called upon to show his administrative talents in deciding how best to fulfill his duties. His job is to carry out the law and to satisfy the voters. He is not responsible for the rest of the operation of county government, nor is he responsible to any other county official. The board of commissioners, however, have authority to set the budget for each office and in some instances control the hiring of employees. Following the charts is a brief statement concerning each county officer.

**Constitutional County Administration**



\*In counties having 15,000 or less the county judge is ex officio clerk of district court and in counties having less than 6,000 the register of deeds is ex officio clerk of district court and county judge.

**County Manager Form**  
Chapter 11-09 NDCC



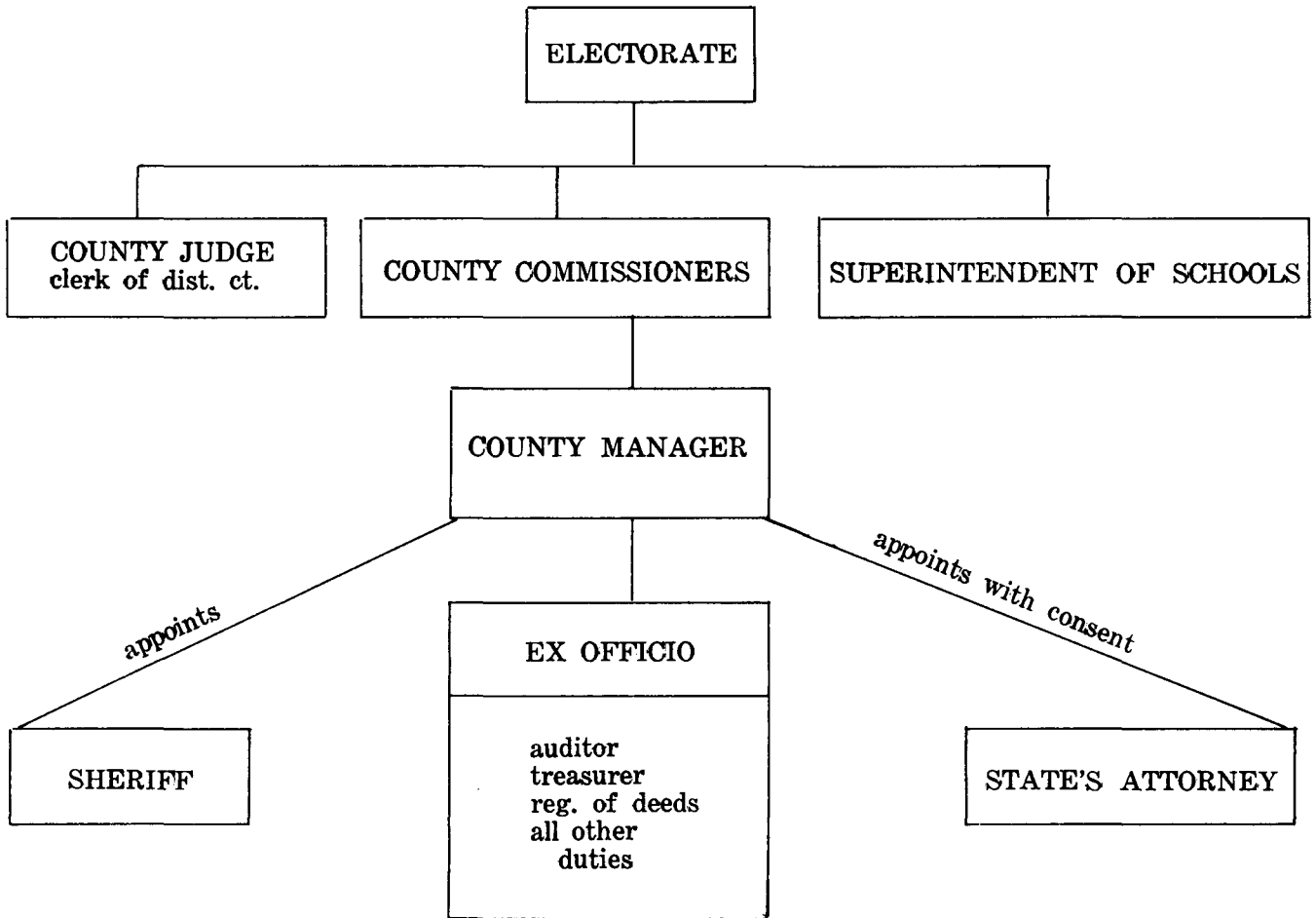
\*County manager may, with commissioners' consent, be a director of one or more departments.

Upon petition filed with the county auditor signed by not less than 35 percent of the qualified electors of the county as determined by the total number of votes cast for the office of governor at the last general election, asking that an election be held on the question of the adoption of one of the forms of county managership and specifying which of the forms is to be submitted, the board of county commissioners shall submit the question at the next regular primary or gen-

eral election or the question may be submitted by the county commissioners without a petition pursuant to a resolution adopted by not less than two-thirds of the entire board. The question must obtain 55 percent of the vote at the election submitted. The county manager serves as the administrative head of the county and is responsible for all which the board has authority to control. The board of county commissioners may establish additional departments.

County Manager Short Form

Chapter 11-09 NDCC

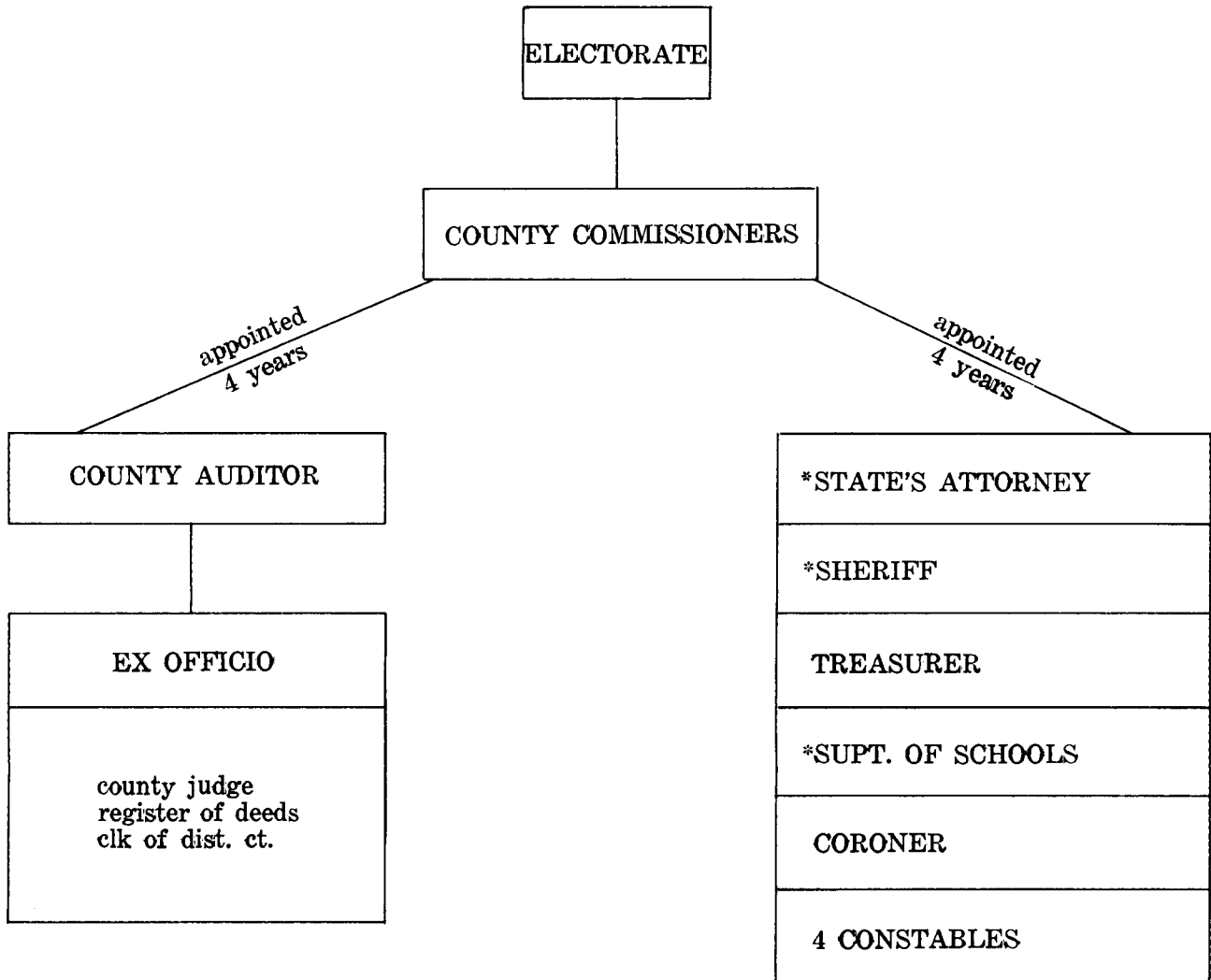


Upon petition filed with the county auditor signed by no less than 35 percent of the qualified electors of the county as determined by the total number of votes cast for the office of governor at the last general election, asking that an election be held on the question of the adoption of one of the forms of county managership and specifying which of the forms is to be submitted, the board of county commissioners shall submit

the question at the next regular primary or general election or the question may be submitted by the county commissioners without a petition pursuant to a resolution adopted by not less than two-thirds of the entire board. The question must obtain 55 percent of the vote at the election submitted. The county manager serves as the administrative head of the county and is responsible for all which the board has authority to control.

**Consolidated Office Form**

**Chapter 11-08 NDCC**



**\*These offices can be filled by appointing adjoining county officials for two years at one-half of their salary.**

To effect this form, a petition must be filed with the county auditor with signatures of 40 percent of the qualified voters in the county. The plan must obtain 55 percent of the votes at the primary or general election at which it is presented. No elected officer then in an office which will no longer be an elective office shall be retired prior to the expiration of his term. The incumbent county judge, register of deeds, and clerk of the district court shall continue in office until succeeded by the county auditor appointed pursuant to the provisions of this chapter. Any

appointed officer may be removed by the governor or by judicial proceedings.

The county auditor is the chief administrative officer of the county and may appoint, subject to the approval of the county commissioners, a deputy register of deeds, a deputy clerk of the district court, and a clerk of the county court. He may also employ such clerks, stenographers, and other county employees as may be required to perform the duties under his direction.



## ELECTED COUNTY OFFICERS

### Board of County Commissioners

Each organized county has a board of commissioners. The board may consist of not less than three nor more than five members, each of whom is chosen by the qualified electors of the district of which he is a resident. The term of office is four years. The general duties of the board are to superintend the county fiscal affairs and make an annual report of same; to superintend the conduct of respective county officers; and many other duties specified in the law. Some of the main powers of the board are to institute and prosecute civil actions; to manage, buy, and sell county land; to levy taxes; to perform certain road and bridge work; to establish election precincts; to supply the necessary equipment to other county officers; to grant right-of-way to various public utilities; and many other special powers as granted by law.

### County Auditor. Ch. 11-13

The auditor is elected for a term of four years. He is the chief financial officer and keeps a complete record of all the financial transactions. He is the secretary to the board of commissioners and the principal ministerial officer of the county.

### County Treasurer. Ch. 11-14

The treasurer is elected for a term of four years. He is the collector and payer of county funds as well as the keeper of township and school district funds.

### Sheriff. Ch. 11-15

The sheriff is elected for a term of four years. The principal duties of the sheriff are to preserve the peace; to enforce state laws; to serve all process and notices; and to perform as enforcement officer of the district court.

### State's Attorney. Ch. 11-16

The state's attorney is elected for a term of four years. He is the legal officer for the county and state in all actions brought by or against either.

### Clerk of the District Court. Ch. 11-17

The clerk is elected for a term of four years except when the county has a population of less than 6,000, which causes the register of deeds to be ex officio the clerk or in counties of less than 15,000 population the county judge is ex officio clerk. The general duties of the office are to keep the records of the court and record all judgments made by the court.

### Register of Deeds. Ch. 11-18

This is an elective office with a term of four years. His primary duty is to keep a record of all land holdings and transactions made within his county. He is ex officio the clerk of the district court in counties having a population of less than 6,000.

### County Judge. Chs. 27-07 and 27-08

The county judge is elected for a term of four years. The county court has original jurisdiction in all probate matters and limited jurisdiction in civil and criminal matters. He is ex officio clerk of the district court in counties having a population between 6,000 and 15,000.

In county courts of increased jurisdiction, the above elements of office remain the same except that the court has increased jurisdiction in civil and criminal matters.

### Public Administrator. Ch. 11-21

The office is elective and has a term of four years. He is ex officio guardian in and for the county of all estates of deceased, minor, and incompetent individuals in specified instances as prescribed by law.

### County Superintendent of Schools. Ch. 15-22

The superintendent is elected and must be a graduate of an accredited teachers college and serves for a term of four years. The superintendent has the general superintendency of the schools in the counties except in districts which employ a city superintendent of schools, and performs other functions by state law.

**Other County Offices, Boards, and Commissions**  
**Constable. Ch. 11-15**

The constable is appointed by the board of commissioners for an indefinite term. He has the general powers of a peace officer within his county. He receives no salary but may charge fees for serving process the same as the sheriff.

**County Coroner and Medical County Coroner.**  
**Chs. 11-19 and 11-19A**

The county coroner is appointed by the board of county commissioners for a term of two years. He must be a licensed physician and is the medical county coroner by virtue of his office. As county coroner his primary duty is to accede to the duties of the sheriff when such office is vacant and an inquest is required to determine the cause of death of any individual. As the latter officer, his primary duty is to determine the cause of death arising from accidental or unusual circumstances.

**County Surveyor. Ch. 11-20**

The county surveyor is appointed by and serves at the pleasure of the board of county commissioners. His primary duty is to make all land surveys within the county when so requested by private or county officials.

**County Highway Engineer. Ch. 11-31**

This officer is appointed and created by the discretion of the board of county commissioners or created by the voters. He must be a qualified highway engineer and can be removed by the voters if the office is created by the voters, or by action of the board of county commissioners. His principal duty is to plan the highways and roads of the county.

**County Planning Commission. Ch. 11-33**

This commission may be created by the board of county commissioners. There are nine members appointed by the board of county commissioners of which two are appointed from the board of county commissioners; two from the governing body of the county seat; and the remaining members from the county at large. The commission is charged with the duty to protect, guide, and regulate the overall advancement and

improvement of the county in physical and administrative matters.

**County Supervisor of Assessments. Ch. 11-10**

Appointed by and serves at the pleasure of the board of county commissioners. His primary duty is to supervise all county assessors.

**County Debt Adjustment Board. Ch. 11-26**

The board consists of three to seven members appointed by the judges of the several judicial districts, which members serve at the judges' pleasure. The board attempts to conciliate between a debtor and his creditors.

**Board of County Parks Commissioners. Ch. 11-28**

The members of the board of county commissioners and two residents also appointed by the board of county commissioners constitute the above board. The two appointed members serve one-year terms. The board has the power to do all necessary things relating to county parks in maintenance; to accept gifts of land and money; exercise police powers; and to establish rules and regulations relating to the parks.

**County Agents. Ch. 4-08**

If the agent is wanted by the electorate the board of county commissioners appoints one from candidates submitted by the Extension Division of the North Dakota State University of Agriculture and Applied Science. The agent is jointly supervised by the Extension Service and the board of county commissioners.

**County Board of Equalization. Ch. 57-12**

The board of county commissioners constitutes this board. The board equalizes the assessments made by the village, city, and township boards of assessment.

**County Canvassing Board. Ch. 16-13**

The board is composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and the chairman of each of the county committees of the two political parties. The board's primary duty is to canvass the county election returns.

### County Board of Health. Ch. 23-03

The board consists of the state's attorney, county superintendent of schools and superintendent of public health, and has general supervision and inspection of all types of health hazards which may or could develop.

### County Mental Health Board. Sec. 25-02-11

The board consists of the county judge, an attorney, and a physician appointed by the board of county commissioners. The board's primary duty is to take cognizance of applications to the board for admission to the State Hospital or for the safekeeping and treatment of mentally ill persons.

### County Tuberculosis Board. Sec. 25-05-13

The board consists of the county judge and an attorney and a physician appointed by the board of county commissioners for a term of two years. The board controls admission to the State Sanatorium, or other place of care, of certain affected persons.

### County Welfare Board. Ch. 50-01

The board consists of five, seven, or nine members of which one or two are county commissioners. The remaining members are appointed by the board of county commissioners for a term of three years. The principal duties of the board are to supervise all welfare activity of the county, as well as to supervise and administer the state plans.

### County Administration and Office Consolidation

Before proceeding into any specifics concerning our own counties, it was felt that the general conclusions and facts found by other States should be briefly presented. The following interesting comments and facts are contained in a recent report from South Dakota.

"County government in South Dakota is confronted by many of the problems facing county government generally in the United States. County government was established when transportation and communication systems were far different from those of today. The average citizen now knows more about government in Washington than he

does about government in his county courthouse. As governmental problems have grown in scope and complexity, personnel needs have changed, demanding public servants trained in the administration and conduct of public welfare, highway planning and construction, assessment procedure, law enforcement, and numerous other technical activities. While the burdens imposed on county government have grown, the capacity of county government to do the job has been questioned, for counties vary greatly in area, population, and financial resources. States have found it increasingly necessary to regulate county activities and to aid counties by various grant-in-aid systems.

The great difference in counties can be shown by noting that in Georgia, Indiana, Kentucky, and New Jersey, counties average around 300 square miles in area, while in Nevada and Arizona, on the other extreme, they average over 6,000 square miles. In South Dakota the average for the state's sixty-four organized and three unorganized counties is about 1,100 square miles, varying from Meade with 3,466 square miles to Clay with 403. Nebraska counties average 800 and North Dakota counties average 1,300 square miles. Some students of local government have contended the county should not exceed 6,400 square miles in area. With respect to population, Nevada and South Dakota have the smallest average population per county, below ten thousand. \* \* \* In Delaware, Maryland, Pennsylvania, Rhode Island, California, Georgia, New Jersey, New York, Connecticut, and Massachusetts, the average per county is over 100,000 persons. Nebraska, North Dakota, and Wyoming average between ten thousand and twenty thousand, while Iowa averages between twenty thousand and thirty thousand. The average for the United States is about fifty thousand.

Perhaps the most serious recent factor affecting county government has been the dramatic shifting of the population. The 1960 Census reported that approximately half the counties in the United States lost population. Between 1950 and 1960 forty-five of South Dakota's sixty-seven counties declined in population. In this type of loss South Dakota was not alone. Indeed, in eight states a greater percentage of counties lost population: Arkansas, 92 percent; Oklahoma, 83 percent; North Dakota, 77 percent; Nebraska, 75 percent; Mississippi, 74 percent; and

Kentucky, Missouri, and West Virginia, 73 percent each.

This decline of population is clearly reflected in increasing per capita governmental costs. South Dakota Department of Revenue statistics in South Dakota show the gradual increase in overall county governmental costs in South Dakota. When population declines as costs go up, per capita costs inevitably increase. This increase is especially severe in impact in counties of low population. \* \* \*

The larger the county population the lower the per capita cost in maintaining county elective positions. If the experience of other states applies to South Dakota, there is a point in population size where per capita costs shift from decreasing to increasing costs, but no South Dakota county has reached this point.

The essential problem of county government in the light of analysis presented here is how to decrease per capita costs in relation to the same or higher standards of service. Two ways this can be done are by: (1) improving the efficiency with which the service is performed, thus decreasing the cost; and (2) increasing the population of the jurisdiction." (Public Affairs, Governmental Research Bureau, University of South Dakota, August, 1963.)

The following information was presented in a Minnesota report:

"A substantial library of publications from citizens' groups and legislative study commissions in other states was assembled by the County and Township Governments Commission to determine what other states are doing in the field of local government. These publications reveal that there has been a considerable amount of interest in and activity relating to the structure, operation, and finances of local government. Most of the publications are limited to public information-type descriptions of existing agencies, but several discuss in broad terms the movements, trends, and alternatives in important subjects.

A central theme of many of the publications is that local government faces new and difficult problems, the solution of which may call for innovations in structure and opera-

tion. The rapid urbanization of many areas of states which were formerly rural, the migration from farm to city, and the continued growth of metropolitan areas outward from city boundaries have created a maze of problems in the field of local government. In many instances state and local governments have been prompted to adopt new methods of procedure and new forms of government to cope with the challenging problems.

Some of the major trends and innovations in county and township government are reviewed in subsequent paragraphs as reflected in the publications and recent state legislation. Reference will be made to a few of the publications.

The list of subjects below is not intended to be exhaustive or complete. It is a suggestive list designed to indicate in a general way the extent of movements to renew, revise, and modify county and township governments.

1. Alternative Forms of County Government. One of the results of the home rule movements has been the adoption of constitutional amendments and state legislation which permits counties to operate under forms of government which differ from the traditional forms of county government. Alternative forms of government may be obtained by one of three means: by locally initiated county charters, by adopting one of two or more optional forms provided by general law, or by special legislation.

Locally initiated county charters are permitted, for at least some counties, in seven states, California, Maryland, New York, Ohio, Texas, Washington, and Missouri. Such charters have been adopted in only three of these states, California, Maryland, and Missouri.

Nine states have enacted legislation providing for optional forms of county government, Georgia, Montana, Nevada, New York, North Carolina, North Dakota, Oregon, Tennessee, and Virginia. One or more counties have adopted an alternative form in each of these states with the exceptions of North Dakota and Oregon. In most of these states the only option aside from the traditional form is the manager form of county government.

Special legislation has provided for innova-

tions in county government in one or more counties in nine states, Arizona, Florida, Illinois, Michigan, New Jersey, New Mexico, New York, Ohio, and South Carolina.

Three basically different forms of county governments have been devised for use in place of the traditional form of government. They may be instituted by any of the three methods indicated above.

- (a) County manager form. The county manager form of government provides for an appointive county manager with broad executive powers and an elective policy-making board which controls personnel and expenditures. It is similar to the city manager form of city government.
- (b) The limited executive or chief administrative officer form. This form resembles the county manager form except that the appointive executives have considerably less power than county managers. Power is reduced particularly with respect to authority in appointing and removing subordinates.
- (c) The elected executive form. The elected executive officer forms of county government are generally equivalent to the city mayor form of city government. Normally the position has general administrative and appointive powers, but it may be necessary to have confirmation of appointments by an elective board.

2. Consolidation of Offices or Functions. A number of states have enacted permissive legislation to allow counties to combine functions or offices within the county. A recent study in Iowa indicates that about 12 states have enacted laws to permit counties to rearrange the traditional arrangement of elected county officials through mergers. California, Utah, North Carolina, and Nebraska allow wide latitude in functional consolidation but other states restrict combinations to one or two possibilities. The outline below indicates combination allowed by each state.

Auditor	
Court Clerk	Wyoming, Washington
Auditor	
Court Clerk	
Register of Deeds	Idaho
Auditor	
Register of Deeds	Michigan, Montana
Treasurer	
Assessor	Washington, Illinois
Attorney	
Coroner	Washington
Sheriff	
Treasurer	West Virginia

Several arguments are advanced in favor of permitting integration of functions. Some of the major county offices are administrative in nature rather than policy-making and could very well be merged into one office because of the similarity of functions. The most common mergers involve the record keeping functions of the treasurer, auditor, register of deeds, and clerk of courts.

Substantial savings could be realized by reducing the overhead costs of county government, particularly salaries. More effective use of employees and integrated staffs, it is argued, could make county government more efficient."

The Iowa committee came to these conclusions:

"Although the board of supervisors has general charge of county affairs, county government is headless. It has no chief executive—like a mayor, or governor, or superintendent of schools. Many of the persons in charge of county offices are directly responsible to the people rather than any other county officer. Therefore, they may carry out their duties more or less independently from the rest of county government.

Here are some questions which are basic in considering the strengthening of counties. Should county government authority continue to be centralized? Can all of Iowa counties afford the present arrangement of offices? How far should the legislature go in control-

ling county affairs? How much difference is there in legislative needs of counties?

Short of consolidating counties or reorganizing the entire administrative organization of counties, there are at least two possibilities for the legislature to provide for more flexible organization and efficient operation in Iowa's 99 counties. These are: (1) to permit any county to consolidate its present offices and functions and (2) to permit two or more counties to provide a service or function together rather than individually."

The Minnesota committee made these remarks concerning their study:

"At the conclusion of a year and a half of study, several general observations may be made about the operation of county and township government in Minnesota.

There is strong support for "home rule" and continued vigorous local government. The Commission encountered strong sentiment for "home rule" in various forms, particularly at the out-State meetings, which were designed to sound public sentiment as well as to acquire information. There were many expressions by town officers that town government should be retained. On the county level, there were expressions of the thought that laws might be designed, in many instances, to leave more discretion to the county boards. Generally, the Commission encountered the thought that, where a general law would cover or where the matter might be left to local decision, special legislation should be avoided.

The Commission was impressed also with the variation of local government from region to region, indicating how government adapts itself to conditions. For example, in many of the northern Minnesota counties, there has been a trend toward abolishing the townships in the least populous and least wealthy regions. In some instances, notably St. Louis County, there has been some combination of township areas for governmental purposes. At the other extreme, there are some urban townships with wealth and population and peculiar problems which have led to legislation framed particularly for such towns.

Likewise, there have been some adaptations in

county government, where conditions vary from the usual.

One instance of this is Olmsted County, where all of the officials have been put on a salary basis instead of a fee basis for compensation. St. Louis County has seven county commissioners instead of the usual five, has four courthouses and in other ways varies from the usual form. The variations suggest the need of allowing variations under general law or granting options to local government units under the general law.

The Commission noted that many who attended the out-State meetings were apprehensive as to the intentions of the Commission. Undoubtedly this, in part, accounted for the large turnout of local government officials at these meetings. Instead of using the Commission as a vehicle for securing improvements, the officials generally used the meeting as an opportunity to demonstrate their faith in the status quo and showed reluctance and even hostility toward consideration of innovations and change. As a result of this apprehensiveness, it was not possible to obtain information and constructive criticism to the extent desired by the Commission. Nevertheless, the meetings were valuable in communicating with the elected officials and in obtaining a sense of what they desired from the legislature.

It was apparent that there are differences among county and town officials themselves as to what is desired for local government. While some would speak strongly in favor of a county assessor system, others would attack it as a reduction of the power of the local assessor and a limitation on the right of the people to elect their officials. Similarly, these officials would dispute the meaning of the home rule amendment, the outcome of the gas tax amendment to the constitution, or the need for township government in certain areas.

The Commission concludes its study with the impression that, generally speaking, local government is in good hands and is functioning well. However, there are many specific areas in which improvements may be made. There are areas in which changing conditions arising from population shifts and improved transportation and communication have left certain parts of the structure as "dead

wood" or outmoded machinery. There are other areas where new forms of government should be instituted to meet changed conditions. Developments in other states suggest the possibility of offering alternative forms of local government, particularly at the county level, under procedures set up by general law, either by setting forth the specific forms in the statutes or by enabling legislation which would allow counties to adopt charters, or both."

### Some Things to Consider About Combining Any Offices

The Iowa report has listed the following questions which should be considered when thinking about office consolidation:

1. Groupings of functions of the counties,
  - A. Record keeping, other than county financial records.
  - B. Financial administration, including accounting, budgeting, and purchasing.
  - C. Property tax administration and licensing.
  - D. Law enforcement and prosecution.
  - E. Roads and other public works projects.
  - F. Welfare and health work.
  - G. Court work.
  - H. School supervision.
  - I. Agricultural programs.
2. Population of the counties.
3. Which elective office to combine.
4. Who should decide whether certain offices should be combined.
5. Courthouse space.
6. Adjustment in salaries for combined offices.
7. How much would the county laws have to be changed.

### County Consolidation

Before discussing our own laws again, let us look at what some other States have said on the subject.

"The drastic shift in the distribution of population in South Dakota is making the need to reorganize local government more urgent. Counties with populations of less than ten thousand should not maintain the same structure of administration used by counties with over fifty thousand in population. The best available study (1952) on size of counties, by Professor Lane Lancaster of the University of Nebraska, indicates that somewhere around twenty thousand a point is reached below which the overhead cost of government becomes disproportionately great.

A logical solution is county consolidation, but county consolidation is difficult to attain for political or other reasons. Only three voluntary county consolidations have been achieved in the United States since 1900. In 1919 the Tennessee legislature adopted a special act authorizing the annexation of rural James County to Hamilton County, containing the city of Chattanooga, if approved by two-thirds of the qualified voters in James County. After the merging of the counties, Megus County requested annexation to new Hamilton County, but the legislature did not authorize this action.

Georgia eliminated two of its counties through mergers by 1932. A legislative act in 1929 authorized merger if two-thirds of the voters in rural Campbell County and a majority vote in Fulton County, containing the city of Atlanta, were favorable to consolidation. Similar legislation in 1931 authorized the merger of rural Milton County with Fulton County. These proposed mergers were approved by the respective counties: the tri-county consolidation became effective in 1932. Throughout this entire century, however, there has not been a single instance of consolidation involving two rural counties only." South Dakota Report.

In a 1959 study entitled "An Evaluation of Iowa County Government", pp. 42-43, it was said:

"Study of per capita costs of Iowa county offices would suggest that the highest per-

centage of savings would result in creating a county including a population of approximately 100,000 to 110,000. While a decrease in per capita costs is noted in counties with larger populations, percentage increase in savings under present conditions in Iowa would not appear to be significant.

The major obstacles confronting proposals for county consolidation are the ones of politics and apathy. The county as it now exists is normally the nucleus of the dominant political party's organization. Because of patronage and favors that may be formed on this level of government, there have been throughout the United States subtle but sure pressures from the major political party to prevent basic changes in the structure of county government. There is no reason to feel that Iowa would be an exception.

When the political barrier is coupled with the problem of public apathy toward county government, which results primarily from the lack of information concerning the amounts of money handled and spent by the county, the problems confronting the achievements of plans for county consolidation are enormous. Therefore, it might be more realistic to view other areas where many of the advantages of efficiency and savings might be attained, but which would seem to have a greater success potential than might county consolidation. At the same time, it can be seen that county consolidation is the most comprehensive and effective approach to solving the basic problems of county government."

In a 1961 report of the Legislative Interim Commission of Minnesota it was stated:

"There has been some sentiment for consolidation of two or more counties. However, the movement has achieved little success for a variety of reasons centered around the vested interests of elected officials, opposition of businesses located at county seats, and pride of the citizens in each jurisdiction. A more successful movement has been in favor of the joint exercise of powers by counties. It has been suggested that many of the benefits of county consolidation may be achieved for certain county services or functions if counties are given the power to perform these services or functions jointly. At least a few states allow counties and, in some cases,

other units of government, to make contractual agreements with adjoining units to perform certain services which both or all are authorized to perform. Iowa, Missouri, Wisconsin, Minnesota, and Nebraska have permissive legislation to permit counties to provide any service or function jointly that they have power to provide separately. In Virginia two or more counties may jointly employ any county administrative official who is not elected."

### Summary of North Dakota Consolidation Statutes

In discussing North Dakota law regarding county consolidation one must start with the Constitution. Section 167 states:

"The Legislative Assembly shall provide by general law for organizing new counties, locating county seats thereof temporarily, and changing the county lines; but no new county shall be organized, nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than five thousand bona fide inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships the natural boundaries shall be observed as nearly as may be.

The Legislative Assembly shall also provide by general law for the consolidation of counties, and for their dissolution, but no counties shall be consolidated without a fifty-five percent vote of those voting on the question in each county affected, and no county shall be dissolved without a fifty-five percent vote of the electors of such county voting on such question."

Section 168 concerns itself with changing boundary lines of organized counties and section 169 relates to the changing of county seats. These two sections as provided for in our law will not be presented in this report because of their non-direct effect on county consolidation.

In order to effect a consolidation of counties in our State, the following procedure (chapter 11-05 NDCC) must be complied with:

1. Any person of a county wishing to have



his county consolidated with another must obtain a petition containing thirty percent of the signatures of the qualified voters who voted for the office of governor at the last general election.

2. This petition is then submitted to the board of county commissioners of both counties at least 90 days prior to the next primary election.
3. If the consolidation is approved by 55 percent of the voters in each county then consolidation will occur.

If a county is to be split among two or more counties the same procedure is followed except that the petitioner must obtain 30 percent of the voters in each part of the county that is to be annexed to another county.

The petitions must be submitted to the boards of the respective counties 90 days prior to the election date. Also consolidation may be voted on only once every three years.

When the governor has proclaimed that a sufficient number of votes were cast in favor of such consolidation as certified by the Secretary

of State, the petitioning county shall cease to exist on the first day of January following the proclamation. All county officers of the petitioning county shall continue to hold their offices until their terms expire. Each officer then performs such duties as prescribed by the other county or counties' board of commissioners.

All judicial proceedings, both civil and criminal, are transferred to the new county on January first following the date of the governor's proclamation. The board of commissioners of the dissolved county continue their office until expiration of their terms and their duties involve voting on only the matters concerning their old county which arose before January first, the official date of consolidation.

A nomination received by a candidate for a county office in a petitioning county at an election at which the question of consolidating the county is voted upon is null and void if the consolidation is passed.

The territory which constituted the petitioning county remains in the legislative district of which it was a part prior to the consolidation until the next apportionment of the State into legislative districts.

**County Per Capita Property Taxes for 1962\***

**COUNTIES WITH 0-5,000 POPULATION**

County	Sq. Mi.	Pop.	Tax	County	Sq. Mi.	Pop.	Tax
BILLINGS	1139	1513	49.86	SHERIDAN	995	4350	37.90
SLOPE	1226	1893	37.12	ADAMS	990	4449	33.19
OLIVER	720	2610	53.65	RENVILLE	901	4698	34.45
GOLDEN VALLEY	1014	3100	42.08	STEELE	710	4719	33.93
SIOUX	1124	3662	18.86	EDDY	643	4936	32.77
BOWMAN	1170	4156	38.85				

**COUNTIES WITH 5,001 - 10,000 POPULATION**

GRIGGS	714	5023	31.86	MERCER	1097	6805	35.57
FOSTER	648	5361	27.61	SARGENT	855	6856	31.25
LOGAN	1003	5369	36.80	NELSON	997	7034	31.64
KIDDER	1377	5386	37.27	McKENZIE	2810	7296	29.51
DIVIDE	1303	5566	33.32	PIERCE	1053	7394	32.06
TOWNER	1044	5624	33.66	RANSOM	863	8078	24.88
BURKE	1121	5886	39.37	DICKEY	1144	8147	33.80
GRANT	1672	6248	32.59	EMMONS	1546	8462	36.68
HETTINGER	1135	6317	27.63	LaMOURE	1137	8702	32.48
DUNN	2068	6350	39.40	WELLS	1300	9237	28.45
McINTOSH	993	6702	44.71	BENSON	1412	9435	31.61

**COUNTIES WITH 10,001 - 20,000 POPULATION**

CAVALIER	1513	10064	34.15	RAMSEY	1214	13443	30.12
MOUNTRAIL	1900	10077	23.31	McLEAN	2287	14030	26.73
TRAILL	861	10583	34.87	BARNES	1486	16719	30.75
ROLETTE	913	10641	17.45	WALSH	1287	17997	28.02
McHENRY	1890	11099	23.92	STARK	1319	18451	18.06
BOTTINEAU	1699	11315	33.29	RICHLAND	1450	18824	26.07
PEMBINA	1124	12946	24.99				

**COUNTIES WITH 20,001 - PLUS POPULATION**

MORTON	1933	20992	31.05	WARD	2048	47072	17.30
WILLIAMS	2100	22051	23.81	GRAND FORKS	1438	48677	20.29
STUTSMAN	2274	25137	16.36	CASS	1749	66947	17.48
BURLEIGH	1648	34016	18.20				

**POPULATION**

**AVERAGE COUNTY TAX PER CAPITA**

0 to 5,000	.....	36.00
5,001 to 10,000	.....	33.06
10,001 to 20,000	.....	26.82
20,001 to - - -	.....	19.55

STATEWIDE AVERAGE COUNTY TAX PER CAPITA ..... 25.85

\*NOTE: Tax figures are taken from the State Board of Equalization, Proceedings, 1963, and represent the 1962 county taxes. The population figures are those of the 1960 Census.

The counties are listed by population.

**PERCENTAGE CHANGE IN COUNTY  
POPULATION**

NORTH DAKOTA 1950 to 1960

Counties with Population Increases		Counties with Population Declines							
		0 to 9.9 Percent		10 to 14.9 Percent		15 to 19.9 Percent		20 Percent and More	
Ward	34%	Barnes	2%	Adams	10%	Billings	16%	Mercer	22%
Williams	33%	Rolette	5%	Ransom	10%	Cavalier	16%	McLean	26%
Burleigh	31%	Sioux	5%	Sargent	10%	Logan	16%		
G. Forks	23%	Walsh	5%	Dickey	11%	Oliver	16%		
Stark	14%	Richland	6%	Benson	12%	Renville	16%		
Cass	13%	Divide	7%	Burke	12%	Sheridan	17%		
Morton	8%	Ramsey	7%	G. Valley	12%	Slope	19%		
Mountrail	6%	Bottineau	8%	Hettinger	12%				
McKenzie	5%	Pembina	8%	McHenry	12%				
Stutsman	3%	Steele	8%	McIntosh	12%				
Bowman	2%	Traill	8%	Pierce	12%				
Foster	*	Eddy	9%	Wells	12%				
		Griggs	9%	Dunn	13%				
		LaMoure	9%	Emmons	13%				
				Grant	13%				
				Kidder	13%				
				Towner	13%				
				Nelson	14%				

\* Increase of less than 1%.

SOURCE: 1960 Census of Population. Preliminary Reports PC(P1) - 36.

## Conclusions and Recommendations

It is the general consensus of the Committee that basically the laws relating to division and disorganization of counties are still adequate. It was further agreed by the Committee that the laws relating to county consolidation and the optional statutory forms of county government are adequate for the most part.

Our county consolidation statutes have been on the books since 1933 and the various forms of county government have been with us since 1941. In few instances has consolidation been attempted and none of the counties have ever proposed trying one of the optional forms of county government. Other States in studying the problem came to the conclusion that consolidation of counties or better county government structure appears to be the answer in solving the high cost of county government in sparsely settled counties. If the other States concluded that county consolidation or the streamlining of county government is the solution then why haven't our counties used this approach?

With this question in mind, the Committee searched for the answer. A Committee meeting was held in Dickinson because of the interest expressed in this matter by the county officials of southwestern North Dakota. The meeting was attended by a good number of county officials from several counties and the Committee received many good suggestions and the answer to their question. It appeared that most people did not know that these statutes existed, especially those statutes dealing with the optional forms of county government. Another reason expressed was the general apathy of citizens toward their county government or a town's fear of losing the county seat.

Based on the above information, the Committee concluded that the method or procedure of presenting a county consolidation or county government reorganization plan to the electorate was probably a major stumbling block to its being adopted by any county. The Committee pondered the idea of eliminating the procedure of a plan being submitted by any one individual and the possibility of substituting in its place the creation of a committee by the electorate to study a county's problems and make a recommendation to the electorate. By this means the views of as many people as possible could be obtained and a plan prepared that might have greater possibilities of acceptance. After considerable thought

the Committee agreed that the idea had merit and instructed the staff to draw a bill implementing the proposal. Further, the Committee thought it wise to expand the county managership forms of county government to include the option of appointing or electing a county manager and in the consolidated office form of government to allow the office of treasurer to be consolidated with that of the auditor. All of these ideas were approved and are set forth in the resume of the bill furnished in this report.

**Senate Bill No. 45.** This bill eliminates from the law relating to county consolidation the consolidated office form of government and the managership forms of county government, the procedure of any one individual preparing a plan for consolidation or choosing one of the optional forms of county government and submitting such plan to the electorate of the county. In its place this same citizen may, upon petition signed by ten percent of the electorate voting for governor at the last general election, require the board of county commissioners to create a county consolidation committee to study the problem. The committee can also be formed by the board of county commissioners upon a two-thirds vote of the board.

The membership of the committee is composed of one resident of each city or village in the county, one resident from each county commissioner's district, and three citizens appointed from at large. The committee would study the overall problems of the county and decide if the county should be consolidated or if it would be best for the county to adopt one of the optional forms of county government. The committee would be required to hold public meetings, and allow every person to present his views. If the committee agreed to a plan, the board of county commissioners would be required to submit the plan to the electorate for approval.

As written, this bill would also allow a board of county commissioners, upon their own motion, to submit to the voters the question of selecting a new form of county government. However, this power is not given to the board of county commissioners regarding county consolidation.

Further, the bill amends the county consolidated form of government to allow the option of having a separate office for the auditor and treasurer, or combining these two offices into one position. The bill also amends the county managership form of government in that it

changes the form of the office of county manager from strictly an appointive office to the option of a county to either appoint or elect the county manager as the county may desire.

The extreme length of the bill was caused by the fact that singular form adverbs used in the county manager sections required changes to the plural to accommodate the option of an elected or appointed county manager.

## PART II

### WELFARE STUDY

#### Introduction

The Subcommittee on State, Federal, and Local Government, in its effort to comprehensively review North Dakota's welfare programs, met with many professional groups in several different areas of the state in order to completely review as many facets of the welfare program in North Dakota as time would permit. In addition to interviewing their own county welfare boards, the members of the subcommittee met with representatives from the Public Welfare Association, State Medical Association, State Nursing Home Association, members of the four Indian tribal councils of North Dakota, members of the Indian tribal courts, the State Public Welfare Board, and the North Dakota Hospital Association, in addition to many interested citizens and welfare workers.

Many areas of North Dakota's welfare programs were covered and a great deal of information was offered for the Committee's consideration. No attempt will be made to explore deeply the many facets of the welfare problems in this report, but an attempt will be made to concentrate on those areas in which the Committee is recommending legislation. It is felt that even in some of the areas where no legislation will be recommended, progress has been made through a more proper understanding by members of the Legislature and the many groups having daily contact with the welfare field.

#### Administration of Welfare Programs

It was brought to the Committee's attention that there appear to be many burdensome administrative procedures prevalent in the state and local welfare programs. There seems to be an abundance of reports required for every action taken and sometimes numerous steps to be taken in accomplishing small objectives. Much time ap-

pears to be spent on paperwork by welfare recipients, doctors, hospital personnel, and case workers. There does not seem to be any major legislative action that can be taken to alleviate this problem because this is largely a matter of administration and, in addition, the Federal Government requires the constant filing of numerous records and forms. In order for the state welfare program to qualify for federal matching funds, it must comply with the directives of the Federal Government, or, more specifically, the Department of Health, Education, and Welfare. The Committee has not taken any action in regard to the records that must be compiled, but it is hoped that the state and local welfare personnel will make efforts to reduce their recordkeeping procedures. The Committee recommends, however, legislation providing that the Secretary of State, in his capacity as state records administrator, shall promulgate rules and regulations for the destruction of certain welfare records. It was felt that the storage of welfare records on some local levels has reached the point where some offices are overcrowded because of space taken by filing cabinets which contain obsolete records which have been retained only because there has been no specific authority to dispose of them. The Committee specifically noted that records pertaining to the public assistance programs which were in effect during the depression days of the 1930's are still retained in some welfare offices. Therefore, the legislation recommended specifically takes note of such public assistance records, but also provides for the disposal of records which have been closed for a minimum of six years or have been duplicated. Because it is felt that the Secretary of State might not always have firsthand knowledge of appropriate records which could be destroyed, the legislation recommended provides for consultation by the Secretary of State with the Director of the State Public Welfare Board. It is the opinion of the Committee that the passage of House Bill No. 538, the bill in which the recommended legislation is contain-

ed, will be of great value to both state and local welfare officials.

### Laws, Policies, Enforcement, and Cases

In its efforts to review the welfare programs in North Dakota the Committee felt that the simplest procedure would be to concentrate on those areas where the greatest welfare problems appear to exist. It was noted that by far the largest per capita welfare payments in the aid to dependent children program are made to counties wherein the Indian reservations are located. Rolette County, the site of the Turtle Mountain Indian Reservation, for instance, ranks a close second behind Cass County in the total amount of funds paid to counties for assistance to dependent children. This becomes even more meaningful when it is remembered that there are only 11,000 inhabitants in Rolette County as compared to 67,000 in Cass County. The fact that Rolette County receives more assistance for aid to dependent children than the combined counties of Burleigh and Grand Forks, or Burleigh and Ward, is also a shocking realization. Benson County, the site of the Fort Totten Indian Reservation, spends approximately \$50,000 more for its aid to dependent children program than Burleigh County, and yet the population of Benson County is only about 9,500, compared to Burleigh's population of 34,000. The Committee realizes that the problems which might arise on Indian reservations are not necessarily indicative of the operation of the welfare program in other parts of the state because of lack of state civil jurisdiction and the lack of employment opportunities, but it was felt that an examination of specific cases in reservation areas would quite likely point out many problems found in other parts of the state, though perhaps not as frequently. In addition, such an examination would shed some light upon special problems in operating welfare programs in reservation areas.

In an effort to receive a firsthand view of the problems found on Indian reservations and their immediate areas, many sample ADC cases arising on reservations were studied by the Committee. These cases were brought to the attention of the Committee by the Committee staff, with the cooperation of state's attorneys and welfare workers familiar with Indian problems. It should be especially noted that the sample cases presented in this report are not typical or average ADC cases in North Dakota alone, but rather reflect the problem-type cases which are presented as

examples of problems that may merit legislative consideration. It may be that some of the problems illustrated are found only in the reservation areas because of lack of civil jurisdiction on the part of the state to take action on them, while others occasionally occur in all areas of the state. The following are some of the cases reviewed by the Committee, with brief comments outlining the basic problem, and some possible actions which would aid in the correction or prevention of the problem. The cases have been grouped in such a manner as to reflect a primary problem area within each grouping which may require legislative action. It may be that a particular case will reflect more than one problem area but in order to classify such case it was placed in that group which appeared to best express the primary problem. The cases should give the reader some insight into problems faced by those administering public welfare programs.

#### Cases primarily concerned with difficulties in the establishment of paternity:

**Case No. 1.** An Indian mother living off the reservation had left her three children with an old man who was blind and deaf and unable to care for them. They had only powdered milk for food and the eight-month old baby had not had its diapers changed for the entire 5-day period. The children, who were all under ADC and all illegitimate, were placed under the jurisdiction of the juvenile court and in foster homes. No paternity has ever been established. The mother has implicated a certain man as the apparent father, but the 2-year statute of limitations has lapsed. The case was brought to the attention of the state's attorney in respect to terminating the parental rights of the mother who has indicated she does not want the children. This mother has been very promiscuous and unreliable, and the possibility exists that the man she has named as the father may not be the real father at all.

**COMMENTS:** The status of the children in this instance has been somewhat hazy, due to the fact that the decision as to termination of parental rights was not quickly acted upon. This was because it was felt that the children possibly would not be adopted, and the further concern over separating the children for adoption purposes. There is also a justified reason for not terminating parental rights when the parents show the least interest in providing for the children, and perhaps it was hoped that this interest could be aroused. These children have been living

in foster homes since they were taken from the mother.

Another point brought out by this case is that there is more than just the reason of direct support for establishing paternity. Children who have a certain percentage of Indian blood frequently receive grants from the Federal Government because of their status as Indians. If the paternity of a child is not established the blood percentage is not certain. In this instance, each Indian was to receive a grant of approximately \$800. It was, in fact, determined that the children would be eligible because the mother was at least one-half Indian, which would make the children no less than one-fourth Indian. But if the mother had been only one-fourth Indian, then it appears that the children might not have been eligible to receive any grant. Also to be considered are the inheritance rights a child may derive from a legal father as well as social security and veteran's benefits.

Case No. 2. The defendant husband was divorced by his wife while he was in a Minnesota prison. He agreed to the terms of the divorce and agreed to pay support payments for the two minor children. Since his release from prison he has not made any support payments and apparently cannot be found. He has been reported as having been in several locations in North Dakota, in addition to being in California and Wisconsin. He receives a Veterans Administration check of \$55 per month which has been forwarded to him on various occasions by his mother. The VA has agreed to make payments of \$16.50 per month to the mother of the children out of this check. This man is a qualified bookkeeper but is in and out of jail continually. He seems to keep one step ahead of the local authorities who have charged him with neglect.

COMMENTS: This appears to be a problem case which unfortunately is not too uncommon and which will not have a favorable outcome, especially for the children. It is sometimes almost impossible to enforce support payments from chronic offenders who make a career out of avoiding their parental responsibility. In cases such as this the cooperation of an agency such as the Veterans Administration is certainly a great aid to welfare officials and welfare recipients. However, as a matter of public policy all possible efforts to trace such fathers and insist on the support of their children is necessary. Perhaps more investigatory training of personnel; in a few counties the assignment of specific personnel to

these investigations; or the possibility of utilizing the services of a Special Assistant Attorney General should be considered.

Case No. 3. The mother in this case has four children for whom she has been receiving ADC payments for herself and the first three children born. Her former husband divorced her on charges of adultery, extreme cruelty, and habitual intoxication, but he is now in the penitentiary and thus can make no support payments. In any event it appears that only one of the first three children born was fathered by the former husband, the other two being illegitimate and no paternity having been determined.

The case was referred for court action because it appeared that the last-born child was about to become a public charge. The mother refused to reveal the name of the father of the last-born child but merely stated that the father was contributing to its support and that she would not file for ADC. It appearing that the child would become a public charge and that the 2-year statute of limitations would soon prevent any determination of paternity, an investigation was commenced in an attempt to determine the father of the child. A thorough investigation revealed that a man was living with the mother and that he was apparently the unnamed father. Faced with various facts compiled during the investigation, the man admitted that he was the father and formally acknowledged paternity. This man appears to be able to take care of the child and has expressed a desire to do so.

COMMENTS: Several factors are brought out by this case. The first is the enforcement of support for the child fathered by the former husband. The father has been in prison and apparently will provide support under the divorce judgment only when pressure is put on him. Since this is an off-reservation Indian case, and the state reimburses the county for the county's share, there may be less incentive than usual for the local officials to put on the necessary pressure, although at times it is done. As to the second and third child born, there appears to be a substantial amount of money being spent, as their paternity has never been established and the 2-year statute of limitations has now run. Perhaps the use of a Special Assistant Attorney General and an investigative staff would have established paternity and enforced parental responsibility, or the provision of adequately trained investigatory personnel to the welfare board or state's attorney would have resulted in a determination of parent-

age with possible veteran's, social security, or Indian benefits for the child, as well as rights of inheritance. Possibly the father could have been forced to support his child.

In establishing the paternity of the last child it does not seem sufficient to say that the mother "refuses to disclose the name of the father". It is the policy of the State Public Welfare Board that paternity be established in every instance but that the father be contacted only with the mother's consent, although it does not appear that the mother has a legal right not to disclose the name of the father, since an illegitimacy proceeding is not a criminal proceeding. The mother can possibly be charged in the illegitimacy proceeding with the alleged father, or at least be subpoenaed as a material witness, and if she knows the father she would have to disclose his name or possibly face contempt of court. In this case, on an experimental basis, funds from the state's attorney's contingency fund were secured in order to provide for a special investigator to collect data concerning the mother and her paramour. It was found that the father had made sufficient admissions to warrant issuance of a complaint and when he was confronted with these admissions, paternity was admitted. The case suggests, with reference to the second child, the results of a lack of means to do the job and possibly a lack of incentive on the local level, for the money would only be returned to the State or Federal Government.

Case No. 4. The mother in this case had two illegitimate children; Child X, born later in time, is the subject of this case. The alleged father was frequently found in the company of the mother, and had made admissions to the effect that he was the father of X but not the father of the other child. The mother refused to commence a paternity action, so the welfare board under its power to bring an action to establish paternity where it appears that the child may become a public charge, commenced action to determine paternity. Paternity was established and the father was ordered to make monthly payments. Neither parent appeared very interested in the child. Eventually the mother was evicted from her apartment for drunkenness and the children were placed in a temporary foster home. The mother was charged with neglect, but later, after discussions with welfare officials, this charge was dismissed when the mother married the alleged father and both expressed their willingness to assume the responsibility of providing for both children. Both parents are now employed and

seem to be doing well.

COMMENTS: Through the joint efforts of the welfare board and the state's attorney, the paternity of the child in question was established prior to the expiration of the 2-year statute of limitations. The subsequent marriage of the parents and admission of paternity also had the effect of legitimatizing the child. The family is not now on the welfare rolls and the possibility of a normal family life for the child exists, even though such may not be probable. It would appear that timely action by public officials can, and frequently does, result in a more favorable living climate for the children involved.

Case primarily concerned with fraudulent use of welfare payments:

Case No. 5. The defendant man and wife were active ADC recipients due to the husband's physical incapacity. A visit was made to their home on July 13 by the welfare worker in order to make a review of their needs. At this time the family was fully informed that they must report all income received by them while they remained recipients of public assistance. The family needs totaled \$348 at this time and were fully met through ADC.

On November 2 a relative of the assistance family reported they had income in addition to that provided by the welfare agency. A letter was written to the bank in which it was reported the assistance family was keeping their money and it was learned that on January 23 a deposit of \$1,249.53 had been made in the bank by the family. This money had been obtained through a personal injury settlement with an insurance company. The bank also reported that by February 26 a balance of only \$40 remained and this was withdrawn on April 26. All of this transpired while the family was receiving ADC.

When a worker visited the assistance family and confronted them with the information concerning their additional income, the family contended they were not aware they were responsible for reporting income. The case was referred to the state's attorney for prosecution and he definitely was of the opinion that this was a case of fraud. The family was brought before the district court and it was determined that the wife was guilty of fraud in obtaining ADC. At the time of the mother's appearance in court she was pregnant, and also responsible for the care of her



small children at home. The court fined her \$50, plus court costs of \$10, and she was given a 30-day sentence in jail. However, the entire sentence and fine were suspended upon condition that the mother be a law-abiding citizen and thereafter comply with all welfare laws. No provision was made by the court for repayment of the ADC payments which had been fraudulently obtained.

**COMMENTS:** During the 11-month period in which the events in this case transpired, a total of \$3,456 was disbursed to the assistance family. This appears to be an obvious case where fraud was prevalent. It is to be expected that some assistance families will lie about their income, but such cases are very difficult to uncover and prosecute. It would seem that the court was less than seriously concerned about the recovery of public funds that were disbursed because of the fraud.

**Cases primarily concerned with paternity and child support:**

**Case No. 6.** The husband and wife were married in 1956 and a child was born shortly thereafter. In 1958 the husband left the wife and she made application for ADC. The husband could not at first be contacted in order to impose his legal responsibility to care for the child. When located he was disabled and could not support the child, so the wife continued to receive ADC, and in 1960 and in 1961 gave birth to two illegitimate children, who were placed in a children's home without a determination of paternity. Apparently it was felt that the best course was to terminate parental rights as to the illegitimate children, and there being no objection from the mother, the termination was carried out. The father is now living apart from his wife and caring for his own child.

**COMMENTS:** This is a typical case where the mother, after she left the father, started associating with some other man or men and gave birth to illegitimate children. Such conduct on her part is certainly not conducive to bringing the family together again, so eventually all children born to the mother become the responsibility of the welfare agency. In some cases the father will assume responsibility for the children which he fathered, but in many cases he is either so disillusioned or completely irresponsible that he will make no effort to assume his parental responsibilities. Confining the father in jail for neglect or nonsupport is sometimes of no avail.

Yet, unless efforts are vigorously and continually directed toward determining parentage and requiring support by every means available from parents in every instance possible, the entire ADC program may fall into disrepute, its costs will continue to grow, and innocent children will be deprived of their rights.

**Case No. 7.** The state's attorney received a notice from the welfare agency that the mother of seven children had filed for ADC payments because her husband had deserted her. She expressed interest in signing a complaint for nonsupport. Further information revealed that the father was consorting with another woman who had two illegitimate children, apparently by the father in question. The paternity of the two illegitimate children had not been legally established, but it appears that there may be sufficient evidence to warrant a paternity hearing. The father is able to work but chooses not to, and is very hard to locate. The mother of the illegitimate children will not reveal the apparent father's whereabouts and will not name him as the father. Thus the state's attorney will apparently have to commence two legal proceedings: the first for nonsupport for the legal wife of the defendant, and the second to establish paternity of the second illegitimate child (the first died), before the 2-year statute of limitations expires. This is the case of a man who has fathered nine children, all of whom have received, or will possibly receive, ADC payments.

**COMMENTS:** Although it appears that nonsupport actions against the father in this case would perhaps be of no avail, the prosecution of this individual might serve as an example to himself and others, or at least keep him out of circulation long enough to prevent him for a limited time from fathering additional children who eventually become public charges. A failure to take any action might be viewed as public acquiescence in this type of conduct and encourage a growth in the ADC rolls.

**Cases primarily reflecting jurisdictional problems:**

**Case No. 8.** Mrs. X is a resident of an Indian reservation and has five children who are receiving ADC through the county welfare office. Her husband is in the state penitentiary. Mrs. X has deserted her five children and left them with a relative who has signed a complaint with the Indian law enforcement agency, charging Mrs. X with failure to provide for dependent children.

The children have been placed with their grandmother and are still being maintained under the ADC program. The mother was located in a North Dakota city and a welfare worker contacted her and advised her of the importance of returning to the reservation in order to care for her children. Mrs. X said she would not return. The sheriff and the county wherein the city is located in which Mrs. X is now staying stated that he would be happy to return Mrs. X to the reservation if a warrant were issued by the Indian authorities. The sheriff was informed that the Indian court would prosecute Mrs. X if she returned to the reservation but that they were not authorized to issue a warrant or go to City X to pick her up and return her to the reservation.

**COMMENTS:** It has long been decided that extradition by a state is not a matter of discretion or comity, but is governed exclusively by the Constitution and the laws of the United States. It has been expressly held that there can be no extradition to an Indian reservation on the request of the tribal authorities for an offense committed on the reservation. Extradition is provided for by federal law only between states and territories and a reservation is neither. An Indian tribe has authority to remove from its reservation persons who are not members of the tribe, or to order the delivery of offenders to the proper authorities of the State or Federal Government where such authorities consent to exercise jurisdiction. The result of such a situation is that Indian offenders who reside on a reservation can effectively take refuge outside the reservation and avoid the consequences of violating the Code of Offenses (Indian) as provided by Title 25, Code of Federal Regulations. This illustrates one of the many problems of lack of state jurisdiction on reservations.

**Case No. 9.** An illegitimate child was born to an Indian mother and it appeared that an Indian was the apparent father. Both parties are reservation residents. The mother refused to name the man as the father, but it appeared to the state's attorney that there was sufficient evidence to warrant a paternity hearing. Neither the tribal court nor the county welfare agency felt that a paternity hearing would be of avail without the mother's cooperation. It appears in this case that it is the tribal court's responsibility to establish paternity and enforce its judgment. The county welfare board would have the responsibility of disbursing any ADC payments if there were no ineligibility factors present. In this instance the apparent father was not incapacitated and was

in the area. Thus the mother might not be eligible for ADC payments under state law if such paternity was established. If ineligible for ADC, the mother would receive general assistance from the Bureau of Indian Affairs, which would be in an amount less than the state would provide. There appears to be a motive for the mother not to reveal the father of the child so she may secure state ADC payments. There does not seem to be any incentive for the tribal court to establish paternity in this case, for it might result in smaller payments from the Bureau of Indian Affairs. This case was eventually closed when the tribal court failed to take any action, the welfare agency did not authorize ADC, and the mother married.

**COMMENTS:** It should be noted that the facts as stated in this case took place quite some time before the Department of Health, Education, and Welfare notified the North Dakota Public Welfare Board that if the father is living out of the physical confines of the home, even though he may be living within the immediate area and is easily located, such father is to be considered "absent from the home" and, if otherwise qualified, his family is eligible for ADC.

A "dependent child", as defined by the North Dakota Century Code, may be any needy child:

"Under the age of eighteen years, or under the age of twenty-one if mentally or physically incapacitated, who is living in the home of a relative by birth, marriage, or adoption, who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent;" (emphasis supplied)

There had been some disagreement as to what constituted "continued absence from the home". In determining the eligibility of a recipient for ADC, some officials had interpreted this clause as meaning merely being out of the physical confines of the house, while others had felt that the true meaning should be out of the immediate area, either rural or municipal, of the residence of the applicant. It would seem that a father who is readily available within the jurisdiction of the local welfare board is not actually "absent from the home". It appears that through the federal directive to the North Dakota Public Welfare Board this disagreement is now academic, and in order to continue to receive federal matching funds an "absent parent" must be considered so when merely living out of the physical con-

finances of the home. It is estimated that the effect of this ruling will be that the cost of the ADC program will be increased by \$1 million over a two-year period.

**Case No. 10.** Six children living with their parents in a town near a reservation were being seriously neglected. The court having jurisdiction terminated the parental rights and took custody of the children. Three of the children were placed for adoption and three were placed in foster homes. The oldest daughter placed in a foster home finished high school and has now become a beauty operator. The two other children placed in a foster home are becoming well adjusted.

COMMENTS: This is an example where the termination of parental rights before too much damage had been done has greatly benefited the children. The proper action by a concerned court having civil jurisdiction could save many children from wasted and unproductive lives.

**Case No. 11.** In this case the child in question lived with her mother off the reservation. The mother and child continuously moved from one town to another and the mother had been unable to take, or was not especially interested in taking, care of the daughter. The daughter was finally removed from the custody of the mother at the age of 15 and placed in a foster home. The daughter is now 19 and has grown into a fine young woman able to care for herself and take her place in society.

**Case primarily reflecting the multiplicity of problems often found on Indian reservations:**

**Case No. 13.** The husband and wife in this case reside within the boundaries of the Indian reservation. They have been married for 23 years and 11 children have been born to them. Three of the children were born prior to the marriage and

COMMENTS: In this instance the child was taken out of a home where she was being deprived of a normal life. When given a chance to improve herself she was able to become a credit to society. This would seem to point out that if a court has jurisdiction, and is willing to act, the destruction of a child can sometimes be avoided.

**Case No. 12.** The defendant was married and had two children. His wife sued him for divorce, which was granted, along with payment of \$100 per month for support of the children. The defendant was receiving a payment of approximately \$100 a month from the Veterans Administration and from this amount \$54.20 was deducted for the wife. The wife instituted an action to increase the amount assigned from the Veterans Administration payment to \$100 per month, pursuant to the divorce decree, because the husband had not contributed any other money to her support. Apparently the husband had not been working steadily and thus had not been able to contribute the full \$100. The court increased the wife's share to approximately \$70 per month. The defendant husband seemed quite willing to provide for his two children and did not want them to receive any welfare payments.

COMMENTS: This case is an example of the fine results which may, and frequently do, occur when a case is diligently pursued to its finality through the cooperation of the mother, the courts, and welfare officials.

eight were born during coverture. Five are now living. The husband is an unskilled laborer and the wife is equipped only for domestic work. The husband's reservation criminal record, or as much of it as can be ascertained, is as follows:

January 17, 1942 .....	Disorderly conduct, \$10 fine.
February 10, 1942 .....	Failure to support, 6 months' probation.
April 8, 1942 .....	Contributing to delinquency, sentence deferred.
July 29, 1950 .....	Disorderly conduct, sentence deferred.
April 15, 1951 .....	Disorderly conduct, 3 months' probation.
July 7, 1951 .....	Assault and battery, 3 months in jail, suspended.
January 26, 1952 .....	Failure to support, 30 days' probation.
March 18, 1952 .....	Failure to support, 30 days' probation, \$10 fine.
April 15, 1952 .....	Disorderly conduct, 30 days' probation.
June 17, 1952 .....	Disorderly conduct, 60 days in jail.
July 15, 1952 .....	Assault and battery, 60 days in jail and \$50 fine.
September 24, 1952 .....	Malicious mischief, 30 days in jail.
May 6, 1954 .....	Assault and battery, 5 days in jail.
November 3, 1958 .....	Disorderly conduct, work detail of 10 days.
February 2, 1959 .....	Theft, paid this back.
September 6, 1963 .....	Assault and battery and nonsupport, 10 days on each.

In many instances there is no record of the sentences having been served, and in others the sentences were not fully carried out. It should be

noted that there are some gaps in the husband's Indian court history. These can be accounted for by the following facts:

1944 - 1948 .....	Spent time at Fort Leavenworth Federal Prison on an AWOL charge.
October 30, 1951 .....	Forgery conviction, 1 year in the county jail.
August 12, 1952 .....	Forgery conviction, 6 months' sentence.
August 4, 1953 .....	Forgery conviction, 1 year sentence.
October 12, 1954 .....	Forgery conviction, 1 to 3 years.
June 13, 1956 .....	Husband deserted but it was verified on February 18, 1957 that he was in jail in Illinois on a forgery charge.
June 8, 1959 .....	Deserted and on August 1, 1960 he was sentenced to the State Penitentiary for forgery.

On July 8, 1963, the wife made application for ADC and stated that her husband had again deserted her and she had been instructed by the Bureau of Indian Affairs to file for ADC with the county welfare agency. Immediately prior to this time the family had been receiving Indian general assistance. The wife stated that she had filed a complaint against her husband with the Indian law enforcement agency. The welfare board contacted the Indian officials in order to verify the wife's story and requested them to inform the county agency if they heard anything concerning the husband. On September 13, 1963, the worker attempted again to locate the husband after hearing a rumor that he was in the Indian jail. Upon contacting the Indian officials it was learned that the husband had been picked up on an assault and battery and a nonsupport charge and sentenced to a total of twenty days, ten days of which were suspended upon good behavior. No stipulation was made in this sentence regarding the future support of the children. It should be noted that the county welfare office was not informed of the new developments concerning the husband even though they had requested such information. The husband was released after serving his ten days and remains in the area of the family but does not render any support. ADC has been denied by the county board because nothing can be done to force support from the husband who is still in the community, although under the new federal directives, such denial of ADC will no longer be possible.

The effects on the family resulting from the continuous absence of the father have been quite detrimental. The mother has been incarcerated several times on drunk and disorderly charges and has deserted her children on at least one occasion. Thoughts have been given to terminating parent-

al rights but this is impossible because the family resides on the reservation where state courts have no jurisdiction, and the tribal court has not been active in such matters. The oldest female child was pregnant at the age of sixteen, one boy is in the State Penitentiary, another girl is now pregnant, another boy is at the State Industrial School, and the other child is continuously absent from school. There has been \$23,575 invested in the family in the form of ADC at times when the husband was incarcerated, and thousands of dollars more in Indian general assistance when the family did not qualify for ADC. It appears that many additional thousands of dollars will eventually be invested in future payments, since the children are likely to become public charges.

COMMENTS: The purpose of including this case is to point out some of the problems which welfare agencies located in Indian areas face. It is realized that this case may be a more extreme example, but such cases do arise and must be dealt with. Welfare officials find it quite difficult or even impossible to improve situations such as exist in this case.

Payment of public funds in this type of case (and because of lack of civil jurisdiction there is no other course available) does not result in accomplishing the objectives of ADC. The high death rate of the children indicates that substantial neglect continues — the children have not been protected. No acceptable family situation can result — on the contrary, the situation encourages a proliferation of the problem as the children that do survive become older. It is probable that this chain will continue in regard to this family and, through the children, five more families can be expected to find their way onto ADC rolls — and so the chain will continue and grow.

## General Observations

The Committee studied many other sample welfare cases in addition to those presented in this report. Although the Committee is quite aware that these cases are not typical of the general operation of the welfare program in North Dakota, there does not appear any doubt that such cases do occur occasionally in small communities and somewhat more frequently in the larger, more populated, communities and on Indian reservation areas. It would appear that the frequency with which such cases may arise is not the only consideration. The fact that such cases do arise cannot be ignored. If there is any way possible to minimize the number of such cases or alleviate their ill effects upon children such course should be taken whether such cases happen frequently or infrequently. To salvage one or a few children, or prevent the break-up of one or a few families, would seem to be an end worth pursuing. To fail to take action in such cases, or be unable to take action as is the situation on Indian reservations, prevents the ADC program from reaching its objective of improving the status of children, and in effect results in a waste of tax funds.

The Committee gave consideration to recommending legislation which would have provided for the operation of North Dakota's welfare program only in areas where the State has civil jurisdiction with the thought that if the welfare program could not reach its objectives, it was preferable to withdraw and thereby transfer welfare responsibilities completely to the general assistance program of the United States Bureau of Indian Affairs. In the alternative the reservation residents could vote for the acceptance of state civil jurisdiction if they desired. Although at first glance such a course might appear harsh, the prime motive behind this consideration was the protection of innocent children and adults. Since the state welfare program must provide funds for Indian reservation residents who appear to qualify for welfare assistance, without the authority to make a full determination of eligibility, or without being able to use normal state laws and state courts to alleviate the deplorable conditions that Indian children are sometimes subjected to; because the state lacks the necessary jurisdiction to terminate parental rights, provide specialized care for children, enforce support payments, place children in foster homes, and generally provide the essential services necessary for the well-being of children, the state may well be merely preserving the deplorable social conditions by providing money, through ADC payments, to parents who

do not use the payments for the benefit of their children. Sometimes the funds are used for the purchase of liquor which perpetuates and multiplies the problems. Even before the Committee gave very serious consideration to this course of action, the Department of Health, Education, and Welfare issued a statement which in essence provides that if the state does not provide assistance to all areas of the state, regardless of whether or not it has civil jurisdiction, the state may be disqualified from receiving federal matching funds. It appears the Federal Government contends that our laws in regard to the "payment" of welfare assistance are valid on the reservation, regardless of their invalidity in regard to supervising the use of such funds, or insuring care for the recipients of the funds.

The Committee, nevertheless, has developed a number of legislative recommendations which should aid in the administration of North Dakota's welfare program. The majority of these recommendations are specifically aimed at the aid to dependent children program, because the majority of the welfare problems are found in this program, and the greatest social needs exist here. Two such proposals have special application to reservation areas.

## Recommendations

It was brought to the attention of the Committee that the authority of state's attorneys, public welfare boards, and even the Attorney General to secure information which is deemed necessary for a determination as to whether a welfare applicant is eligible for assistance, or whether it is advisable to take legal action against or in behalf of a welfare recipient is questionable, even though it has generally been made available to these officials. Information received by the registrar of vital statistics is confidential and not readily available except as provided by law. Such information can be secured through a court order, but this process can be cumbersome and, furthermore, information received through a court order must be shown to be necessary to litigation pending in any court. It quite frequently happens that information is needed in order to initiate court proceedings, or such information may show there is not any need for a court proceeding. There are many instances when information retained by the registrar of vital statistics, if easily accessible, can greatly aid the administration of the welfare program. The Committee recommends legislation which will allow the registrar of vital statistics

to furnish information contained in records to state's attorneys, county and state welfare boards, and the attorney general, when such information is to be used for official business in carrying out their duties.

This legislation is embodied in House Bill No. 538.

The father of a child born out of wedlock is responsible for the support of such child. Fathers of illegitimate children generally do not volunteer to provide support for such children, and frequently make efforts to avoid supporting the children. It is also not unusual for the mother of an illegitimate child to refuse to name the father, or refuse to initiate legal action to compel the father to support the illegitimate child. The law provides that a mother, guardian, or "authorities charged with its support" may bring a child support action. It is felt that the phrase "authorities charged with its support" is vague and should be clarified. For this reason the Committee recommends legislation providing that "a representative of the county or state public welfare board or any of the authorities charged with its support" may bring a child support action on behalf of an illegitimate child. Consequently, if the necessary information is obtained it would be possible for a child to have its parentage determined and support provided, even without the cooperation of the mother. Even though it may be very difficult to establish paternity and provide for support without the cooperation of the mother of an illegitimate child, the law must provide the necessary legal machinery for use in those instances when it will be possible to protect an innocent child's legal and other rights such as veteran's benefits, social security, and the sharing in the father's estate. It is with this thought in mind that the Committee recommends that the law be clarified to provide for the initiation of paternity and support actions by welfare officials or the legal authorities charged with counseling them.

It has already been pointed out that it is not unusual for a mother in making application for ADC to refuse to name the father of the child in question. Without such information it is nearly impossible to legally determine the child's eligibility for assistance, to determine the parentage of the child and the inheritance, veteran's, or social security rights that accompany such determination, or to enforce support from the absent parent. Nevertheless it is not uncommon for such applications to be approved and ADC assistance to be granted. It is the opinion of the Committee

that parental responsibility should be determined in all instances, so that the innocent children involved will receive all inherent rights they are entitled to by birth, or as provided by law. Furthermore, every parent should accept the responsibility of supporting his child, and if such responsibility is not accepted voluntarily, the law should impose it and provide for methods of determining such responsibility. In order to aid in the enforcement of parental obligations, the Committee recommends legislation which will provide for the denial of eligibility for aid to dependent children payments so long as the parent who has custody of the child refuses to give law enforcement officials reasonable assistance in enforcing the parental obligations of the absent parent. Under the proposed legislation a refusal to be interviewed by the state's attorney, to sign a complaint against the absent parent, or to reveal the identity or whereabouts of an absent parent, or a request to dismiss a complaint, shall be deemed a refusal to offer reasonable assistance to law enforcement officers. If a child was denied eligibility under the proposed legislation then the parent would be forced to make application for general assistance, which usually provides for a lesser amount of monetary assistance. It should be noted that the legislation recommended does not apply to a child whose parent has given consent for its adoption, or who has signed a statement of intent to place a child for adoption after its birth. The Committee feels that any of the children for whom ADC assistance is applied would receive far greater benefits if placed in an adoptive home than if it remained with its natural parent as an illegitimate child. Therefore, the provision has been made which would allow for ADC assistance for children to be placed for adoption.

Aid to dependent children payments are made for the care and protection of innocent children. It sometimes happens that such payments are diverted from the purposes intended, by the caretaker of the children, for the caretaker's personal use. It is a crime to knowingly obtain ADC assistance greater than one is entitled to, under the law and the regulations promulgated pursuant to law, but there is no provision in the law penalizing a person for using assistance grants for a purpose other than the necessary support of the needy children and the caretaker. Therefore, the Committee recommends legislation which provides that it is a misdemeanor to use ADC assistance payments for purposes other than the support of dependent children and their caretaker. A person found guilty of misusing ADC as-

sistance would be subject to imprisonment in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment, and would not be eligible to receive ADC assistance during the time of imprisonment. Dependent children under the care of any person imprisoned would be placed in a foster home, or under the care of a responsible person and be eligible for ADC assistance, upon order of the juvenile court during the period of imprisonment. It is the opinion of the Committee that the recommended legislation is necessary in order to discourage those persons who use ADC payments to purchase alcoholic beverages or otherwise abuse their trust. It is hoped that the proposed legislation will aid in the direction of funds for the purposes intended and, also, aid in promoting a better family atmosphere. The legislation discussed in this paragraph and the preceding two paragraphs is contained in Senate Bill No. 46.

During the course of its studies state and local welfare officials pointed out to the Committee that the law in regard to the obligation of stepfathers to support stepchildren has sometimes proved to be very confusing. The law presently provides that a stepfather is not bound to support his wife's children by a former husband, but if he receives them into his family and supports them, it is presumed he does so as a parent. In cases where an application for ADC assistance on behalf of stepchildren is received, it is very difficult for welfare officials to determine if such stepchildren are eligible for assistance if no written statement has been made by the stepfather before the marriage in regard to the extent of his support. If a stepfather has agreed to support his stepchildren and is financially capable of doing so, the application would be denied, but if the agreement was oral, it would appear that the determination of eligibility would depend on the applicant's word and any available facts showing an intent to support or not to support. Cases have been found where a man will marry a woman receiving ADC payments for her children, in order that he might participate in such payments which, in addition to denying the children the basic essentials to their well-being, has the effect of creating a very unwholesome family atmosphere. It is the opinion of the Committee that a more natural family atmosphere would result if a stepfather capable of supporting his stepchildren would do so, and, also, marriage for the purpose of diverting ADC payments should be discouraged.

A bill which would have provided that stepfathers must support stepchildren under the same conditions as a natural parent was seriously considered by the Committee. The main objection to this bill was that it might discourage marriages which could eventually prove beneficial to the stepchildren. In addition, it might obligate a stepfather to support children living out of the home. The Committee therefore recommends a bill which, in the opinion of the Committee, will solve the administrative problems in regard to providing ADC payments to stepchildren and will improve the social atmosphere of stepfather families. In essence this bill provides that a stepfather is liable for the support of his stepchildren, if without such support they would be eligible for ADC assistance, which responsibility would be in addition to any obligation under general law. The bill also provides that the natural father is not relieved of any obligation to support his children by the liability for their support imposed upon their stepfather, and that the income of the stepfather must be considered when aid to dependent children grants are made for his stepchildren.

The Committee has prepared and recommends the approval of a bill which provides that child support payments, or alimony combined with child support, may be made to the clerk of court upon decree of the court. The bill further provides that the clerk of court, with the assistance of the state's attorney, shall keep all records pertaining to such support payments, send notices of arrears when there is a failure to make required payments, and request the district judge to issue a citation for contempt of court upon failure of the person required to make such payment, within ten days from the date of notice. The citation for contempt would not issue unless consent is received by the clerk of court from the attorney for the support recipient, or personally from the support recipient, or the caretaker of such support recipient. The bill further provides that the clerk of court notify the local welfare office that support payments were ordered to be made to the clerk, and, if the recipient of the support payments makes application for welfare assistance, the clerk of court is authorized to initiate citation procedures without the consent of the recipient or recipient's attorney. Any person receiving support payments pursuant to a court decree may initiate contempt proceedings through the clerk of court upon giving the clerk written consent to do so, and by filing with the court an affidavit of failure by the ordered party to pay such support. The Committee is of the opinion that the



remedy provided by this bill, which is in addition to any other remedies provided for by law, can facilitate the enforcement of support payments, and conserve welfare funds, and will be an especially useful remedy in the case of chronic offenders.

It was brought to the attention of the Committee that instances in which children are subjected to physical abuse and injury appear to be quite prevalent throughout the United States. Such injuries are often inflicted by parents or guardians of the injured child, and even though serious and frequently repeated, are not always brought to the attention of responsible social and legal officials by those persons who are aware of the injuries. The prime reasons why such injuries are not reported by physicians who treat the abused children are the confidential relationship maintained by the doctor and patient, and the doctor-patient privilege prescribed by law, which provides that a doctor cannot be examined as to any information acquired in attending a patient without the consent of the patient. Another reason why such injuries are not detected would appear to be the husband-wife privilege prescribed by law, which disallows the testimony of a marriage partner for or against the other partner without such partner's consent. In addition to these legal and ethical reasons there is also the natural reluctance of a doctor, or marriage partner, to involve a patient, or the other marriage partner, in any social or legal entanglements. In order to combat these legal and natural deterrents, and to protect innocent children, many states have enacted what are commonly termed "child abuse laws" or "battered child laws". The Committee reviewed suggested model child abuse laws and the laws of other states, and has prepared and recommends the approval of a child abuse law for North Dakota. Briefly, the bill provides that any physician or other licensed doctor of medicine, having reasonable cause to suspect that a child under the age of 18 has had serious injury inflicted upon him by other than accidental means, by a parent or guardian, shall report such fact to the nearest juvenile commissioner, if available, or to the state's attorney. The juvenile commissioner or the state's attorney must then notify the county welfare board, whose duty it shall be to investigate the facts of such report, and the welfare board must then make a report to the juvenile commissioner and the state's attorney, who shall take such action within their authority as appears necessary. Anyone participating in good faith in the making of a report would have immunity from any civil or criminal

liability that might otherwise be incurred, and neither the physician-patient privilege nor the husband-wife privilege would be a ground for excluding evidence regarding a child's injuries or the cause thereof. It is the belief of the Committee that the purpose of a child abuse bill should be to protect the innocent child and preserve the family, not necessarily to seek out and prosecute a parent or other person responsible for the care of a child. For this reason the bill recommended provides that the report be made to the juvenile commissioner or state's attorney, and be investigated by the county welfare agency. If the report were to be made to the police or sheriff, more prosecutions might result but the ultimate aim should be the well-being of the child and restoration of the family. The juvenile court, of which the juvenile commissioner is an officer, has the necessary authority to protect a child without any undue publicity arising; the state's attorney has power to prosecute, or take steps toward the treatment of an unstable parent; and the information compiled by the welfare board is confidential. It is the consensus of the Committee that through the use of these three agencies, only those deserving punishment will receive it, and those in need of social counseling and treatment will receive it.

As was noted earlier in this report, the Committee specifically directed its attention to welfare problems arising on Indian reservations and in Indian country, especially in reference to the aid to dependent children program. Some of the recommendations which have been outlined were the direct result of the study of Indian problems, but these recommendations are equally applicable to similar cases found off reservation areas. The lack of civil jurisdiction on Indian reservations presents problems which are peculiar to the citizens residing on such reservations and the welfare officials whose duty it is to provide assistance to such citizens. It is the responsibility of county welfare boards of counties having Indian reservations to provide assistance to eligible Indian recipients living on reservations, without having power to initiate legal proceedings for the termination of parental rights, enforce support payments, provide guardianships and foster home care, place children for adoption; or without the general power to make a legal determination of eligibility; or supervise the use of assistance grants. In the past some applications for assistance have been denied because the lack of jurisdiction prevented a full and independent determination of eligibility, but the Department of Health, Education, and Welfare has now issued a



directive that assistance must be granted to reservation residents, even though the necessary jurisdiction is lacking to make independent determinations of eligibility. If the directive of the federal office is disregarded, the matching funds provided by the Federal Government might be withheld. The tribal courts and Court of Indian Offenses may be clothed with the jurisdictional authority to terminate parental rights, enforce support, and generally carry out the necessary functions necessary to the enforcement and supervision of a well organized welfare program, but in the past these courts have not provided a high-level type of judicial operation. County welfare boards have frequently found it very difficult to depend upon tribal courts and Courts of Indian Offenses.

It was noted by the Committee that efforts are now being made by Indian court officials, and other Indian citizens, to upgrade their codes of laws and court systems. Although the work of the Indian officials is in its early stages, progress is being made, especially on the Fort Yates and Fort Totten Indian Reservations. A new code of laws has been adopted on the Fort Yates Reservation and a very promising and dedicated tribal judge obtained. The services of a judge with a professional legal background have been secured at Fort Totten. Because progress has been made in updating the reservation laws and court systems, and the Committee has received assurances that further efforts will be made in the near future by all Indian court officials in North Dakota to enact uniform codes of law for all North Dakota Indian reservations and provide a judicial system comparable in some legal areas to the state courts, the Committee has tentatively recommended a bill which would provide for the docketing and enforcement of civil judgments and decrees rendered by tribal courts and Courts of Indian Offenses. The bill provides that a civil judgment or decree rendered by an Indian court may be docketed in a district court of the state in the discretion of the judge of the district court. The Committee believes that it is necessary that a district judge have discretionary power in the recognition of Indian court judgments in case the Indian court officials fail to improve their judicial system to a degree comparable to the administration of justice in the state courts, or in case an Indian court, through error or inexperience, fails to make a fair judicial determination of the case before it. The bill recommended also provides that if a judgment is docketed in a district court, such court will have jurisdiction over the person and his property affected by the judg-

ment, and that executions, writs, and other processes issued by a district court shall have full force and effect in all areas of the state, including Indian reservations and Indian country. It should be carefully kept in mind that the recommendation of the Committee is contingent upon the enactment of a uniform code of laws on all reservations of the state, and the improvement of the Indian court systems to a degree of high judicial competence. If the improvements are forthcoming and the bill were to become a reality, it is felt that welfare programs could become more successful and social conditions sometimes found on Indian reservations involving ADC cases could be vastly improved through the cooperation of Indian county welfare boards and Indian and state courts.

If firm and substantial further progress in law and court improvement is not evident when the legislative session begins, the Committee recommends an alternative bill providing for the assumption of civil jurisdiction by the state over the following civil matters and causes of action arising on Indian reservations or in Indian country:

1. The care and protection of children under the age of eighteen, the jurisdiction of which is now vested in a state juvenile court;
2. Adoption;
3. The determination of parentage of children;
4. Termination of parental rights;
5. Commitments by county mental health boards or county judges;
6. Guardianship;
7. Marriage contracts; and
8. Obligations for the support of spouse, children, or other dependents.

The bill alternatively recommended provides for methods for enforcement of decisions in regard to those causes of action over which the state will assume civil jurisdiction, and recognizes tribal ordinances and customs not inconsistent with the applicable law of this state. The bill prohibits the state from exercising jurisdiction over Indian trust lands, and states that the proposed legislation should not be construed as requiring the extension of additional governmental

services to Indian reservations or Indian country.

The Committee is fully cognizant of the fact that a great majority of Indian reservation citizens have expressed their unwillingness to be placed under state civil jurisdiction but, nevertheless, the Committee is of the opinion that unless affirmative actions are taken for the protection of the underprivileged or abused children living on the Indian reservations and in Indian country, the deplorable social conditions frequently found there will continue to increase and perpetuate themselves. It is the sincere hope of the Committee that a solution to the welfare and social problems of the Indians of North Dakota can be arrived at through the joint efforts and cooperation of Indian and state officials, but if it appears that a cooperative solution can not be arrived at, the Committee feels that the initial action should be taken by the state.

The Committee recommends the passage of a concurrent resolution asking Congress to secure the enactment of legislation which will provide for federal reimbursement in welfare programs on North Dakota Indian reservations equal to that paid to the states of New Mexico and Arizona. These states receive federal matching funds for Indian welfare assistance equal to 80 percent of that provided by the states. The Indian and financial problems confronting North Dakota appear to be at least as pressing and important as those found in New Mexico and Arizona in relation to the Navaho-Hopi Indians. It also appears that North Dakota will have to spend more money for Indian welfare programs in the future than it is presently spending, which will add to the heavy financial burden already facing the

state. The Committee definitely feels that North Dakota is deserving of federal treatment equal to that accorded to Arizona and New Mexico. Letters to the North Dakota congressional delegation have been prepared and mailed, which outline the Indian problems in North Dakota and express the viewpoints of the Committee.

### Conclusions

The study undertaken by the Committee in regard to North Dakota welfare programs involved many welfare program activities. The Committee could not develop recommendations in all areas of study, but has concentrated its recommendations to those areas where the problems are most severe. It should be noted that improvements on the administrative level are being made. Manuals have been revised, policies have been reviewed, budget standards revamped, and the State Public Welfare Board has now employed a medical doctor with a wide range of experience as an adviser for cases requiring professional and medical knowledge. The Committee is of the opinion that the study undertaken, and the recommendations being made, will materially aid in the improvement of the North Dakota welfare program, which is already recognized by many state and federal welfare authorities as being one of the finest and best administered in the United States.

The Committee wishes to express its real appreciation to members of the respective state and county welfare boards, many county welfare directors, and to the Director of the State Public Welfare Board and his staff for their excellent cooperation in the course of this study.

# Taxation

Senate Concurrent Resolution "V-V" directed the Legislative Research Committee to continue the tax study begun in the two previous bienniums in regard to tax equity, administration, and the effect of the tax structure upon economic development. House Concurrent Resolution "E-1" directed the Committee to study the feasibility of substituting a sales tax or other taxes for personal property taxes with the view in mind of eliminating personal property taxes in North Dakota. House Concurrent Resolution "B" directed the Committee to continue studying the equities of telephone taxation begun in the last biennium and, in addition, to include a study of the taxation of power generation and transmission companies. Senate Bill No. 38 directed the Committee, with the cooperation of the State Tax Department, to conduct a study of state law, policies, and procedures in regard to the collection of sales

and use taxes, such study to include a review of sales tax laws and regulations, field and office auditing requirements and practices, administrative procedures, personnel requirements and standards, authority and responsibilities of the sales tax division and the sales tax deputy, the subjects taxable by the sales tax, and sales tax exemptions.

These studies were assigned to the Subcommittee on Taxation, consisting of Representatives Harold R. Hofstrand, Chairman, Richard J. Backes, Leonard J. Davis, Arne Dahl, Eldred N. Dornacker, Donald Giffey, Otto Hauf, Milo Knudsen, Arthur A. Link, A. R. Miller, Stanley Saugstad, Frank Shablow, and Gerhart Wilkie; Senators H. B. Baeverstad, Edwin C. Becker, Jr., Gail H. Herne, Donald C. Holand, Dan Kisse, Evan E. Lips, Duane Mutch, and Clark Van Horn.

## PART I

### TELEPHONE TAXATION

The study in regard to telephone companies undertaken by the Legislative Research Committee is primarily concerned with establishing an equitable taxation system for taxing mutual and cooperative telephone companies. The work carried on by the Committee during the previous biennium was quite extensive but it was felt there had not been sufficient time to fully explore all possibilities of developing a workable tax system.

The taxation system under which mutual and cooperative telephone companies have operated provides for taxing these companies at the flat rate of 50c per phone in lieu of all real and personal property taxes. Such a system is quite favorable to mutual and cooperative telephone companies when compared to taxation laws applicable to other telephone companies. As a partial answer to establishing more tax equity the Committee recommended in its 1961-63 study that small commercial telephone companies, which provide the same type of service as mutual and cooperative telephone companies, be taxed in the same manner as mutuals and cooperatives. This recommendation became law and thus small commercial telephone companies exclusively engaged in providing telephone service to rural areas, or to rural areas and cities and villages of five hundred persons or less, were placed under the 50c-

per-phone tax with mutuals and cooperatives. The Legislative Assembly also passed a law removing the sales and use tax exemptions for mutual and cooperative telephone companies. This law is also applicable to the commercial companies taxed in the same manner as mutuals and cooperatives. For a further explanation of the study carried on by the Committee in regard to telephone companies during the previous biennium the reader should review the 1963 Legislative Research Committee report.

The Committee made arrangements with the Bureau of Business and Economic Research of the University of North Dakota for assistance in determining basic background facts and information that would be necessary for any consideration of a change in the methods of taxing rural telephone companies. It was agreed that any study carried on by the University of North Dakota should include a determination of taxes paid under present laws, taxes that would be paid if such activities and property were taxed under North Dakota's regular tax structure, equitable methods of distribution of any state-collected tax revenues, and equities of alternative methods of taxation.

During the early stages of the telephone tax

study representatives of the North Dakota Rural Telephone Association offered their services in developing a new method of taxation for cooperative and mutual telephone companies and small private companies serving rural areas. The Committee accepted the offer of the Rural Telephone Association and pursuant to such acceptance the association presented its plan for taxing rural telephone companies and private companies serving rural areas.

The tax plan presented by the Rural Telephone Association used as its basic yardstick the number of telephone stations a company maintains per mile of telephone line in its operations in North Dakota. Thus the tax rates proposed were one-half of one percent of gross revenues received from in-state operations for companies maintaining less than 1.25 stations per mile of telephone line, one percent of gross revenues for companies maintaining between 1.25 and 1.75 stations per mile of telephone line, one and one-half percent of gross revenues for companies maintaining between 1.75 and 2.25 stations per mile of line, and two percent of gross revenues for companies maintaining over 2.25 stations per mile of line. In no event would the tax liability be less than the present rates of 50c per phone.

Data comparing the tax revenues payable by rural telephone companies under the proposed plan with that presently payable and that which

would be payable under the ad valorem system, was prepared by Dr. William Koenker of the University of North Dakota. This data indicates that the increase in taxes for rural telephone companies would be substantial for one telephone company, which would be the only company subject to the two percent rate. The size, operating revenues, property valuation, and number of telephone stations maintained by this company are quite large in comparison to the average rural telephone station. In comparing the taxes that would be payable under an ad valorem tax system with taxes payable under the tax plan proposed, it will be noticed that the proposed plan provides lower rates than would the ad valorem property tax. However, some of the rural telephone companies have such marginal operations that the imposition of real and personal property taxes might force their telephone rates beyond the point of diminishing returns and seriously impair their solvency. Other companies could afford to pay normal real and personal property taxes, but it is not feasible to adopt two or three different taxing systems for these companies. Despite variations between rural telephone companies there appears to be a definite correlation between telephone station density and taxpaying ability. Consequently a tax plan with rates based on this factor can readily apply to both the marginal and more affluent companies. The tax plan presented by the Rural Telephone Association seems quite appropriate to the Committee.

Rural Telephone Companies  
Taxes payable Under Various Tax Systems  
1963

Companies	BEK	Consol- idated	Dakota Central	Dickey	North- West	Polar	Red River	Reser- vation	Souris	United	West River	Total Tax Revenues Payable Under Various Tax Systems
<b>Tax Paid Under 50c per Phone Rate</b>	1,277	904	829	1,050	1,445	2,910	232	1,430	3,236	1,565	1,639	\$ 16,517
<b>Tax Which Would be Paid Under Ad Valorum Tax*</b>	54,946	31,147	37,115	48,884	50,959	77,412	8,245	57,790	222,101	44,623	46,597	\$679,819
<b>Tax Payable Under Proposed Graduated Gross Receipts Tax</b>	1,319	1,086	950	1,129	3,020	10,534	485	3,263	43,950	5,290	4,369	\$ 75,395

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\*Assuming assessment at 39 percent of book value  
and an average levy of 100 mills.

The bill recommended by the Committee retains the rates proposed by the rural telephone association. The administration of the proposed tax would basically be the same as under present laws except that the allocation of revenue to the counties would be in the proportion each company's stations in a county bear to the total number of stations maintained by such companies rather than an allocation based on the number of telephone instruments. The funds would be allocated within an individual county to the school districts on the same station pro rata system, rather than to every individual political subdivision in which a telephone station might be located. The primary reason for changing this allocation method is because rural telephone companies in the past have been forced to maintain records

listing every telephone instrument in every political subdivision in their counties of operation, which is quite a cost item in relation to the amount of revenue allocated. It should also be remembered that many political subdivisions and special districts are constantly shifting their boundaries and other subdivisions are being created. Under the proposed allocation method some subdivisions may lose a very minute amount of revenue from that received under the present tax law, but the loss will be made up by a gain to the school districts. The total tax yield of the tax now on the statute books is so small, and the share of the subdivisions sharing in it so minor, that it will hardly be missed by the other local governments.

## Part II

### SALES TAX

Pursuant to the direction of Senate Bill No. 38 the Committee obtained the services of professional personnel experienced in the enforcement and administration of sales and use taxes. The Committee was most fortunate in being able to employ Mr. John T. Singer, Director of the sales and use tax division of the Bureau of Taxation in the state of Maine; and Dr. John F. Due, professor of Economics at the University of Illinois, probably the outstanding authority on sales and use taxes in the country. These two men made a detailed and comprehensive study of state laws, policies, administration, and procedures in regard to the collection of sales and use taxes in North Dakota. The results and conclusions of this study have been compiled in a separate report entitled "The North Dakota Sales And Use Tax" which is available in the offices of the Legislative Research Committee.

This report, hereafter referred to as the Due-Singer Report, was extremely valuable in the Committee's deliberations, and the majority of the recommendations in this tax field are based upon information taken from the Due-Singer report.

The recommendations and suggested changes to the sales and use taxes contained in the Due-Singer report were classified by the Committee as either "administrative" or "legislative", in order to simplify their consideration. Many of the suggested administrative changes have already been put into effect by the State Tax De-

partment, and others are being considered for the future. Sales and use tax collections have increased through the use of new auditing procedures and the reclassification of firms and permit holders. The use of computer systems and IBM cards has been effected. Methods of simplifying the taxpayers' duties have been studied and put into use, and sales and use tax regulations have been clarified and brought up to date. These are a few of the administrative suggestions which have been put into effect. It is the hope of the Committee that the sales and use tax division of the State Tax Department will continue to improve its efficiency through the enactment of additional new and modern procedures.

### Legislative Recommendations

The Committee considered a large number of legislative changes to sales and use tax laws, as suggested in the Due-Singer report. In addition, consideration was also given to problems and grievances which were called to the Committee's attention by businessmen, administrators, and legislators. Some of the bills recommended by the Committee are designed to cover deficiencies or loopholes which are sometimes unfair to taxpayers and retailers, and other recommendations are concerned with streamlining the administration of the sales and use tax in an effort to save time and money.

The Committee recommends the approval of

a bill which contains four recommendations found in the Due-Singer report. The first recommendation contained in the bill would allow the Tax Commissioner to make use of annual or monthly returns by certain retailers, in addition to the quarterly returns normally submitted by most retailers. There are many retail firms which remit only a small amount of tax each year, because of the small number of sales. Firms rendering nontaxable services, and wholesale supply houses which occasionally make retail sales are examples. In addition, there are the seasonable types of businesses which may operate only three or four months a year, but yet must file a sales tax return for the three quarters when they are not operating. Such firms could easily be placed on an annual return basis, which would aid in reducing delinquencies and compliance costs as well as reducing the number of returns that would have to be processed by the Tax Department. The use of monthly returns for selected firms, generally those with poor records and which are chronically delinquent, will minimize loss from failure or disappearance of firms; lessen the period in which a vendor will have the free use of tax money; place the state on a more current basis with some firms; help the small retailer to avoid the problem of being hard pressed for money to pay taxes; and lessen the peakload problem of processing returns. The establishment of annual, or less than quarterly, returns would be a discretionary power with the state Tax Commissioner which would only be exercised when such action was necessary or practical.

The present fee that must be paid before a sales tax permit is issued is fifty cents, and the fee for the reinstatement of a permit previously revoked is one dollar. In the past it appears that many persons who are not actually retailers have been able to obtain sales tax permits by complying with the statutory requirements of making application for a permit and paying the permit fee. The revenue received from the permit fee (about \$1,100 a year) does not pay for the cost of administering it. There is also an objection in principle in requiring firms to pay for permits to pay taxes. The present fee for reissuance of sales tax permits appears to have nuisance value only, and does not serve as any form of a penalty. In order to aid in providing a more careful screening of sales tax permits and correct the nuisance situation resulting from the inadequate permit fees, the Committee has included a provision in the bill which would clothe the Tax Commissioner with authority to reject an application for a sales tax permit upon

determining that the applicant is not a bona fide retailer; and is also including provisions to eliminate the sales tax permit fee and to raise the fee for a permit previously revoked from one dollar to five dollars. It is the consensus of the Committee that the administration of sales tax permits will be greatly improved through the approval of these provisions.

It was brought to the attention of the Committee that the delinquency rate in filing the quarterly returns is quite high. Part of this delinquency rate can be attributed to the remitters who have a small amount of tax to remit. Because the penalty is so small, they do not bother to remit their collections. Although the amounts due may be small, the cost of administering delinquent accounts can be substantial. To help overcome this problem the Committee has submitted provisions calling for a minimum penalty fee for late filing of \$5 or 5 percent of the amount due, whichever is greater, instead of the present rate of 5 percent of the amount due. The Committee had considered recommending increasing the 5 percent penalty fee to 10 percent, and reducing the 1 percent-per-month penalty to one-half percent. This consideration was rejected because it was thought such a penalty might be too high for those who, through inadvertence, might fail to file on time. Although the penalty has not been substantially increased, the Committee believes that the recommendation included in the bill under discussion should have the effect of encouraging many retailers to submit their collection more promptly.

The Committee also recommends provisions included in the bill under discussion which would shorten the period of time for the assessment of sales taxes, and shorten the time for appeal upon such assessment. Specifically, it is provided that when an incorrect or insufficient return is filed, the Tax Commissioner shall compute the tax due and give notice to the taxpayer of the amount due, instead of requiring the taxpayer to file a corrected return within twenty days of notice by the Tax Commissioner. After receiving notice from the Tax Commissioner the taxpayer would have fifteen days, instead of thirty, as presently provided, to appeal to the commissioner for a hearing. If the taxpayer was aggrieved by the Tax Commissioner's hearing he would be allowed to appeal such decision to the district court within thirty days, instead of sixty as presently provided. It is the opinion of the Committee that the reduction of the appeal time will greatly speed up procedures for the control of delinquent

cies, and still maintain the same degree of protection to the taxpayer. At present it can take almost four months for a delinquent taxpayer to be brought into court for failure to pay his tax, in which time he may have left the state or become bankrupt. Eliminating the twenty-day period to file a corrected return will not affect the taxpayer, because he will still have a sufficient amount of time to appeal any assessment, in spite of the fact that the periods of appeal will be shorter.

The Committee recommends passage of a bill which would provide for the collection of use taxes from a purchaser when such purchaser does not pay a sales tax as required. Presently the purchaser cannot be held liable for the sales or use tax if it is not collected and paid by the vendor. Specifically, the bill would amend the use tax exemption section of the law to provide that the use tax chapter does not apply to the taxation of any tangible personal property or taxable service upon the sale of which the retail sales tax has been "collected". Formerly this section stated "upon the sale of which is subject to the retail sales tax". This was interpreted as meaning that goods subject to the sales tax were exempt from the use tax, even though the sales tax was never paid. This recommendation would take care of situations where the vendor failed to collect the sales tax, and then went out of business or became bankrupt or otherwise judgment proof. Tax treatment of firms doing both retail selling and contract work would be greatly simplified. These firms could be allowed to make purchases tax free under resale certificates, and account for the tax themselves on all items going into contract work. The present rule that items going directly to the contract site cannot be purchased tax free, necessitated by the inability to enforce tax payment from contractors themselves in such instances, is very troublesome.

The Committee recommends that the sales tax law be amended to require that vendors who make deliveries into this state in their own vehicles or by contract carrier, and vendors sending catalogs or other circulars into this state offering merchandise for sale to North Dakota customers, obtain sales tax permits. This type of vendor is doing business in the state in the same manner as, and is in competition with, resident vendors, and should be subject to the same laws and regulations where it is possible to impose them. In order to implement this recommendation it was necessary to amend the definition of "retailer" and "retailer maintaining a place of

business in this state", because those who are required to obtain sales tax permits are the retailers maintaining a place of business. The bill is limited to "a vendor who makes deliveries into this state in his own vehicle or by contract carrier" because one who uses his own vehicle is certainly doing business in the state, and a contract carrier is one who usually negotiates directly with the vendor and acts directly as the agent of the vendor. Persons who deliver by other common carriers generally are scattered throughout the United States, and their deliveries are combined with goods shipped by many persons. It would be very difficult to enforce the provisions of the proposed bill in regard to those who deliver goods by trains, large van lines, airplanes, and other modes of transportation, jointly used by the public. Such goods would still be subject to the use tax.

All use taxes except the motor vehicle use tax are presently administered and collected by the Tax Commissioner. The present system of two agencies collecting use taxes appears to have two major disadvantages: 1.) differences can develop in the application of the two taxes because they are administered by separate agencies and, 2.) there is grave danger that some transactions are escaping taxation completely because they fall between the two taxes. The Committee is of the opinion that all portions of the sales-use tax structure should be placed under the jurisdiction of the Tax Commissioner, and recommends a bill carrying out this recommendation. The present system of collection of the motor vehicle use tax through the office of the Registrar of Motor Vehicles would be continued to prevent any leakage of the tax, but the registrar would act as the agent of the Tax Commissioner. This bill would result in more uniform administration of the use tax, and the joint staffs and facilities of the two agencies involved, especially in field audits, should improve the collection of the use tax.

It should also be noted that the motor vehicle use tax law has been amended to provide that the revenues received by the Motor Vehicle Registrar be paid to the State Treasurer for deposit in the general fund, instead of the motor vehicle registration fund. Presently all sales and use taxes, except the motor vehicle use tax, are deposited in the general fund. The Committee is of the opinion that the \$700,000 estimated annual income from the motor vehicle use tax should be treated in the same manner as other sales and use taxes. It was noted that the provision for placing the motor vehicle use tax in the motor vehicle registration



fund was enacted at a time when there was a shortage of highway funds, but it now appears that the state general fund is more in need of revenue than the highway fund.

The Committee recommends the approval of a bill which would appear to fall midway between the sales tax study and the power generation study. Presently electric cooperatives are exempt from the payment of sales and use taxes, while other forms of businesses, including rural telephone cooperatives, are required to pay these taxes on the goods they purchase. The Committee is of the opinion that, while there may have been good reasons for exempting electric cooperatives from the payment of sales and use taxes during the years of their infancy in North Dakota, there is no real reason today why these cooperatives should not pay sales and use taxes. Electric distribution cooperatives are well established in North Dakota, and the large-scale electric generating cooperatives which will locate in North Dakota in the future, appear to be quite capable of paying a sufficient amount of state taxes to cover the additional costs of services that the state and local governments will provide. The Committee recommends the approval of a bill which would eliminate the exemption from sales and use taxes for electric cooperatives for the reasons herein enumerated.

The Committee recommends a bill which would incorporate four Due-Singer recommendations and, also, two miscellaneous recommendations. This bill would make the sales and use tax permanent at a 2 percent rate; place the sales and use tax on liquor, wine, beer, cigars, tobacco, cigarettes and cigarette products, and oleomargarine; place a temporary rate, in addition to the 2 percent rate, on articles taxed under the sales and use tax; change the method of imposition of the sales and use tax on articles purchased for rental purposes; make casual sales by retailers of goods normally carried in their stock subject to the sales and use tax; and repeal the wholesale taxes on cigars and tobacco products and on commodities used in mixed drinks.

The Committee noted that the present practice of reenacting the sales tax every two years could cause a major financial crisis for the state if the sales tax was to be subjected to a referendum. By making the 2 percent rate permanent, the state would be more certain to receive that amount raised by the 2 percent rate, because such figure would not be subject to referral if it were not enacted at each legislative session, but rather

would be subjected to the initiative process. Any amount needed over the 2 percent rate could be reenacted on a temporary basis in the same manner as the sales tax is now reenacted. The Committee is not at this time recommending a specific rate to be designated as temporary, but it is of the opinion that any rate which would be established over the 2 percent rate could be provided for during the legislative session when the fiscal condition of the state is better known.

The Committee believes that the present exemption from the sales and use tax for liquor, wine, beer, cigars, tobacco, cigarettes and cigarette products, and oleomargarine is not justified. The argument that to impose the sales tax on such products would result in a "tax on a tax" because such articles are already subject to special taxes does not seem to be an objection of merit. Approximately two-thirds of the states impose the sales tax on cigarettes, and all except three tax most, or all, liquor. The fact that there is justification for a special tax on these products does not seem to be a justification for exempting them from the sales tax. If the sales tax is imposed on these products the problem of how to tax mixed drinks and cigars would not result. The items in mixed drinks excluding the liquor are presently subject to a wholesale tax because it was administratively impossible to tax a mixed drink, the liquor being tax free and the other ingredients being taxable. Auditing problems arose in allowing cigarettes to be tax free and cigars to be subject to the tax. To overcome this problem the cigars have been subjected to a wholesale tax. The Committee feels that the wholesale taxes on commodities used in mixed drinks and on cigars are not necessary if all liquor and tobacco are made subject to the sales tax, because such wholesale taxes were enacted to cover the gaps in the collection of sales taxes. It is estimated that a 2 percent sales tax on these products will bring in an additional \$1,686,849 a year.

Casual sales - that is, sales which are not made at retail by a retailer - are presently exempt from the sales tax. If a store sells used fixtures, desks, etc., the sales tax does not apply because this is regarded as a casual sale, unless the store is exclusively engaged in the business of selling used items. It is also possible for a retailer to take some of his stock, use it for a period of time, and then sell it on a casual basis. The articles thus used escape the sales tax. It is for this reason that the Committee recommends that the sale of articles normally carried in stock by a retailer

be made subject to the sales tax, whether made as a casual sale or upon a regular retail basis.

The former interpretation of the sales tax law in regard to rental products was that a firm could buy an article for rental purposes with the choice of paying the tax on the purchase price, or on the rental charge. The new ruling of the Tax Commissioner is that the original purchase of an item bought for rental purposes will not be subject to the sales tax, but, rather, the tax is to be imposed on each rental transaction upon the theory that the item is being sold on a rental basis, and consequently the purchase was for resale. Thus the option to pay on the first sale or on the rental no longer exists.

The Committee recommends that the sales

tax law be amended to provide that all rentals be made subject to the sales tax and also the purchase of rented articles, but that the rental agency be allowed to offset the taxes paid on the purchase price. Furthermore, the sales tax would be imposed only on the fair rental value. It was noted that under the present law one can buy an article for rental purposes and not pay any sales tax. He can then rent the article for a time and cease such rental, and thus escape paying the full sales tax, while at the same time paying for the article through rental revenue. Any person is able to do this under the present law, because anyone can obtain a sales tax permit. The Committee believes that the proposed amendment will result in better administration and result in more sales tax revenue.

### PART III

#### TAXATION OF LARGE-SCALE ELECTRICAL ENERGY GENERATION PLANTS

The study in regard to developing a taxation system designed for large-scale electrical energy generation plants as requested by the Legislature was undertaken for many reasons. The generation facilities presently being constructed by Basin Electric Power Cooperative and those facilities being proposed by United Power Association of Elk River, Minnesota, in addition to any other facilities which may be proposed in the future, differ substantially from any electrical facilities presently operating in North Dakota in their size and operation, and the effect they will have on the economic structure of North Dakota. The development of a favorable tax climate is of prime importance, and consideration must be given to the future as well as the present needs of industry and the state and its political subdivisions. It must be kept in mind that there is likely to be a wide diversity in the patterns of ownership of large industrial companies desiring to locate in North Dakota and a proper tax program should be appropriate to any of them. It appears that our present tax structure does not fully meet this objective.

#### Present Methods of Taxation

Nonprofit cooperatives engaged in the distribution, transmission, or generation of electrical energy are presently taxed at the rate of 1 percent of their gross receipts derived from busi-

ness carried on in North Dakota for the first five years of their operation, and 2 percent thereafter. This tax is in lieu of all personal property taxes and, except for land, all property used in supplying electrical energy is classified as personal property, including, but not limited to, poles, wires, generating equipment, buildings, and substations. Land (not including improvements) belonging to electric cooperatives is subject to the ad valorem property tax. Revenues received from the taxation of distribution electric cooperatives are apportioned to each county according to the proportion the number of miles of transmission lines in a county bears to the total number of miles of line belonging to an electric cooperative. Revenues received from cooperative electrical generation plants with less than two hundred miles of transmission lines are apportioned 85 percent to the county wherein the generator and plant is located, and 15 percent to the counties in which the transmission lines are located, in the ratio in which the number of miles of lines in each county bears to the total number of miles of lines of such cooperative. Electric cooperatives are also exempt from paying sales and use taxes on goods they purchase, motor fuel taxes, motor vehicle taxes, and also from the payment of income taxes.

Investor-owned electric companies are subject to the ad valorem property tax and, as such, their property is assessed or valued, and levied

upon in the same manner as an individual's property, with the exception that the State Board of Equalization is charged with the responsibility of making the assessment on the companies' operative property. The local taxing districts determine the taxes to be extended against the property located within its boundaries, as assessed by the State Board of Equalization, according to the mill levies prescribed in such districts. The revenue received is thus collected on the local level and no major allocation problem is encountered as in the case of revenues collected on the state level. In addition to property taxes, investor-owned electric companies pay sales and use taxes on articles they purchase, motor fuel taxes, motor vehicle taxes, and income taxes.

These are the two systems of taxation presently applicable to electrical energy companies. It is the belief of the Committee that North Dakota's tax structure, as it presently exists and affects electrical energy companies, is suitable for small electric distribution plants, but does not appear wholly applicable to the development of large scale electrical energy generating plants.

#### Operation of Large-Scale Generating Plants

In outlining the proposed operation of large-scale generating plants, primary consideration will be given to the operations of the plant being constructed by Basin Electric Cooperative since most of the information available at this time is in reference to that plant. However, the material presented should be fairly applicable to other electric cooperatives and, except for the present tax system, also applicable to investor-owned generation companies.

The value of the large-scale generating plants will be over \$30 million and each plant will have a generating capacity of 150,000 to 200,000 kilowatts, which will be transported over extra-high voltage transmission lines with a carrying capacity approaching 230 kilovolts and more. The plants will probably be located in and around the Mercer County area because of the large deposits of lignite coal, availability of water, and the large-scale mining operations carried on. Unlike any generating plants presently operating in North Dakota, the largest of which has a generating capacity of near 35,000 kilowatts, the bulk of the power generated will be transmitted to out-of-state customers. Thus in the case of cooperatives the majority portion of the total sales will be exempt from the 2 percent gross receipts

tax, because such tax is levied only upon revenues derived from in-state sales. Investor-owned plants, even though the majority of their revenues would be derived from out-of-state customers, would still be liable for all of their taxes, except for the possible exception of a portion of their income taxes, because property taxes are levied upon their property, the bulk of which will be located in North Dakota.

The power to be generated is usually classified as either firm power or dump power. Firm power can generally be defined as that power generated for which there is a firm and constant demand, and which a power company is committed to supply to a given place for a given time. Dump power is that power which may be seasonably or sporadically produced which is in excess of the firm power, and for which there is not a firm and constant demand. The income received from the sale of dump power is usually somewhat lower than that received from the sale of firm power. There are two rates at which generating plants sell their power and they are known as the "postage-stamp" rate and the "bus-bar" rate. The postage-stamp rate is the standard uniform charge made to members of an electrical cooperative for a unit of electricity and is the rate generally charged to all such customers, regardless of their proximity to the generating plant, for electricity carried on transmission lines. The bus-bar rate refers to the charge made to customers who obtain their electrical energy directly from the generation plant by running their own transmission lines to the plant. The bus-bar rate is generally lower than the postage-stamp rate and may vary from customer to customer. It appears that the customers of a cooperative, such as Basin Electric, would all be subject to the same rate whether they lived in North Dakota, Minnesota, or Iowa, unless they were able to obtain a bus-bar rate. Thus, as far as rates are concerned, a postage-stamp rate system does not directly encourage industrial development in North Dakota in the form of power-consuming industries to nearly the extent that they would be encouraged by a bus-bar rate.

The three main reasons for large electrical generating companies locating in North Dakota are: 1.) the inexhaustible supply of cheap fuel in the form of lignite coal; 2.) the availability of water; and 3.) a favorable tax structure. There are an estimated 350,910 million tons of lignite coal available in the state of North Dakota. The estimated yield of coal that one acre of land will produce is between 15,000 and 30,000 tons, with

a figure close to 15,000 tons being the more usual yield. Basin Electric estimates that one of its plants will use approximately 1,200,000 tons of coal a year, which means that it will take about 80 acres of coal land a year to furnish one Basin plant with a sufficient amount of coal. Of course eighty acres of coal mined will take more than eighty acres of farm land out of production, because coal acres are not uniform. The lignite coal underlying North Dakota is considered by many to be a natural heritage of the state as a whole, rather than of the particular subdivision in which it is located. The rationale that follows such concept is that if the coal is a natural heritage of the state as a whole, the entire state should share in the proceeds thereof. The natural heritage concept precludes the use of the property tax as the proper or sole method of reimbursement, because the property tax is a local tax, and as such does not reimburse all the citizens of the state.

### Possible Effects and Resulting Problems

It has already been stated that North Dakota's present tax structure is not adequately equipped to equitably provide for conditions resulting from the locating of large-scale generation plants in our state. Thus far only one reason has been advanced to substantiate this statement. As will be recalled, the reason given is that, because most of the power generated will be sold out-of-state, the revenues derived therefrom will not be subject to the gross receipts tax in the case of electric cooperatives, and investor-owned plants will pay all their property taxes, even though they, too, will sell most of their power out-of-state. This portion of the report on power-generating companies will be devoted to further emphasizing the inadequacy of our tax system.

There appears little doubt that the political subdivisions wherein electric generating plants are located will have increased governmental costs as will the state level of government. New power generation and transmission enterprises will benefit from the judicial and law enforcement systems of our state, and other services of government. More roads and school facilities will be required in the areas of development. These are costs which should be balanced by an equitable tax system.

It is true that even without enacting any new legislation there will be a rather significant increase in local tax revenue and an increase for the state will also take place to a degree. These

increases will result from increased assessed valuation of grazing and farming lands when they are used for coal mining purposes, new payrolls, increased revenue from sales, increases in income, an increase in personal property revenue resulting from the assessment of the large articles of machinery used in mining operations, and a general upswing in economic activities. Initially these increases will quite likely prove of substantial benefit to the political subdivisions, but it is the long-range effects that must be considered.

The political subdivisions wherein the generating plants are to be located will not be the only subdivisions affected by increased governmental costs. Neighboring counties and subdivisions will be affected by increased traffic over their roads and it is quite possible that employees of generating plants and coal companies and their families might choose to establish their residence in a town or county other than in the immediate area of the generating plant. Such a town or county might not receive any of the tax revenue derived from the generating plants because the revenue would be allocated to the subdivision wherein the plants and transmission lines of the plants are located under both the gross receipts tax and the ad valorem property tax.

Although property tax revenues should increase initially in the coal mining areas because of the increased assessment of land when used for coal mining purposes, the ultimate effect will be that such land will be assessed much lower than it was when assessed as farm or grazing land. After the coal has been mined the land will be returned to a rolling terrain, but the productivity of such land will be low because of the loss of topsoil and the infusion of unfavorable elements into the soil. Not only will this result in an immediate loss of property tax revenue, but the income normally derived from such land through farming and grazing will be lost to the owner and, indirectly, to the neighboring communities. It might be said that the loss of the property tax revenue will be compensated for by the gain in the revenue derived from the generating plants. This is not entirely true, for many of the coal lands will be located in a county or political subdivision other than that where the generating plants or transmission lines are located. The problems resulting from lands disturbed by coal mining operations, or "spoil banks" as they are commonly termed, are not new to North Dakotans. In the past very little effort has been made to combat the destruction of good farm and grazing lands through coal mining operations,

but if the coal mining activities in North Dakota are going to multiply, provision must be made for restoring such lands to a useful purpose and increasing their value. The present methods of taxation, and their means of allocating revenues, are inadequate for this task.

Another problem which our present tax structure appears unfit to cope with involves the use of extra-high voltage transmission lines. Because of the long distances to centers of greater population density, or areas where industrial uses of power occur, it is necessary to have the use of a cheap mode of transporting the electrical energy generated. This, of course, calls for the use of high voltage transmission lines. Basin Electric will be required to build only thirteen miles of transmission lines because it will have the use of the federal power grid at Washburn. Since cooperatives are given priority in the use of federal power lines over investor-owned companies, and the federal power grid appears to be committed to a capacity carrying load, the investor-owned companies and probably additional cooperative companies will have to build their own transmission lines. Under the ad valorem system these extremely expensive lines will be taxed at a very high rate, and by every political subdivision through which they would run. The imposition of such a tax and its administration would be very burdensome on these longer lines, and might cause North Dakota-produced power to lose the price advantage resulting from low-cost fuel. To completely exempt such lines from taxation would be to make a substantial tax concession to other states through which such lines will pass, since these states impose a fairly high ad valorem tax on transmission lines and they would also have the benefits of lower power costs because of North Dakota tax concessions. Thus, any new tax structure must take into account the new transmission lines that will be constructed by investor-owned companies and by cooperatives. At the same time it appears imperative that such a tax structure must not discourage the development of long transmission lines. This may call for low rates and simple administration, neither of which is present in the ad valorem system.

### Essentials of an Adequate Tax System

It appears that the first and most essential objective of any proposed tax plan should be the promotion of the economic development of North Dakota, although the revenue to be raised should be sufficient to provide for the increased govern-

mental costs and a fair contribution to general governmental costs. If North Dakota is able to provide low-cost power, other industries, in addition to the power generation industry, may choose to locate in our state. Cheap power is essential to many large industries and may counter-balance the long distances to market places that have in the past prevented many industries from locating in North Dakota. It is hoped that it will be possible in the future for some industries to buy power directly at the bus-bar at a rate that will encourage them to locate in this state, for without this the economic advantages to North Dakota will be limited. Tax concessions to the power generating companies must be balanced by their attracting other industries to locate in the state.

Another aim of a proper tax structure should be the promotion and use of the natural resources of the state in the most efficient manner possible. In the power generation industry the essential natural resources are water and fuel. The fuel found in North Dakota is lignite coal. This lignite coal should not be left in the ground while other forms of fuel, such as atomic energy, are being developed. If our lignite reserves are not made use of now, their capabilities of being able to supply low-cost power may be eventually displaced by other forms of power.

A proper tax structure should be equitable and treat like entities equally. We now have two different tax methods under which generation plants will be treated. Cooperatives would be taxed under the gross receipts tax and investor-owned companies under the ad valorem tax. It does not appear that these methods present an equitable tax system. Our tax structure should provide for some flexibility in dealing with diverse patterns of ownership. Specifically, there must be some consideration for those companies which will be required to build long, high-voltage transmission lines in order to overcome the great distances to market places.

Any proposed tax system must provide for an adequate formula under which a reasonable amount of revenue will be returned to the political subdivisions to compensate them for the cost of increased governmental services and the depletion of lands and other natural resources. Under existing laws almost all of the revenues to be received would be returned to the political subdivision wherein the generation plants are located. Some revenue would be returned to those

subdivisions through which transmission lines would pass. As was pointed out earlier in this report increased costs and the depletion of lands and natural resources will not necessarily take place only in those areas where the generating facilities are to be located. Thus a distribution area larger than is presently provided for must be considered. It is realized, of course, that the greatest costs will arise in the areas where the generation plants are to be located and the coal to be mined, so any distribution formula must take this fact into account. In the Stanton School District, which is the site of the plant presently being constructed by Basin Electric, it would be possible, if such plant were taxed under the ad valorem system, to lower the mill levy to sixty mills or less because of the increased property valuation in that small area. Thus this area would be tax-revenue rich, while other areas of the state, some of which would have increased governmental costs because of the new generation plants, would be levying twice as many mills. The coal to be depleted is considered to be a natural heritage of every North Dakota citizen, and it does not appear justifiable to permit only a few people to benefit from its use to the detriment of the rest of the citizens. In the Hibbing, Minnesota, area there was a great increase of local tax revenues when the iron mines were being developed. The state of Minnesota did not take sufficient action to divert some of the tax revenues which resulted, nor was any action taken in regard to the land that was disrupted. The tax dollars which were derived were used to develop fine municipal structures, but now that the rich iron ore has been almost completely depleted, these structures are a handicap because there is not sufficient tax revenue to operate or maintain them. This type of situation should not be allowed to happen in North Dakota.

### Suggested Alternative Possibilities for Taxation

The Committee considered many alternative taxation proposals in an effort to develop a fair and equitable tax structure applicable to all large-scale generating plants desirous of locating in the state of North Dakota. Specifically, the Committee directed its attention to a report prepared by Dr. William E. Koenker, Vice President for Academic Affairs at the University of North Dakota, entitled "Alternative Possibilities for Taxation of Large-Scale Generating Plants in North Dakota", which report was prepared at the request of the Committee. In addition to suggested alternative plans of taxation this report contains detailed in-

formation pertaining to the coal mining industry, sources of low-cost power, taxing methods used by other North Central States, and other information and computations. Dr. Koenker also prepared a supplementary report for the Committee entitled "Taxation of Extra-High Voltage Transmission Lines and Relative Tax Burden on REA Cooperatives" which contains, as its title indicates, information primarily devoted to transmission lines, and also an analysis of relative tax burdens resulting from proposed plans. No effort will be attempted in this report to cover all the material presented by Dr. Koenker but the pertinent parts thereof will be briefly covered.

The first alternative taxation system which the Committee explored was that of taxing on an ad valorem basis. At present mill rates, Basin Electric would have a tax liability of approximately \$614,172. This is comparable to what an investor-owned plant would pay and which would be returned to the local political subdivision. It would be possible for the Stanton area to lower its mill levy to 60 mills under the present system and still raise approximately \$362,700 a year. Basin Electric, in its feasibility studies, had estimated that it would pay approximately \$120,000 a year in taxes. Thus on the basis of the high rates and the allocation of most of the revenue to one township and school district, this plan is probably not very advantageous.

The second alternative would be to maintain the present gross receipts tax in amended form. Under this tax Basin Electric would pay approximately \$114,000 if all revenue received, including that derived from out-of-state, were used as the basis for this tax. If investor-owned utilities remained under the ad valorem tax their taxes would be substantially greater than those of the cooperatives, as indicated by the above estimates. If they were to be placed under the present type of gross receipts tax the revenue produced would approximate that of Basin Electric. This tax would only be feasible if the law to be enacted would provide for the inclusion of revenue derived from out-of-state sales in computing the tax. The prime objection to this tax is that the revenue would be returned primarily to the political subdivisions in which transmission lines were located, if over 200 miles of line were involved. In the case of Basin Electric, since its transmission will be entirely over Bureau of Reclamation lines except for 13 miles, the allocation would be to the taxing districts within which the plant is located. The result would be that these local districts would drastically reduce their mill rates,

and little or no compensation would be made to other cities, school districts, or the state which have costs resulting from generation activities.

A third alternative would be the use of a severance tax on coal, similar to the gross production tax on oil. In reference to the Basin plant being constructed, a yield of approximately \$108,000 a year would be realized if a 5 percent rate is assumed at \$1.80 per ton, and 1,200,000 tons of coal per year were taken from the ground. Such a tax would probably be paid by the coal companies but since their contracts with the generating plants provide for price adjustments to cover tax costs, the burden of the tax would be shifted to the generating plant. It must be kept in mind that an ultimate aim is to keep the power cost to North Dakotans down. A severance tax would not reduce the price of electrical energy as capacity increased for it is imposed upon the number of tons of coal taken from the ground and sold to a generating plant. It might be advantageous in having a tax which would move down as capacity went up. A fixed rate does not appear to be the best approach. The allocation of revenue would also be a problem evident in the establishment of this type of tax.

A fourth alternative would be the use of a flat-rate tax on the generating capacity of a power plant. This would appear to be an administratively simple tax, an example of which would be to impose a tax of one dollar per kilowatt based on the capacity rating of a generator, or "nameplate" capacity as it is commonly termed. Since a plant may actually be able to generate more than is indicated on its nameplate, the cost percentage would remain the same whether the company is operating at full capacity or not. This may be a disadvantage to this type of tax, but it is presumed that most plants would operate close to their nameplate capacity. A method of allocation would have to be determined.

The fifth type of tax outlined by Dr. Koener would be one imposed on the actual kilowatts produced. A tax of two-tenths of a mill imposed on each kilowatt produced by a 200,000 kilowatt plant, operating at 75 percent of its capacity, would produce tax revenue of approximately \$262,800 a year. A disadvantage of this system would be that there is no distinction made between dump power and firm power, which affects ability to pay. There might possibly have to be two rates imposed, if this is feasible.

Any new tax method enacted will have to

give consideration to the use of high voltage transmission lines. In the early stages of its study the Committee paid very little attention to transmission lines because only one generating plant (Basin Electric) had announced its decision to locate in North Dakota, and its plans called for the building of only 13 miles of transmission lines. The need to arrive at some solution to the problem of transmission lines occurred, however, with the announcement by United Power of their intention to build a 150,000 kilowatt plant close to Stanton, North Dakota, and to build a 230 kilovolt transmission line to Voltaire and Grand Forks. It is assumed that any other plants desiring to locate in North Dakota will also consider building transmission lines.

Several alternatives for including transmission lines in a new tax structure for large-scale generating plants were considered by the Committee. The first approach studied was that of leaving transmission lines free of any tax. The principal argument for this approach was that if a tax is placed on transmission lines owned by agencies other than those of the Federal Government, then an advantage is given to companies having access to federally-owned lines. If the tax is substantial, it would preclude the building of privately-owned lines and encourage all power to be transmitted over Bureau lines to the maximum extent. Another argument in favor of exempting transmission lines is that the development of large-scale generating capacity in the lignite coal area is dependent upon cheap transportation of power to centers of greater population density, or where industrial uses will occur. There are some important arguments against freeing extra-high voltage transmission lines from taxation. First there is the matter of equity with other taxpayers who have a right to ask why, for example, in the case of the proposed United power line, should \$8.3 million worth of new line be tax exempt. Another argument involves the high tax which Minnesota places on transmission lines when they enter Minnesota. Why should North Dakota subsidize Minnesota in the taxation of transmission lines and subsidize out-of-state consumers?

A tax alternative to the transmission problem which would free the transmission lines from taxation, but which would still secure tax revenue for the state, would be to consider the generating plant and the transmission lines as a unit. The entire tax would be imposed upon the generating plant. This would seem to provide a solution to the situation where one or more plants



would not have any substantial amounts of transmission lines, because they make use of Bureau of Reclamation lines. It might be difficult to establish a rate correlation but it is felt that this obstacle can be overcome.

Other approaches which might be used would involve taxing transmission lines on the same ad valorem basis as existing lines are now taxed; levying a tax on the miles of line, adjusted for voltage, in lieu of a property tax; levying a tax on the carrying capacity of a line; levying a tax on the amount of energy transmitted; and levying a gross revenue tax on power purchased at wholesale anywhere in the state. There are both favorable and unfavorable aspects to each tax plan and no attempt will be made to examine every aspect in detail.

Under the ad valorem tax the cost of wheeling power would be increased about 20 percent. This would materially increase the rate charged for power. To levy on the miles of line, adjusted for voltage, would give no consideration to the amount of power transmitted or the distance it is actually transmitted, and would appear to place some penalty on longer lines. To levy on the carrying capacity may be quite inequitable during the first five or ten years when many extra-high voltage lines might be used at substantially less than capacity. Because there are serious problems related to the exchange of power between transmission systems, to levy on the amount of energy transmitted would not be practical.

It would appear that there is no perfect method of taxing transmission lines alone, but it is not impossible to devise a tax system which would appear to be equitable to all concerned. Whatever system will be developed it will have to meet certain standards. Some of the criteria that such a tax should meet are: (1) the rate should not be so high as to discourage the building of additional lines in the future, or the long-distance transportation of large quantities of energy; (2) it should be readily adaptable in the law or by amendment to various capacity lines; and (3) it should, if possible, not unduly penalize a line during the early years of operation, when it may not be fully loaded.

Several combinations of the tax plans previously discussed were considered, in addition to suggestions received from Committee members and representatives of the power industries. One suggestion to which careful consideration was

given was that of formulating a tax system based upon the cost of the operation of a generation plant.

There seemed to be several serious objections to this proposed plan. Another plan offered was to place a tax on the land of a generating plant and a gross receipts tax in lieu of a tax on the generator and the generation yard. Further suggestions noted that any revenue gained from a severance tax could be used to rehabilitate spoil bank lands, or that a type of severance tax could be used, in addition to a production or gross receipts tax, and revenue received could be placed in a trust fund to compensate subdivisions in the future, through interest earned for the losses resulting from the loss in taxable value of coal lands. If a tax is imposed on transmission lines a credit could be given against the tax imposed on the plant.

A final plan suggested to the Committee would apply only to major units of 100,000 kilowatts or over, plus transmission lines of two hundred thirty kilovolt capacity or over. The land of these plants would be taxed on an ad valorem basis, and a tax on the net production of energy could be imposed at one-twelfth or one-tenth of a mill per kilowatt hour with the ad valorem tax being deducted from this amount to arrive at the amount of tax imposed. Revenue derived would be allocated 30 percent to the county and 70 percent to the state. The amount to be allocated to the counties would never be less than the highest amount received in past years, the state having to take any reduction which might result in a lean year. Net production would be defined as the gross energy production minus about 5 percent of the energy which is used to run the generators and equipment to produce the energy.

### Legislative Recommendations

The Committee recommends a franchise tax for the privilege of doing business in this state. The rates would be measured by the gross receipts received by plants with an electrical energy generation unit capable of generating 100,000 kilowatts or more. The plan suggested is not one of the specific alternative plans studied, but embodies aspects of the many alternatives suggested. The rates that would be imposed on the generating plant are comparatively low in reference to rates imposed by other states, yet sufficient to make a contribution toward the resulting increased governmental costs



on both the state and local levels. The Committee is of the opinion that the bill recommended will provide a favorable economic climate, and should prompt other electrical energy generation plants and other industries to explore the opportunities offered by North Dakota when consideration is being given to new industrial locations.

The bill provides that both cooperative and investor-owned electrical generation plants with an electrical generation unit of 100,000 kilowatts or more shall be subject to a tax of one percent for the first two years, and two percent thereafter, upon their gross receipts for the privilege of doing business in this state. It is estimated in regard to the Basin Electric plant that this plant will yield about \$60,000 at the 1 percent rate and \$120,000 at the 2 percent rate. All property of such plants, except land, is classified as personal property and the tax is in lieu of personal property taxes. Land would be taxed under the ad valorem method at the local level. Transmission lines of two hundred thirty kilovolts or larger are to be taxed at the rate of \$150 per mile of line in lieu of any property tax upon the lines and substations. In the case of Basin Electric this tax would yield about \$1,950 on its 13 miles of line and if the proposed 250 miles of line are constructed by United Power Association, its tax would be \$37,500 upon its 230-KV lines. Provision is made for the collection of both the tax on the generation plant and the tax on the transmission lines by the State Tax Commissioner, who is to remit the revenues to the State Treasurer for allocation.

The annual revenues received from the taxing of generation plants located in any county would be allocated by the State Treasurer 75 percent to the county and 25 percent to the state for the first \$50,000 received, 50 percent to the county and 50 percent to the state for the second \$50,000 received, and 25 percent to the county and 75 percent to the state for any amount over \$100,000 received from a county. On the county level the annual revenues received from the taxing of the generation plant would be apportioned 15 percent to the incorporated cities and villages, based upon the population of such cities and villages according to the last decennial federal census, 40 percent would be apportioned to the county general fund, and 45 percent would be apportioned to the school districts within the county based upon the average daily attendance as certified by the county superintendent of schools. Revenue received from the taxing of transmission lines would be allocated by the State Treasurer to the

counties in which transmission lines are located in the proportion that the miles of such lines in the county bear to the total miles of such transmission lines in the state. These revenues would be deposited in the county general fund.

The Committee believes that the generation tax plan proposed will be found to be quite favorable to any of the electrical generation companies planning to locate in North Dakota. The rates are comparatively low and flexible. No problems should arise because a company must charge more for firm power than it does for dump power. The amount of taxes that Basin Electric would pay compares favorably with the findings of its feasibility study, except that the 2 percent rate will be applied after two years of operation rather than five years. The Committee believes that a two-year period is sufficient because large-scale generation plants, unlike the smaller distribution plants, should be able to operate at a high level of efficiency within two years. The local levels of government will receive additional revenues to apply towards extra governmental costs resulting from the location of the generation plants within their boundaries. The tax imposed on the transmission lines is at a low enough level to encourage the building of such lines. If such lines were to be taxed under the ad valorem system, the tax would approach \$600 per mile of line. Furthermore, only lines owned by and carrying electrical energy of generation plants located within North Dakota would be entitled to such favorable tax treatment under the terms of the bill. Any plants located without the state, and building transmission lines into or through this state would be subject to the ad valorem tax.

Those counties in which extensive coal-mining operations will take place without having the benefit of a generation plant located within their borders have not been overlooked. The Committee remains well aware of the long-range problems which might result from extensive mining operations in the form of spoil banks and the subsequent devaluation and unproductivity of the land. Since several individual legislators desired to introduce legislation designed to overcome the problems which result from large coal-mining operations, the Committee declined to make any recommendation in this area. Several alternative solutions were studied by the Committee which would aid coal mining counties in restoring spoil banks to useful purposes and replace any tax revenue which might be lost through the devaluation of the land. The Committee is confident that these alternatives will be brought before the Legislative Assembly.

PART IV  
PERSONAL PROPERTY TAX

The detailed study of the personal property tax undertaken by the Committee required a great amount of basic research in order to determine correlations between personal property values and sales tax, income tax, real property taxes, and populations of political subdivisions. In addition, it was necessary to ascertain the revenues presently produced by the personal property tax for use by the various political subdivisions, in order that an estimate could be made as to how much new tax revenue would be necessary as a replacement, as well as determining how such revenue could be distributed to the political subdivisions in the most equitable manner. This type of information had not previously been compiled by any state or local agency.

The Committee was most fortunate in obtaining the services of the personnel of the Department of Agricultural Economics of North Dakota State University for the purpose of obtaining and developing the detailed information required in making a comprehensive study of the personal property tax and the effects and methods of its replacement. Dr. Laurel D. Loftsgard, Mr. Thomas K. Ostenson, and Mr. Jerome E. Johnson, of the Department of Economics of North Dakota State University, presented detailed reports containing the information requested by the Committee which was a substantial aid to the Committee's deliberations. The reports which were presented contained information showing the amount of taxes levied on selected classes of personal property by counties, school districts, cities, villages, and townships, with possible suggestions for the replacement of revenue lost if such personal property were eliminated from the tax rolls.

The Committee recognizes that the elimination and replacement of the personal property taxes is a goal sought by many, but it is also recognized that to immediately end a tax system, inequitable as it may be, that has been part of the tax structure of North Dakota since statehood, could have a very undesirable effect upon the political subdivisions of the state. Personal property makes up approximately 20 percent of the property tax base, and public utility property, which is classified as personal property, makes up another 15 percent of the property tax base. To

eliminate approximately 35 percent of the property tax base, which is the principal source of operating revenue for the political subdivisions, without providing for replacement revenue would put the political subdivisions of the state into bankruptcy.

In addition to finding an equitable replacement for the personal property tax, the Committee was faced with the problem of the retention of the bonding base of the political subdivisions and distribution of a replacement tax. Political subdivisions are authorized to sell bonds to finance the building of schools and other public buildings and projects. The value of the bonds which may be issued by a political subdivision is limited to a percentage of the tax base, or property valuation, of the political subdivision. If a portion of the tax base were eliminated, the bonding capacity of the political subdivision would be proportionately reduced. In addition, the obligation for the payment of any outstanding bonds would be shifted to the remaining tax base, which would be real property, if personal property were to be totally eliminated. Therefore, consideration must be given to preserving the bonding capacity as well as the tax base of the political subdivision in order that municipal projects may be adequately financed.

To develop any permanent program to replace the revenue lost by the elimination of the personal property of each political subdivision on a dollar-for-dollar basis would be a physical impossibility. The Committee's deliberations, therefore, were concerned with developing an equitable method of replacing revenue lost through the elimination of the personal property tax, which would reflect as nearly as possible on a continuing basis, the revenue-producing capacity of exempted items in each major political subdivision.

Thus far just a few of the problems with which the Committee was concerned have been mentioned in a very general manner. The remaining material will be more concerned with specific areas of the personal property tax, and alternative plans and suggestions, which were studied in an effort to develop a reasonable method and plan for the replacement of the personal property tax.

## Alternative Suggestions for the Elimination and Replacement of Selected Items of Personal Property

The Committee reviewed various alternatives for the elimination and replacement of items of personal property. No attempt will be made in this report to detail every alternative suggested, but some of the possibilities will be briefly mentioned.

If miscellaneous farm machinery, household goods, clothing, musical instruments, personal belongings, business furniture and equipment, and professional equipment and libraries were to be eliminated from the tax rolls, the resulting revenue loss to counties, school districts, and cities and villages would be approximately \$4,401,978. This figure includes the 21-mill county equalization fund levy, but there would be a reduction of the estimated loss because of reduced administration costs in assessment and collections.

The revenue lost could be replaced in several ways. The allowable mill levy for school districts could be increased. A 4-mill increase on the remaining property could provide \$2,577,110 a year. Improvement in assessment practices would take place and savings would be realized from reduced administration costs involved in assessing the exempted property, which would reduce the tax loss of counties, cities, and townships. If the \$1.00 per person school tax were eliminated along with the items previously mentioned, the work of the local assessor in cities and villages would be greatly reduced, resulting in material savings. Loss of revenue to school districts through the elimination of the poll tax would be \$304,262, based on 1962 figures.

An increase of the sales and use tax by one-fourth of one percent of all sales, on the present base, would generate approximately \$2¼ to \$2½ million per year, which could be returned to schools with provisions for counties, cities, and townships to make up their lost revenue through savings in assessment and collection costs and an increase in levies on the remaining tax base. The revenue distributed to schools could be made through the foundation program according to average daily attendance. A one-half of one percent increase in the sales and use tax should yield approximately \$4½ to \$5 million. This amount would be ample to replace all revenue lost from the elimination of the items previously mentioned, including the poll tax. Possibly a simple per

capita distribution formula could be used in returning an estimated \$1,664,646 loss to counties, cities, and villages.

If the major portions of the personal property taxes were eliminated, the revenue loss to counties, school districts, cities, and villages would approximate \$13,634,000. A three-fourths of one percent increase in the sales tax would generate \$7 to \$7¼ million, which would not be sufficient to reimburse school revenue lost (\$8,954,000). Thus an additional \$6 million would be required to replace all revenue lost by removing the major portion of the personal property tax.

The preceding information in regard to alternative plans for the elimination and replacement of the personal property tax is a brief summary of the information presented by the personnel of North Dakota State University. A much more detailed explanation of the alternatives can be obtained by reading the reports in the files of the Subcommittee on Taxation.

The Committee considered other suggestions made by individual legislators and citizens. Among the alternatives reviewed were the use of an income tax based on a percentage of state income tax collections as a replacement source, a portion of which could be paid directly to the county treasurer for distribution according to other property taxes levied; a gross earnings tax on business and professional people in lieu of the personal property tax on inventories and professional equipment; a transaction tax; and the use of a self-listing procedure to reduce the high cost of administering the personal property tax.

### Committee Recommendations

The Committee noted that the most inequitable aspect of the personal property tax, and the one which affects almost every citizen of the state, is the taxation of household goods, clothing, and musical instruments. Another area that is very troublesome is the assessment and taxation of smaller, miscellaneous farm machinery and tools. Practically speaking, an equitable assessment of these articles is almost impossible. The most widespread displeasure of the citizens of this state in regard to the taxation of personal property is directed toward the taxation of household goods, clothing, and musical instruments, and the highest administration costs are incurred in the assessment of these articles. The revenue received through the taxation of household goods, clothing,

musical instruments, and miscellaneous farm machinery (excluding tractors, combines, potato pickers, and beet harvesters) is approximately \$3.7 million. This figure includes the mandatory 21-mill school levy. The net loss from these items, which are commonly referred to as Items 6f, 7, 8, and 9, as found in the Assessor's Manual, would be less than the \$3.7 million figure if the administrative savings were deducted.

The Committee recommends that Items 6f, 7, 8, and 9 be eliminated from the personal property tax rolls, and the revenue lost be replaced by an income tax at the rate of one-half of one percent of net income before personal deductions. The recommendation for the exemption of these articles would not apply if they are held by a retailer as a part of his stock for resale. The sum of \$2,715,000 represents the actual loss to school districts, cities and villages, townships, and the county level of government. This sum would be distributed to each county in that proportion which all property taxes collected for each county and the cities, villages, townships, and school districts therein for the preceding calendar year, bear to the total amount of all property taxes collected by all counties and the same political subdivisions therein. The same method of distribution would be made on the county level, exclusive of the 21-mill county equalization fund levy.

The Committee deliberated for some time before making its final recommendation. Although it might appear to some that the recommendation of the Committee is the only natural conclusion that could be arrived at, there were certain factors which had to be considered. For instance it was noted that with the exemption of Items 7, 8, and 9, as found in the Assessor's Manual, many city residents will not directly pay any property taxes, and on any bond issue placed before the voters they would be in the position of being able to vote a mortgage upon those people

owning taxable property. Of course, such people indirectly pay any increased property taxes through higher rentals of their apartments and houses. It was also argued that to exempt one class of articles would be to discriminate against those people who own a large proportion of another class of articles. Some retailers stated that if one class of personal property is to be eliminated, so should retail stocks. It was pointed out that the taxation of retail inventories is passed on to the consumer and, in addition, retail inventories are strictly income-producing items, whereas most of the items which are being recommended for elimination are not. Furthermore almost every person in the state owns some household goods, clothing, or musical instruments, so the elimination of these items is actually quite broad. Consequently, it seemed the process of eliminating the personal property tax could begin with these items, and the revenue loss would not be so large as to be impossible to replace.

Basically the Committee's recommendation results from the fact that Items 6f, 7, 8, and 9 are the most difficult to assess, result in the highest administrative costs, are the most difficult to collect, have the largest amounts of delinquency, result in the highest degree of inequity, and are owned by the greatest number of taxpayers. The Committee is of the opinion that the proper course is to start with the most troublesome items. The Committee further recommends the approval of a resolution which would direct the Legislative Research Committee to continue its study of the means of eliminating and replacing personal property taxes, including the feasibility of gradually phasing out the balance of the tax through a gradual percentage reduction in the remaining personal property tax base. The Committee feels that a good understanding of the personal property tax has been arrived at, and that the information gained in this study will provide a base for the further study of the personal property tax.

# Transportation

Senate Concurrent Resolution "C-C" of the Thirty-eighth Legislative Assembly directed the Legislative Research Committee to study the transportation laws of North Dakota. The study was assigned to a Subcommittee on Transportation consisting of Senators A. W. Luick, Chairman, Leonard A. Bopp, Walter Dahlund, C. G. Kee, and Emil T. Nelson; and Representatives Harry Bergman, Donald L. Hertz, James E. Leahy, Louis Leet, and Kenneth Tweten.

It was brought to the attention of the Committee that the law prescribes the valuation of property of a utility as the basis for determining the reasonableness of rates. This basis may be correct in the case of electric, telephone, and pipeline companies, but is of only limited usefulness in the case of railroads and motor carriers, which have substantial operating costs in addition to their plant investment. In such case, the cost-of-service basis is a more valid guide in determining reasonableness of rates. Thus legislation has been prepared which would require that the valuation of property of railroads and motor carriers be determined only in such cases as the Public Service Commission shall require.

Present law requires that a public utility applying for a rate increase shall submit to the Public Service Commission an extremely large amount of data and information. This data is often difficult to compile and is seldom if ever required in its entirety. An additional feature of the bill as recommended by the Committee would amend the law to require submission of only such data and information as the Public Service Commission shall request. This bill also decreases from eleven months to seven months the maximum period for which the Public Service Commission may suspend proposed rate increases or decreases by public utilities. The eleven-month period has proved to be longer than required and, in addition, the seven-month period will be the same as the maximum under ICC rules for interstate rate changes.

In the field of safety and equipment rules and regulations governing rail and motor carriers it was noted that some provisions of North Dakota law are inconsistent with Interstate Com-

merce Commission regulations. In addition, it was believed that by granting authority to the Public Service Commission to prescribe safety rules and regulations, conflicts could be eliminated and greater flexibility attained in adapting such rules and regulations to rapidly changing equipment and practices in this field. Thus a bill is recommended which would give the Public Service Commission such rule-making authority.

In regard to railroad equipment, the bill as recommended by the Committee would amend the law relating to the size of lettering on railroad crossing signs in order to leave the size to the discretion of the Public Service Commission. This will permit crossing signs in North Dakota to be uniform with other states. The bill also repeals obsolete sections dealing with locomotive equipment, the maximum size of locomotives and railroad cars and qualifications and working conditions of motor carrier drivers. These matters are covered by ICC regulations or are obsolete in view of modern developments in the transportation industry.

Also prepared and recommended by the Committee is a bill which would require the registration with the Public Service Commission of interstate common, contract, and exempt commodity carriers and provide for the enforcement of Interstate Commerce Commission rules and regulations by state enforcement authorities. Under this proposed bill, a violation of a carrier's ICC authority is made a violation of state law and is subject to prescribed penalties in state courts. It was pointed out to the Committee that a majority of the States have such legislation. Since the level of ICC enforcement within North Dakota is extremely low due to a shortage of personnel, the legislation appeared highly desirable for the purpose of curbing operations in violation of ICC authority with the resultant loss of revenue to legitimately franchised rail and motor carriers.

In connection with agricultural carriers, it was brought to the Committee's attention that a carrier whose permit has been revoked for violation of his authority need only apply to the Public Service Commission for a new permit and that

the commission was without authority to deny the application. A bill is therefore recommended which would grant to the Public Service Commission authority either to revoke or suspend the permit of an agricultural carrier and would further provide that the issuance of a new permit to replace one revoked or suspended should be discretionary with the commission during a period of one year subsequent to the revocation or suspension.

The Committee considered but rejected a proposal to limit the size of agricultural carrier vehicles to three axles in view of the fact that some bona fide agricultural carriers now operate larger-type vehicles and the use of larger vehicles is increasing. Also considered but not recommended was a bill which would have limited special common motor carriers to truck-load shipments between points on Class A routes, thus limiting their ability to compete with Class A carriers.

# Explanation of Legislative Research

## Committee Bills

### Senate Bills

**Senate Bill No. 33 - Initiative and Referendum.** This bill provides for the procedure, conditions, manner, and form for submitting measures by use of the initiative and referendum and reflects the changes of the proposed amendment to section 25 of the State Constitution by the Committee. See the report of the Committee on Constitutional Revision.

**Senate Bill No. 34 - Restriction on Legislators Holding Other Offices.** This bill places a restriction on members of the Legislature concurrently holding other state offices and reflects the proposed amendment to section 37 of the State Constitution by the Committee. See the report of the Committee on Constitutional Revision.

**Senate Bill No. 35 - When Legislative Assembly Meets.** This bill would require the Legislative Assembly to begin its sessions on a set date of January third instead of the first Tuesday after the first Monday in January. See the report of the Committee on Constitutional Revision.

**Senate Bill No. 36 - Special Sessions.** This bill would allow the Legislature to call itself into special session if needed. Presently only the governor can call such sessions. See the report of the Committee on Constitutional Revision.

**Senate Bill No. 37 - Appointment of Certain State Officers and Membership of the Emergency Commission and State Board of Equalization.** This bill reflects the amendments proposed by the Committee to section 82 of the State Constitution which changes the offices of state treasurer, commissioner of insurance, commissioner of agriculture and labor, tax commissioner, and superintendent of public instruction from elective to appointive offices and removes the commissioner of agriculture and labor from the emergency commission and state board of equalization and substitutes the attorney general and chairman of the public service commission therefor respectively. See the report of the Committee on Constitutional Revision.

**Senate Bill No. 38 - Appointment of Supreme and District Court Judges and Chief Justice.** This bill reflects the amendment to section 90 of the State Constitution proposed by the Committee which changes the selection of judges from the elective to appointive-elective system and provides that the judicial council shall select the chief justice. See the report of the Committee on Constitutional Revision.

**Senate Bill No. 39 - Legislative Reapportionment.** This bill sets forth the new legislative districts proposed by the Committee pursuant to the holdings of the federal courts requiring all legislative districts to be apportioned on a "one-man, one-vote" principle. See the report of the Committee on Constitutional Revision.

**Senate Bill No. 40 - Tax Commissioner to Administer Motor Vehicle Use Tax.** This bill would provide for the administration of the motor vehicle use tax by the tax commissioner with the motor vehicle registrar to act as the agent of the tax commissioner, and revenues derived to be deposited in the general fund. See Committee report on Taxation.

**Senate Bill No. 41 - Electric Cooperatives Subject to Excise Taxes.** This bill would make electric cooperative corporations subject to sales and use taxes, and motor fuel taxes. See Committee report on Taxation.

**Senate Bill No. 42 - Franchise Tax Placed Upon Large Electric Generation Plants.** This bill would place a franchise tax upon large electrical generation plants and also impose a fixed amount of tax upon extra-high voltage transmission lines, which tax revenues would be allocated to the state and its political subdivisions to compensate for increased governmental costs and revenue lost through decreasing the property tax base. See Committee report on Taxation.

**Senate Bill No. 43 - Exemption of Certain Items of Personal Property From Taxes and Replacement of Revenues.** This bill would exempt household goods, clothing, musical instruments, and farm machinery and tools, except tractors, combines, beet harvesters, and potato harvesters, from the personal property tax and would replace revenues lost with a one-half of one percent income tax on net income to be allocated to certain political subdivisions. See Committee report on Taxation.

**Senate Bill No. 44 - Legislative Pre-session Orientation Conference.** This bill would establish a three-day, pre-session conference for all hold-over senators and legislators-elect for the purpose of organizing the Legislative Assembly and providing orientation classes. See Committee report on Legislative Procedure, Organization, and Administration.

**Senate Bill No. 45 - County Consolidation and County Government Reorganization.** This bill establishes a county consolidation committee to study whether a county should be consolidated with another county, or if the county should adopt one of the statutory forms of county government. See the report of the Committee on State, Federal, and Local Government.

**Senate Bill No. 46 - Determination of Parentage and Misuse of Aid to Dependent Children Grants.** This bill would deny dependent children assistance to uncooperative parents, clarifies the law in regard to the commencement of paternity actions, and provides that it is a misdemeanor to misuse aid to dependent children assistance grants. See Committee report on State, Federal, and Local Government.

**Senate Bill No. 47 - Stepfather Liability in Regard to Stepchildren receiving Aid to Dependent Children Grants.** This bill would make a stepfather liable for supporting his stepchildren to the degree he is able if they are otherwise eligible for aid to dependent children assistance, but would not relieve the natural father of any legal obligation to provide support. See Committee report on State, Federal, and Local Government.

**Senate Bill No. 48 - Payments for Child Support Through Clerk of Court.** This bill would provide that a court may order child support payments to be made through the clerk of court, and provides for remedial action in cases where support payments become delinquent. See Commit-

tee report on State, Federal, and Local Government.

**Senate Bill No. 49 - Recognition of Indian Court Decrees.** This bill would allow district court judges to recognize, in their discretion, judgments and decrees of Indian courts and to enforce the provisions of such judgments and decrees in the same manner as if they had been rendered in the state courts. See Committee report on State, Federal, and Local Government.

**Senate Bill No. 50 - Acceptance of Civil Jurisdiction on Indian Reservations Over Certain Domestic Relation Causes of Action.** This bill is an alternative bill to Senate Bill No. 49 and if the Indian courts do not improve their judicial codes and administration, would provide for the state accepting civil jurisdiction over certain domestic relation causes of action, primarily for welfare purposes. See Committee report on State, Federal, and Local Government.

**Senate Bill No. 51 - State Outdoor Recreation Agency.** This bill would create a State Outdoor Recreation Agency which would plan and coordinate related outdoor recreation programs and projects and, incidental thereto, would become a focal point within the state for the many activities related to outdoor recreation. See the Committee report on Natural Resources.

**Senate Bill No. 52 - Pardon and Parole.** This bill relates to paroling inmates sentenced under an indeterminate sentence and makes other minor changes in the pardon and parole laws. See the report of the Committee on Pardon and Parole.

**Senate Bill No. 53 - Division of Supervised Correspondence Study.** Strengthens power and clarifies authority of board of public school education over correspondence study division curriculum and general operations as well as more clearly defining requirements for enrollment in correspondence study. See Committee report on Secondary Education.

**Senate Bill No. 54 - Nonresident Pupil Admissions.** Grants authority for pupils to attend schools outside their district of residence if such schools will not thereby be injured or overcrowded and if the pupil's parents or guardian pays the tuition. See the Committee report on Secondary Education.

**Senate Bill No. 55 - Registration of Interstate Common Carriers.** Requires that carriers



operating under Interstate Commerce Commission authority register such authority with the public service commission and makes any violation of such authority a violation of state law. See Committee report on Transportation.

**Senate Bill No. 56 - Agricultural Carrier Permits.** This bill relates to the authority of the public service commission to either suspend or revoke the permit of an agricultural carrier for violation of such carrier's authority, and makes issuance of a new permit discretionary with the commission within a period of one year. See Committee report on Transportation.

**Senate Concurrent Resolution "A" - Constitutional Revision.** This resolution includes all the amendments and repeals to the State Constitution

as proposed by the Committee. See the report of the Committee on Constitutional Revision.

**Senate Concurrent Resolution "B" - Personal Property Tax Study.** This resolution would direct the Legislative Research Committee to continue the study of replacing the personal property tax with other types of taxes and eventually eliminating all personal property taxes. See Committee report on Taxation.

**Senate Resolution No. 1 - Authorizing Department of Accounts and Purchases to Furnish Certain Equipment for the Senate.** This resolution would authorize the department of accounts and purchases to furnish certain types of equipment to be used by the Senate during the legislative session. See Committee report on Legislative Procedure, Organization, and Administration.

## House Bills

### House Bill No. 533 - Imposition of Gross Earnings Tax on Rural Telephone Associations.

This bill would impose a gross earnings tax in lieu of personal property taxes upon mutual and cooperative telephone associations and small private or commercial telephone companies, the rate to be imposed determined according to the average number of telephone stations maintained per mile of telephone line by each company. See Committee report on Taxation.

### House Bill No. 534 - Administration of Sales Tax Returns and Permits.

This bill would shorten the appeal time from a determination of the amount of sales tax due, delete the charge for a sales tax permit, increase the fee for the reissuance of a sales tax permit, allow the tax commissioner some discretionary power in determining who shall be allowed to have a sales tax permit, allow the tax commissioner to provide for the use of annual or less than quarterly sales and use tax returns, and change the amount of penalty for late filing of sales and use tax returns. See Committee report on Taxation.

### House Bill No. 535 - Collection of Use Tax From Purchaser.

This bill would provide that a person is not exempt from the use tax if the sales tax has not been collected from him in sales where such sales tax should have been collected. See Committee report on Taxation.

### House Bill No. 536 - Sales Tax Permits for Out-of-State Vendors.

This bill would change the definition of a retailer so as to include vendors making deliveries into the state, or sending catalogs into the state, and thus provide that such persons must have a sales tax permit in order to continue to do business in the state. See Committee report on Taxation.

### House Bill No. 537 - Sales and Use Tax Permanently and Temporarily Placed Upon Broadened Tax Base.

This bill would provide for making the sales tax permanent at two percent, allow that any amount over the two percent rate be enacted at each legislative assembly, broaden the sales tax base to include articles upon which special taxes are now imposed, change the method of collecting sales and use taxes on rental property, make certain casual sales subject to the sales and use taxes, and repeal the wholesale taxes

imposed upon commodities used in mixed drinks and upon cigars and tobacco products. See Committee report on Taxation.

### House Bill No. 538 - Destruction of Welfare Records and Availability of State Records.

This bill would allow the destruction or disposal of certain welfare records at the direction of the secretary of state, and also make certain vital statistics records available to state and county officials. See the Committee report on State, Federal, and Local Government.

### House Bill No. 539 - Report of Child Abuse.

This bill would provide that physicians and other medical personnel must report cases of apparent child abuse by a parent or other custodians to the juvenile commissioner or state's attorney for investigation by welfare personnel, and provides for immunity from any liability that might otherwise be incurred. See Committee report on State, Federal, and Local Government.

### House Bill No. 540 - Water Law Revision.

This bill contains various provisions which would: (1) remove conflicts and ambiguities in North Dakota's water laws and ensure their adequacy for the purpose of water conservation; (2) allow water management districts to make application for joint use of drains located within drainage districts; (3) provide a statute of limitations regarding claims against irrigation districts; (4) transfer supervision of artesian wells to the state water commission; and (5) provide for a contract fund for moneys paid out by and reimbursed to the state water commission. See the Committee report on Natural Resources.

### House Bill No. 541 - State Historical and Parks Board.

This bill would reorganize North Dakota's park system by creating a State Historical and Parks Board which would be responsible for administering, planning, and coordinating two separate and independent divisions to be known as the State Historical Society Division and the State Parks Division. See the Committee report on Natural Resources.

### House Bill No. 542 - Higher Education Facilities Commission.

Establishes a Higher Education Facilities Commission consisting of members of the state board of higher education plus three

members appointed by the governor to represent private and junior colleges, for purpose of planning and allocating federal funds among colleges in the state. See the report of the Committee on Higher Education.

**House Bill No. 543 - Definition of Nonresident for Tuition Purposes.** Defines term "nonresident" as applied to students under the age of twenty-one attending state-supported colleges and universities in order that residence of such student will be that of his parents or guardian. See the report of the Committee on Higher Education.

**House Bill No. 544 - Nonresident Tuition Rates.** Provides that rates charged students from bordering states at state-supported colleges and universities shall be at least equal to those charged by similar institutions in a student's home state, and that tuition rates for all other nonresidents shall be as set by the state board of higher education. See Committee report on Higher Education.

**House Bill No. 545 - Emergency Commission Grants.** Provides that emergency commission may grant authority and if necessary may grant funds to the board of higher education for purchasing property for expansion at a state-supported institution of higher education when terms of sale are favorable and time does not permit legislative action. See Committee report on Higher Education.

**House Bill No. 546 - Appropriation for Director of Vocational Education.** Appropriates a total of \$29,000 to the department of public instruction for the purpose of employing a director of vocational education to coordinate and upgrade programs on a statewide basis and to prepare programs and plans to qualify for federal funds under the Federal Vocational Education Act of

1963. See the Committee report on Secondary Education.

**House Bill No. 547 - Public Utility Rate Changes.** This bill amends the law governing applications for rate changes to provide that the amount of supporting material be discretionary with the public service commission, decreases the period of suspension of proposed rate changes, and permits the commission to consider factors other than property valuation in setting just and reasonable rates for railroads and motor carriers. See the Committee report on Transportation.

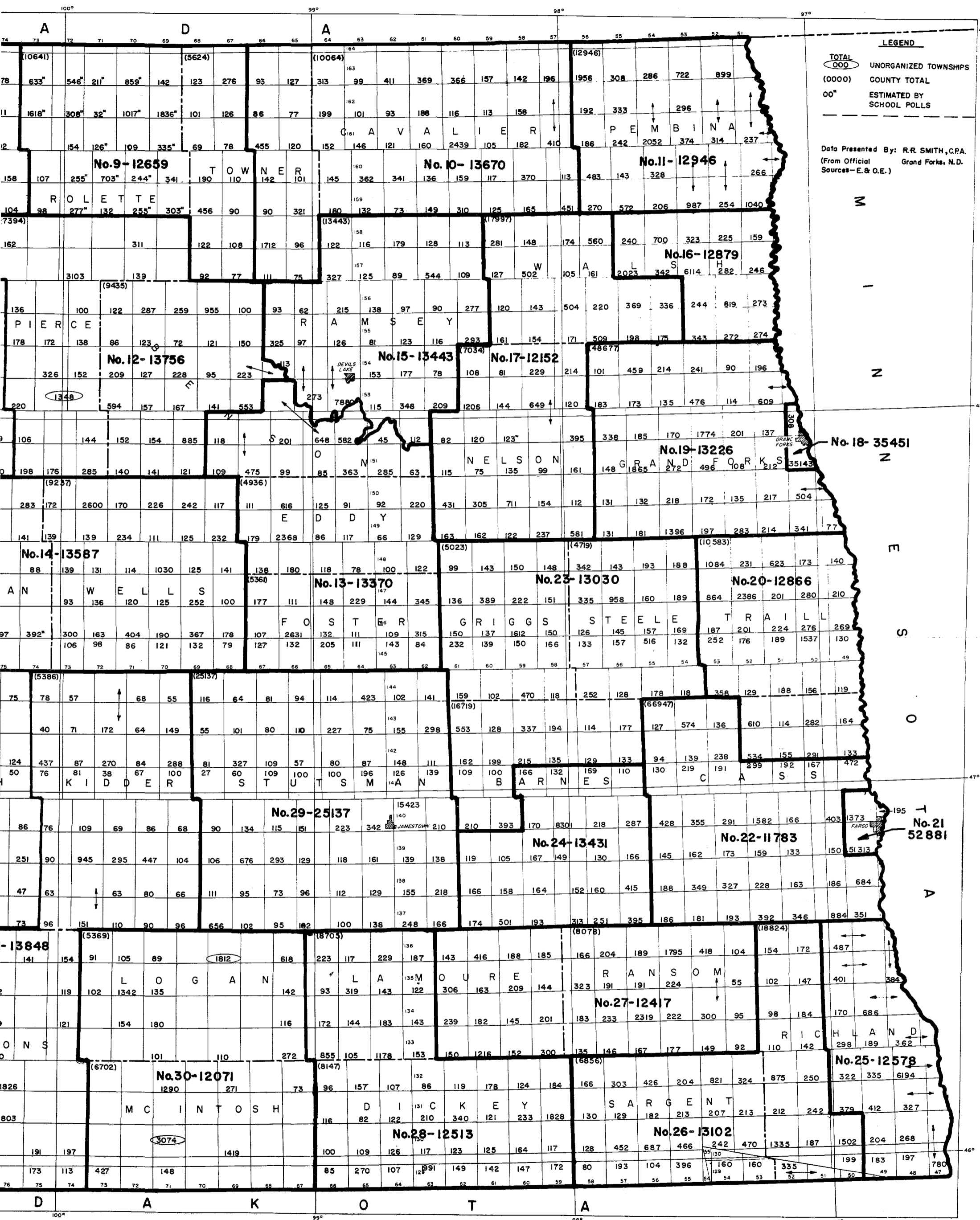
**House Bill No. 548 - Public Utility Safety Requirements.** This bill grants authority to the public service commission to prescribe rail and motor carrier safety requirements and repeals several obsolete sections prescribing safety standards for equipment and operators thereof. See the Committee report on Transportation.

**House Concurrent Resolution "A" - Asking Congress to Provide Welfare Reimbursement for Indian Reservations Equal to Other States.** This resolution would request Congress to enact legislation which would provide reimbursement for welfare assistance on Indian reservations in North Dakota equal to that provided for the Navaho-Hopi Indians in Arizona and New Mexico. See Committee report on State, Federal, and Local Government.

**House Resolution No. 1 - Authorizing Department of Accounts and Purchases to Furnish Certain Equipment for House of Representatives.** This resolution would authorize the department of accounts and purchases to furnish certain types of equipment to be used by the House of Representatives during the legislative session. See Committee report on Legislative Procedure, Organization, and Administration.



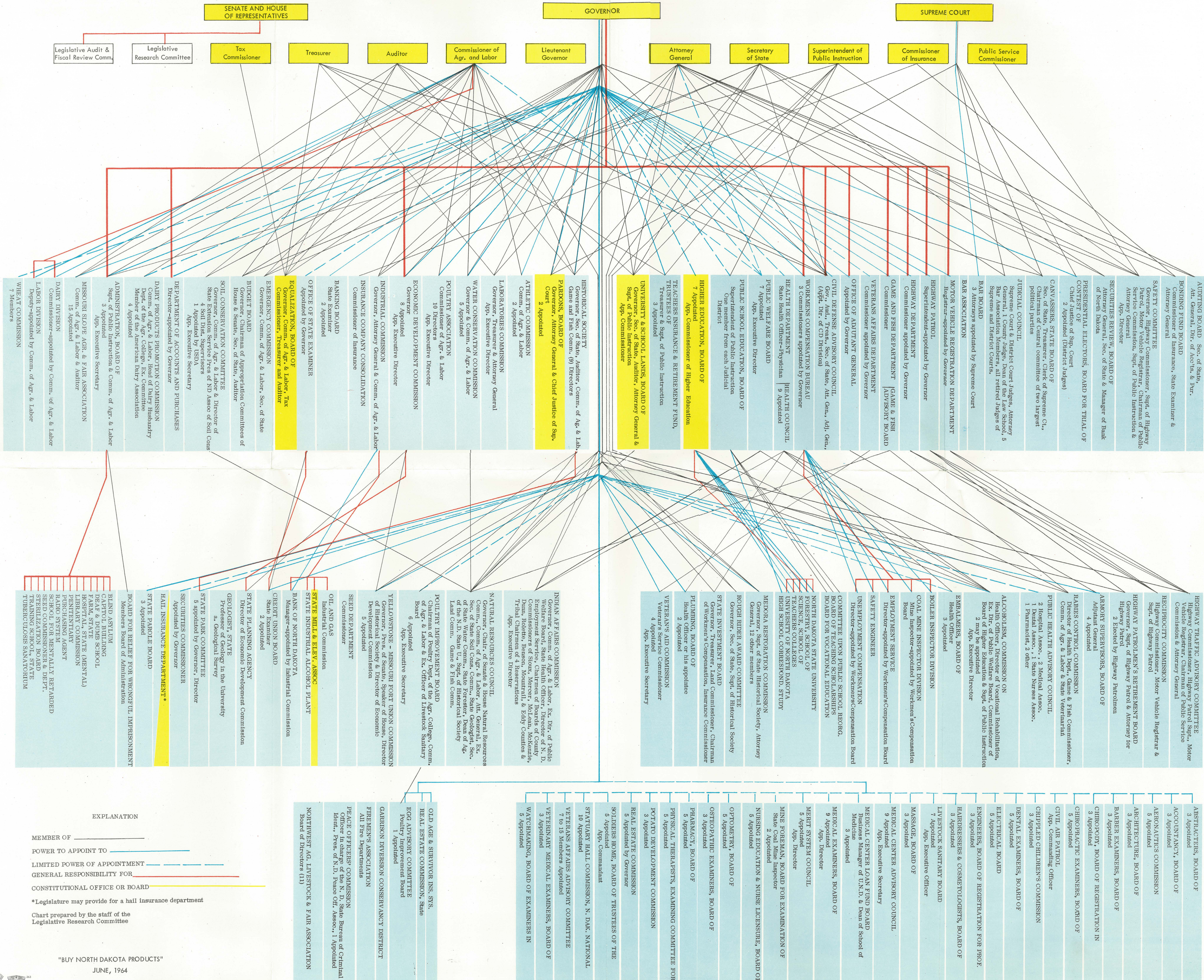
SHIPS (INCLUDING MUNICIPALS THEREIN).



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# ORGANIZATION OF NORTH DAKOTA STATE GOVERNMENT



## EXPLANATION

- MEMBER OF \_\_\_\_\_
- POWER TO APPOINT TO \_\_\_\_\_
- LIMITED POWER OF APPOINTMENT \_\_\_\_\_
- GENERAL RESPONSIBILITY FOR \_\_\_\_\_
- CONSTITUTIONAL OFFICE OR BOARD \_\_\_\_\_

\*Legislature may provide for a hall insurance department

Chart prepared by the staff of the Legislative Research Committee